

Combating Joblessness:

An Analysis of the Principal Strategies that Have Influenced the Development of American Employment and Social Welfare Law During the 20th Century

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I.

INTRODUCTION

The question of how the law should respond to the problem of joblessness has troubled policy-makers for centuries.¹ Should jobless individuals be treated as victims of circumstance or as authors of their own fate? Should publicly funded jobs or income assistance be offered to such persons, or should they be presumed capable of looking after themselves? If income assistance and/or jobs are made available, how much aid should be provided, on what conditions should it be granted, and in what form should it be given? What collateral measures should be undertaken, if any, to address the problem of joblessness, and should the goal of these measures be to pressure jobless individuals to seek work, to reduce aggregate levels of joblessness, or to achieve equal employment opportunity among population groups?

During the twentieth century, public debate concerning these questions has been particularly contentious, with “conservatives” and “liberals” each dominating public policy formation during different periods.² The purpose of this article is to analyze and evaluate the different strategies for combating joblessness that have been pursued in the course of this debate, with special emphasis on the use of employment and social welfare law as a policy instrument.

Some readers may think such an assessment is unnecessary. With the United States unemployment rate at its lowest level in over thirty years, is there really a need to worry about combating joblessness? I believe there is. No responsible commentator believes the dragon of recession has been slain for good. It would be foolish to assume that we have seen the last of rising unemployment rates, and it would be naive to believe that we know as much as we need to about how to respond to mass unemployment when

1. I use the term joblessness to refer not only to unemployment as it is conventionally defined (the non-employment of active job-seekers), but also to involuntary part-time employment and to the non-participation of certain persons in the labor force despite their own stated desire for work or societal expectations that they should be working. For descriptions of standard measures of labor force status reported in statistics compiled by the U.S. Bureau of Labor Statistics, see U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, *BLS HANDBOOK OF METHODS* 5-6, 16-17 (April 1997) [hereinafter *BLS HANDBOOK OF METHODS*]. For a discussion of the law's response to joblessness prior to the twentieth century, see Philip Harvey, *Joblessness and the Law Before the New Deal*, 6 GEO. J. POV. L. & POL'Y (1999).

2. For purposes of expository clarity and consistency, I will use the terms “liberal” and “conservative” as they are used in ordinary political discourse in the United States today, recognizing that the terms have had other connotations in other historical contexts. See, ROBIN MALLOY, *LAW AND ECONOMICS: A COMPARATIVE APPROACH TO THEORY AND PRACTICE* 93-101 (1990) (distinguishing “classical liberalism” from contemporary “liberalism” and contemporary “conservatism”). For an example of the use of the term “liberal” to characterize political positions that would be characterized as “conservative” today, see generally OGDEN MILLS, *LIBERALISM FIGHTS ON* (1936) (denouncing the New Deal in the name of “liberal” political principles).

it occurs. Moreover, even in today's economy, millions of Americans suffer partial or complete joblessness, with members of disadvantaged population groups bearing a disproportionate share of the burden.³ This might not matter, of course, if the burdens of joblessness were light, but the evidence is overwhelming that the personal and social costs of joblessness are extremely grave. Joblessness is a primary cause of poverty,⁴ and, even when it does not cause its victims to suffer significant material deprivation, its physical and emotional effects can be devastating.⁵ Unemployment is

3. In the spring and summer of 1999, when the national unemployment rate hovered in the 4.2 to 4.3 % range, there still were about 6 million persons in the United States who were unemployed and actively seeking work at any point in time, about 5 million who said they wanted jobs but were not actively looking for work, and about 3.5 million who were working part-time not by choice but because their hours had been cut or because they could not find full-time jobs. 46 EMP. & EARNINGS, July 1999, at 7, 32, 42. In addition, official unemployment statistics do not automatically count able-bodied welfare recipients as unemployed, even though welfare programs increasingly are designed to encourage such persons to seek employment.

Members of disadvantaged population groups bear a disproportionate share of all joblessness. Black and Hispanic workers suffer about twice as much unemployment as white workers, see HANDBOOK OF U.S. LABOR STATISTICS 70 (Eva E. Jacobs ed., 1st ed. 1997), and studies of the labor-market experience of former welfare recipients show that they, too, experience disproportionate levels of joblessness. One such study found that only 61 % of persons who left AFDC/TANF rolls in 1996 and 1997 were employed at the time they were surveyed. Fourteen percent were not working but had an employed spouse or partner. Twenty-five percent were not working and either had no spouse/partner or their spouse/partner was also not employed. Pamela Loprest, *Families Who Left Welfare: Who Are They and How Are They Doing* 9-10 (Urban Institute Discussion Paper 99-02, 1999). Given these facts, it is not surprising that the poorest cohorts of single-mother families have grown still poorer as a result of welfare reforms designed to force public assistance recipients to rely more on paid employment for their support. See Wendell Primus et al., *The Initial Impacts of Welfare Reform on the Incomes of Single-Mother Families* (Center on Budget and Policy Priorities, 1999).

It also should be noted that jobless individuals tend to be undercounted in official unemployment statistics for reasons similar to those that result in undercounts of low-income populations in the U.S. census. See BLS HANDBOOK OF METHODS, *supra* note 1, at 13 (April 1997) (noting that prior to 1994, no adjustments were made in unemployment data to reflect the over-representation of certain population groups among persons missed in the current population survey and that the adjustments currently made still assume that missed persons have the same labor-market experience as counted members of their same age-sex-race-origin cohort). For a discussion of the undercount problem in U.S. census data, see NATIONAL RESEARCH COUNCIL, COUNTING PEOPLE IN THE INFORMATION AGE (1994), and NATIONAL RESEARCH COUNCIL, MODERNIZING THE U.S. CENSUS (1995). This means the number of people suffering partial or complete joblessness probably is greater than official statistics suggest.

4. See Isabel V. Sawhill, *Poverty in the U.S.: Why Is It So Persistent?*, 26 J. ECON. LITERATURE 1073 (1988); Catherine Hakim, *The Social Consequences of High Unemployment*, 2 J. SOC. POL'Y 433-67 (1982).

5. See generally G.J. Meyer, *Dancing with Headhunters: Scenes From the Downsized Life*, HARPERS, July 1995, at 37-56 (chronicling the emotional, personal experience of a business executive searching vainly for employment post down-sizing); Liliana Winkelmann & Rainer Winkelmann, *Why Are the Unemployed So Unhappy? Evidence from Panel Data*, 65 ECONOMICA (1998); MARIE JAHODA, EMPLOYMENT AND UNEMPLOYMENT: A SOCIAL-PSYCHOLOGICAL ANALYSIS (1982); PETER KELVIN & JOANNA E. JARRETT, UNEMPLOYMENT: ITS SOCIAL PSYCHOLOGICAL EFFECTS (1985); GORDON E. O'BRIEN, PSYCHOLOGY OF WORK AND UNEMPLOYMENT (1986); David Fryer & Stephen McKenna, *The Laying Off of Hands: Unemployment and the Experience of Time*, in UNEMPLOYMENT: PERSONAL AND SOCIAL CONSEQUENCES (Stephen Fineman ed., 1987); John T. Haworth & Stephen T. Evans, *Meaningful Activity and Unemployment*, in UNEMPLOYED PEOPLE: SOCIAL AND PSYCHOLOGICAL

associated with severe mental and physical health problems,⁶ increased rates of suicide and attempted suicide,⁷ serious family and relationship problems,⁸ and increased criminal activity.⁹ Indeed, access to work is so important in securing individual welfare in market societies, that the right to employment has been proclaimed a fundamental entitlement in authoritative international human rights agreements.¹⁰ Given these facts, there is ample

PERSPECTIVES 241-67 (David Fryer & Philip Ullah eds., 1987); Stephen Fineman, *Back to Employment: Wounds and Wisdoms*, in UNEMPLOYED PEOPLE: SOCIAL AND PSYCHOLOGICAL PERSPECTIVES, *supra*, at 268-84; Sheila Allen & Alan Waton, *The Effects of Unemployment: Experience and Response*, in THE EXPERIENCE OF UNEMPLOYMENT 1-16 (Sheila Allen et al. eds., 1986); KATHARINE HOOPER BRIAR, SOCIAL WORK AND THE UNEMPLOYED 1-23 (1988); Andrew Baum et al., *Unemployment Stress: Loss of Control, Reactance and Learned Helplessness*, 22 SOC. SCI. & MED. 509-16 (1986); Richard M. Cohn, *The Effect of Employment Status Change on Self-Attitudes*, 41 SOC. PSYCHOL. 81 (1978).

6. See generally M. Harvey Brenner & Anne Mooney, *Unemployment and Health in the Context of Economic Change*, 17 SOC. SCI. & MED. 1125 (1983); Susan Gore, *The Effect of Social Support in Moderating Health Consequences of Unemployment*, 19 J. HEALTH & SOC. BEHAV. 157 (1978); Catherine Hakim, *supra* note 4; Ramsay Liem & Paula Rayman, *Health and Social Costs of Unemployment: Research and Policy Considerations*, 37 AMER. PSYCHOL. 1116 (1982); TERRY F. BUSS & F. STEVENS REDBURN, MASS UNEMPLOYMENT: PLANT CLOSINGS AND COMMUNITY MENTAL HEALTH 27-42 (1983); Brendan Burchell, *The Effects of Labour Market Position, Job Insecurity, and Unemployment on Psychological Health*, in SOCIAL CHANGE AND THE EXPERIENCE OF UNEMPLOYMENT 188-212 (Duncan Gallie et al. eds., 1994); PETER WARR, WORK, UNEMPLOYMENT AND MENTAL HEALTH 194-209 (1987) (discussing research on the mental health outcomes of unemployment in various European and American studies).

7. See Stephen Platt, *Unemployment and Suicidal Behaviour: A Review of the Literature*, 19 SOC. SCI. & MED. 93 (1984); Stephen Platt, *Recent Trends in Parasuicide ('Attempted Suicide') and Unemployment Among Men in Edinburgh*, in THE EXPERIENCE OF UNEMPLOYMENT, *supra* note 5, at 150-67.

8. See generally PATRICIA ALLATT & SUSAN YEANDLE, YOUTH UNEMPLOYMENT AND THE FAMILY (1992); SUSAN HUTSON & RICHARD JENKINS, TAKING THE STRAIN: FAMILIES, UNEMPLOYMENT AND THE TRANSITION TO ADULTHOOD (1989); WARR, *supra* note 6; Hakim, *supra* note 4; David Binns & Gerald Mars, *Family, Community and Unemployment: A Study in Change*, 32 SOC. REV. 662 (1984); Jeffrey H. Larson, *The Effect of Husband's Unemployment on Marital and Family Relations in Blue-Collar Families*, 33 FAM. REL. 503, 503-11 (1984); Liem & Paula Rayman, *supra* note 6; BRIAR, *supra* note 5; Lorna McKee & Colin Bell, *His Unemployment, Her Problem: The Domestic and Marital Consequences of Male Unemployment*, in THE EXPERIENCE OF UNEMPLOYMENT, *supra* note 5, at 134-49.

9. See generally Hakim, *supra* note 4; Chester L. Britt, *Crime and Unemployment Among Youths in the United States, 1958-1990: A Time Series Analysis*, 53 AMER. J. ECON. & SOC. 99; Theodore G. Chiricos & William D. Bales, *Unemployment and Punishment: An Empirical Assessment*, 29 CRIMINOLOGY 701-24 (1991); Chris Hale & Dina Sabbagh, *Testing the Relationship Between Unemployment and Crime: A Methodological Comment and Empirical Analysis Using Time Series Data from England and Wales*, 28 J. RES. CRIME & DELINQUENCY 400, 400-17 (1991); Dwayne M. Smith et al., *Crime and Unemployment: Effects Across Age and Race Categories*, 35 SOCIOLOGICAL. PESP. 551-72 (1992); STEVEN BOX, RECESSION, CRIME AND PUNISHMENT (1987).

10. See *Universal Declaration of Human Rights*, G.A. Res. 217(A)(III), Art. 23, U.N. Doc. A/811, at 71 (1948) (adopted by the General Assembly of the UN: 10 Dec. 1948); *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200, 21 U.N. GAOR, Supp. (No. 16) 49, U.N. Doc. A/6316 (1966). For historical perspectives on the development of right to employment claims, see RICHARD LEWIS SIEGEL, EMPLOYMENT AND HUMAN RIGHTS: THE INTERNATIONAL DIMENSION 23-100 (1994); Philip Harvey (*The History of Right to Work Claims*, Rutgers-Camden Series of Occasional Papers No. 1) (visited Dec. 8, 1999) <<http://www-camlaw.rutgers.edu/faculty/occasional/>>. For an

reason to ask whether current policy responses to the problem of joblessness are adequate.

In this article I argue that the key to understanding the strengths and limitations of competing strategies for combating joblessness lies in a careful assessment of differing explanations of what causes joblessness. When examined from this perspective, the theoretical and empirical evidence relating to aggregate labor market performance and individual labor market outcomes reveals a fairly clear picture of the strengths and limitations of the different strategies that have been promoted for reducing joblessness in the United States during the twentieth century.

In Part II, I begin my analysis by identifying three different strategies for combating joblessness, each of which has exerted a powerful influence on the development of American employment and social welfare law during the twentieth century. The first strategy (which I call the “behavioralist” approach) is based on the assumption that joblessness is caused by the behavior of jobless individuals themselves. The second strategy (which I call the “job shortage” approach) is based on the assumption that joblessness is caused by the economy’s failure to provide as many jobs as there are job seekers. The third strategy (which I call the “structuralist” approach) is based on the assumption that joblessness is caused by factors that reduce the access of certain groups of job seekers to available employment opportunities. In Part II, I describe the historical origins of each of these strategies and discuss the influence each has had on the development of American employment and social welfare law.

In Part III of the article, I analyze and evaluate the assumptions concerning the causes of joblessness on which each of the three strategies described in Part II are based. The key conclusion I draw is that a distinction needs to be recognized between factors that help determine the *level* of joblessness in the economy (the size of the population that experiences joblessness at any point in time) and factors that affect the *distribution* of joblessness among population groups (the identity of the individuals that experience joblessness at any point in time). By influencing either the level or the distribution of joblessness in the economy, a particular factor can “cause” joblessness in either of two senses. It can cause an increase in the amount of joblessness suffered in society as a whole, or it can cause certain individuals or groups to bear a disproportionate share of whatever joblessness exists. Both manifestations of the problem are harmful, and public policy can focus on either one.

interchange on the desirability of recognizing such a right, see Jon Elster, *Is There (or Should There Be) a Right to Work?*, in *DEMOCRACY AND THE WELFARE STATE* 53 (Amy Gutmann ed., 1988); Philip Harvey, *Employment as a Human Right*, in *SOCIOLOGY AND THE PUBLIC AGENDA* 351 (William J. Wilson ed., 1993).

In Part III.A., I argue that strong empirical evidence exists that the *level* of joblessness in the United States is determined almost entirely by a shortfall in the number of jobs that employers are ready and willing to fill compared to the number of persons actively seeking work. This job shortage grows during cyclical downturns. But, even in periods of relative prosperity, there are not enough jobs to provide work for everyone who is actively seeking it, let alone for everyone who says they want to work or whom society believes should be working. I argue that unemployment rates would have to fall to the two-percent range before it would be reasonable to assume that the level of joblessness remaining in the economy was caused by a failure to place job seekers in available jobs (for whatever reason) rather than by inadequate levels of aggregate labor demand.

The policy implications of this job shortage depend, of course, on its cause. During recessions, economists generally concede that jobs are scarce because of a breakdown in the process of economic growth. But why do job shortages persist even at the top of the business cycle? In Part III.B., I consider and reject the widely accepted view that job shortages in non-recessionary periods are attributable to the price of labor (average wage rates) being maintained above the equilibrium (market-clearing) level. I do not contest that wage levels play a role in the complex dynamics that determine aggregate levels of both labor supply and labor demand; but I do question the assumption that labor markets would clear if wages were to fall. I believe this assumption is both theoretically implausible and empirically unsupported.¹¹

Instead, I argue that job shortages have the same origin at the top of the business cycle that they do during recessions—too little aggregate demand to provide work for all job seekers. Indeed, there is nothing particularly controversial in this observation, even though it is rare for economists to acknowledge the existence of aggregate job shortages at the top of the business cycle. The real problem is that inflation is perceived to be an insuperable barrier to the achievement of unemployment rates below a certain level, variously thought to lie somewhere between four and six percent. I discuss this problem in Part III.C. The key point advanced is that it is important not to confuse the level of unemployment needed to keep inflation in check with the level of unemployment needed to achieve “full employment”—the availability of adequate numbers of jobs to provide

11. This is an important conclusion not only for our understanding of remedies for joblessness, but also for our understanding of remedies for low-wage poverty. In 1997, the most recent year for which data is available, there were 2.3 million full-time, year-round workers in the United States with incomes below the federal government's official poverty line. See Joseph Dalaker and Mary Naifeh, *Poverty in the United States: 1997* (U.S. Bureau of the Census, Current Population Reports, Series P60-201, 1998), at 17, tbl. 3. It would be a cruel choice if reductions in joblessness and its attendant poverty required reductions in wages and a consequent increase in low-wage poverty. See *infra* Part III.B.

work for all job-seekers.¹² I concede that the achievement of full employment—which I estimate to require an unemployment rate in the two-percent range or less—almost surely would be inflationary if achieved by means of a general economic expansion. However, this reality does not justify a refusal to acknowledge that acceptance of higher levels of unemployment as a prophylactic against inflation means there will not be enough jobs to provide employment for all job seekers. Given the extent and distribution of the personal and social harms attributable to joblessness, it would be irresponsible not to seek out policies that might render this tradeoff unnecessary.

In Part III.D., I note that public perceptions of job availability in non-recessionary periods run counter to my conclusion that the United States suffers from an endemic job shortage. I believe two factors account for this dissonance between popular perceptions and economic reality. The first is the existence of high job-turnover rates in the economy. The second is our susceptibility to the fallacy of composition. Existing jobs change hands, new jobs are created, and old jobs are destroyed at a surprisingly high rate in the United States. Consequently, millions of workers go through the process of seeking and finding work every year. It is natural for people to conclude from this experience that jobs are readily available—at least for people who truly seek them out. In one sense, these perceptions are accurate. Vacant jobs are plentiful if we count how many become available and are filled over time. The problem is that despite this rapid turnover, there aren't enough jobs at any moment in time to provide work for all job seekers simultaneously. To assume in these circumstances that everyone would find work if they emulated the job search strategies of successful job seekers is a classic example of the fallacy of composition—akin to assuming that everyone would see better at a concert if they stood up, just because that strategy works for individual concert goers.

Despite the large number of persons who successfully find employment in the United States each year, the economy's aggregate job shortage means that a certain number of job seekers either will fail in their efforts to find work or will have to endure a certain period of involuntary unemployment while seeking work. The fact that access to work is "rationed" in this sense means that factors affecting the relative success of different job seekers in finding employment are very important in determining how much joblessness different members of the labor force will suffer. Some workers may spend their entire working lives moving from job to job without ever experiencing a significant spell of involuntary unemployment. Others may experience prolonged and repeated spells of joblessness. Of particular concern to policy makers are the factors which

12. I discuss the concept of "full employment" and define it more precisely in Part III.A.

cause disadvantaged population groups to experience disproportionately high rates of joblessness.

In Part III.E., I consider how the burdens of joblessness are distributed among individuals and population groups. The job-shortage explanation of joblessness has little to tell us on this point. To explain why the burdens of joblessness are distributed as they are, we must turn to structuralist and behavioralist explanations of the problem.

Substantial evidence exists that differences in educational opportunities, unequal geographic access to job opportunities, and employment discrimination all play a role in causing disadvantaged population groups to suffer disproportionately high rates of joblessness; but it is generally conceded that behavioral factors also are important. The key issues in dispute concern the relative importance of structural and behavioral factors in explaining elevated rates of joblessness in certain population groups and the source of the behavioral tendencies that contribute to these elevated rates of joblessness.

For purposes of my analysis, it is not necessary to resolve these disputes. It is sufficient to note that the importance of *both* sets of factors lies in their effect on the distribution of the problem rather than on the aggregate dimensions of the problem. In other words, structural and behavioral factors appear to play a powerful role in determining *who* will be jobless but very little role in determining *how many* people will be jobless. Accordingly, we should not expect behavioralist and structuralist policies to reduce overall levels of joblessness. Instead, they should be understood as attempts to (1) equalize the burdens of joblessness among population groups (so that disadvantaged population groups do not bear a disproportionate share of the personal and social costs of the problem), and (2) ensure that individuals who need work can find it quickly enough to avoid the personal harm that joblessness can cause.

These objectives are quite different from the goal of policies designed to close the economy's job gap, and this distinction raises an important question: To what extent should efforts to combat joblessness pursue the redistributionist strategy of behavioralist and structuralist policies, and to what extent should they pursue the alternative strategy of closing the economy's job gap? I address this question in Part IV.

Current policy debates concerning the problem of joblessness are dominated by the conflict between behavioralist and structuralist approaches to the problem, with conservatives generally favoring the former and liberals favoring the latter. The job shortage approach is largely ignored, except during recessions, when the role of job shortages in causing joblessness briefly becomes the focus of attention. I argue that the neglect of policies founded on the job-shortage approach in non-recessionary periods is a serious mistake, since joblessness appears to be just as much a

product of job shortages in such periods as it is during recessions. The inherent limitations of policies that ignore these shortages is illustrated by the following story.

Trouble in Paradise

There once was an island with a population of 100 dogs. Every day a plane flew overhead and dropped 95 bones onto the island. It was a dog paradise, except for the fact that every day 5 dogs went hungry. Hearing about the problem, a group of social scientists was sent to assess the situation and recommend remedies.

The social scientists ran a series of regressions and determined that bonelessness in the dog population was associated with lower levels of bone-seeking effort and that boneless dogs also lacked important skills in fighting for bones. As a remedy for the problem, some of the social scientists proposed that boneless dogs needed a good kick in the side to get them moving, while others proposed that boneless dogs be provided special training in bone-fighting skills.

A bitter controversy ensued over which of these two strategies ought to be pursued. Over time, both strategies were tried, and both reported limited success in helping individual dogs overcome their bonelessness—but despite this success, the bonelessness problem on the island never lessened in the aggregate. Every day, there were still five dogs who went hungry.

The point of this story is not to suggest that structuralist and behaviorist approaches to combating joblessness should be abandoned. A lack of motivation and/or a lack of job skills (along with employment discrimination and job location problems) can cause joblessness (in a distributional sense), and policies designed to equalize unemployment rates make good sense. My criticism is directed at the exclusive focus of these policies on the distributional aspect of the joblessness problem. By ignoring the economy's aggregate job shortage, these policies not only forego the substantial benefits that flow from reductions in aggregate levels of joblessness, they also may undermine their own effectiveness.

This latter point is crucial. The problem is not just that the job-shortage strategy for combating joblessness is being ignored, but that our failure to reduce the economy's job gap also diminishes the effectiveness of structuralist and behaviorist efforts to equalize joblessness rates among population groups. The reasons why the success of structuralist and behaviorist policies likely depend on the success of efforts to shrink the economy's job gap are discussed in Part IV.

I do not claim that it would be easy to devise an effective strategy for closing the economy's job gap. As explained above, inflationary tendencies present a major obstacle to the elimination of job shortages at the top of the business cycle. On the other hand, it does no good to pretend that job

shortages are a problem only during recessions. What is needed but largely missing from current policy debates is an ongoing discussion of possible mechanisms for moving the economy closer to full employment (or its functional equivalent) without causing unacceptable levels of inflation. In other work, I have discussed the advantages of direct job creation by the government as a means of achieving this goal,¹³ but an assessment of this and other policy proposals for closing the economy's job gap is beyond the scope of this paper. The point emphasized here is a simpler one. A policy tradition embodying the job-shortage approach exists in the United States, and there is good reason to consult it during all phases of the business cycle, not just during recessions. To ignore this policy tradition during periods of relative prosperity, in the belief that effective remedies for the problem of joblessness can be based on structuralist and behaviorist strategies alone, is tantamount to sticking one's head in the sand. It is time to acknowledge the role job shortages play in causing joblessness across all phases of the business cycle.

II.

RESPONSES TO JOBLESSNESS

A. *The Behavioralist Approach*

American responses to the problem of joblessness in the twentieth century have reflected the influence of competing explanations of the source of the problem. Prior to the New Deal, the view of joblessness that dominated American law was behaviorist in that it assumed both the cause and cure for joblessness lay in the behavior of jobless individuals themselves.¹⁴

Behavioralist approaches to the problem of joblessness fell out of favor during the 1930s and remained on the defensive in American social policy debates for the next several decades. In recent years, however, the behaviorist perspective has enjoyed a resurgence of popularity. As in the pre-New Deal era, this trend is associated with a tendency to attribute problems of joblessness to behavioral shortcomings on the part of jobless individuals themselves,¹⁵ and it has derived significant support from the

13. See PHILIP HARVEY, *SECURING THE RIGHT TO EMPLOYMENT* (1989); Philip Harvey, *Fashioning A Work-Based Strategy for Welfare Reform Based on International Human Rights Doctrine*, 16 J. PUB. HEALTH POL'Y 269 (1995); Philip Harvey, *Paying for Full Employment: A Hard-Nosed Look at Finances*, SOC. POL'Y, Spring 1995, at 21-32; Philip Harvey, *Direct Job Creation*, in *THE COMMITMENT TO FULL EMPLOYMENT* 35-54 (Aaron Warner et al. eds., 2000). See also Harvey, *Employment As a Human Right*, *supra* note 7; Philip Harvey, *Liberal Strategies for Combating Joblessness in the Twentieth Century*, 33 J. ECON. ISSUES 497 (1999).

14. See Harvey, *supra* note 1, at 41.

15. See, e.g., Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L.

work of neo-classical economists.¹⁶

This behavioralist trend is especially apparent in the work of advocates of “workfare” like Lawrence Mead.

Much of joblessness is apparently voluntary, in the strict sense that job hunters often could find some job. However, they often feel free to decline available openings in hopes of finding better, or in favor of not working. They are *shopping* for jobs, with the option not to buy, rather than *searching* for them with the urgency suggested by Depression images of unemployment.¹⁷

Based on this view, liberal social welfare policies are faulted for not placing sufficient pressure on jobless individuals to seek and accept presumptively available work.

[T]he welfare state [has] failed to integrate the poor not because it did too much or too little for them—the usual diagnoses of the right or the left—but because it was permissive. It did not set behavioral standards for the dependent. . . . [T]he best way to overcome poverty [is] to require employable welfare recipients to work.¹⁸

More radical behaviorists have proposed that income assistance benefits for jobless individuals be reduced or eliminated, not simply conditioned on the performance of work. Charles Murray has suggested scrapping the entire federal welfare and income-support structure for working-aged persons, including AFDC, Medicaid, Food Stamps, Unemployment Insurance, Worker’s Compensation, subsidized housing, disability insurance, and the rest. Scrapping these programs would leave persons of working age with no source of support other than the job market, private charity, or locally funded public assistance.¹⁹

The behavioralist trend in the nation’s response to joblessness became apparent in the early 1980s when the Reagan administration succeeded in defunding the direct job creation titles of the Comprehensive Employment and Training Act (CETA) and strongly resisted the authorization of any

No. 104-193, § 101, 110 Stat. 2105 (1996) (attributing increases in public assistance caseloads to out-of-wedlock pregnancies and births).

16. See MARGARET WEIR, *POLITICS AND JOBS: THE BOUNDARIES OF EMPLOYMENT POLICY IN THE UNITED STATES* 174-75 (1992).

17. LAWRENCE MEAD, *THE NEW POLITICS OF POVERTY* 93 (1992).

18. *Id.* at x.

19. CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY 1950-1980*, 227-28 (1984). A few pages later, however, Murray backs off slightly, suggesting that “[p]roperly administered, unemployment insurance makes sense.” *Id.* at 230. He also emphasizes that he would permit local governments to offer whatever income-assistance benefits they think appropriate and are willing to fund from their own resources. *Id.* at 231-32. What his proposal amounts to, therefore, is a return to the strictly localized system of public relief that existed in the United States in the nineteenth century. See also MARVIN OLASKY, *THE TRAGEDY OF AMERICAN COMPASSION* (1992) (calling for a return to the anti-poverty strategies of the 19th century).

new spending for job creation in the deep recession of 1981-82.²⁰ The growing influence of this point of view has been most obvious, however, in changes introduced in means-tested public assistance programs for able-bodied adults. The conservative Republicans who won control of Congress in 1994 called their welfare reform proposal "The Personal Responsibility Act of 1995,"²¹ perfectly capturing the spirit of the behavioralist response to joblessness. The Act established strict time limits for the receipt of means-tested public assistance benefits by needy families and conditioned receipt of such aid on the satisfaction of work requirements.²² The statement of purpose of this section of the Act suggests that these measures are intended to reduce joblessness and discourage out-of-wedlock births.²³ The Act also imposed severe limits on the Food Stamp eligibility of able-bodied adults who are neither working nor caring for minor children.²⁴

The influence of the behavioralist view of joblessness is also apparent in changes in the nation's Unemployment Insurance (UI) program, which conservative economists began to criticize in the 1970s for allegedly increasing joblessness by reducing job search activity by jobless workers.²⁵ Although the linkage between this criticism and ensuing program changes is hard to demonstrate, policy changes at both the federal and state level have contributed to a significant decline in the percentage of all jobless workers receiving UI benefits since the 1970s,²⁶ and benefit levels have been reduced through changes in their tax treatment.²⁷

Finally, broadening support for the behavioralist view is reflected in the beleaguered status of affirmative action in American law and social policy. Acceptance of hiring preferences for members of minority groups is predicated on the assumption that they suffer disadvantages in seeking work that are beyond their individual control. If the reason they suffer more

20. See Sar A. Levitan & Frank Gallo, *Spending to Save: Expanding Employment Opportunities*, (Center for Social Policy Studies, George Washington University, Occasional Paper 1991-2, 1991).

21. The original bill, introduced in early 1995 as H.R. 4, was entitled the "Personal Responsibility Act of 1995." In its final, enacted form, the legislation was called the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996." See *supra* note 15.

22. Pub. L. No. 104-193, § 103.

23. *Id.*

24. Pub. L. No. 104-193, § 824.

25. For a brief review of this literature, see Beatrice G. Reubens, *Unemployment Insurance in the United States and Europe, 1973-83*, MONTHLY LAB. REV., April 1989, at 22, 28-29.

26. See Daniel P. McMurrer & Amy B. Chasanov, *Trends in Unemployment Insurance Benefits*, MONTHLY LAB. REV., Sept. 1995, at 30.

27. Prior to 1979, Unemployment Insurance (UI) benefits were tax free. The Revenue Act of 1978 made a portion of UI benefits taxable, and the Tax Reform Act of 1986 made all UI benefits taxable. It has been estimated that this taxation reduced net UI benefit levels by about 15.5 % in 1997. See 1996 GREEN BOOK: BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS, WAYS AND MEANS COMMITTEE PRINT NO. 104-14, at 339 (1996).

joblessness than other population groups is attributable to skills deficits that they could remedy through individual efforts at self-improvement, affirmative action loses much of its logic.²⁸

B. *The Job Shortage Approach*

Although the belief that joblessness is caused by the behavior of jobless individuals dominated American social welfare law prior to the 1930s, this belief was strained when economic events cast regularly employed individuals out of work and into obviously involuntary unemployment. Such events gave rise to a countercurrent in the administration of the poor-law system based on the recognition that at least some joblessness was caused by a failure on the part of the economy to provide adequate numbers of jobs rather than by behavioral shortcomings on the part of jobless individuals.²⁹

This countercurrent surfaced during periods of economic crisis, and with the appearance of recurring cyclical downturns in the United States economy during the second half of the nineteenth century, these crises began to occur with a fair degree of regularity. During these periods of economic crisis, the traditional hesitancy of poor-law administrators to grant aid to able-bodied adults eroded. Widespread job loss by normally employed people belied the presumption that joblessness among able-bodied persons was a voluntary phenomenon. Under these circumstances, it became common practice to extend poor relief to unemployed workers during recessions or depressions, and efforts were made in some cities to provide the aid in less-stigmatizing forms, such as by offering unemployed workers "work relief" jobs.³⁰

The reform of American employment and social welfare law that occurred during the New Deal era was consistent with these prior tendencies, but the dimensions of the New Deal effort went far beyond anything that had occurred before. The policies adopted in the 1930s to respond to the economy's perceived job shortage³¹ included measures

28. See, e.g., STEPHEN THERNSTROM & ABIGAIL THERNSTROM, *AMERICA IN BLACK AND WHITE* 443-49 (1997) (arguing, in a book highly critical of affirmative action, that poorer labor-market outcomes suffered by black workers are attributable to their lower cognitive skills rather than to discrimination); Robert L. Woodson, Sr., *Personal Responsibility*, in *THE AFFIRMATIVE ACTION DEBATE* (George E. Curry ed., 1996) (criticizing affirmative action programs and proposing that blacks rely instead on self-help to improve their economic status).

29. See Harvey, *supra* note 1, at 36-40.

30. *Id.*

31. Estimated unemployment increased from 3.2 % of the labor force in 1929 to 24.1 % in 1932. If we count only nonfarm employees, the rate rose from 5.3 % in 1929 to 36.3 % in 1932. In a total civilian labor force of just over 50 million in 1932, 12 million were jobless. During President Roosevelt's first term in office, the period during which the bulk of the New Deal's most important social welfare legislation was enacted, the nation's estimated unemployment rate averaged 21.1 %,

designed to increase the number of jobs available, measures designed to reduce the number of persons competing for scarce jobs, and measures designed to provide non-stigmatizing forms of public assistance to jobless individuals.

The most obvious strategy that the New Dealers devised to close the economy's job gap was to use public funds to create jobs. They did this in two ways. The first method was to increase federal funding for contracted public works. The second was to establish public employment programs in which the government served as the employer of last resort for needy workers who could not find jobs in the regular labor market. In addition to the direct job-creation effect of these initiatives, they were supposed to stimulate job creation in the private sector by increasing both consumer purchasing power and capital goods orders.³²

The New Deal's contracted public works initiative was implemented mainly through the Public Works Administration (PWA) established under Title II of the National Industrial Recovery Act (NIRA) of 1933.³³ The second type of direct job creation initiative undertaken by the New Deal—the establishment of public employment programs for unemployed workers—grew out of the Roosevelt administration's efforts to reorganize the nation's public relief system. The programs therefore functioned both as a mechanism to increase the number of jobs available in the economy and as a mechanism for providing non-stigmatizing public relief to jobless individuals.³⁴

dipping below 20 % only once in 1936. BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE, HISTORICAL STATISTICS OF THE UNITED STATES: COLONIAL TIMES TO 1970, Part 1, at 126, Series D1-10 (1975).

32. See NATIONAL RESOURCES PLANNING BOARD, SECURITY, WORK AND RELIEF POLICIES, H.R. Doc. No. 78-128, pt. 3, at 234 n.42 (1943).

33. Pub. L. No. 73-67, 48 Stat. 195.

34. Harry Hopkins, the principal architect and chief administrator of the New Deal's public relief efforts, was a strong advocate of the virtues of work relief compared to "direct relief." In an early memo expressing the trajectory of the Administration's thinking on the subject, Hopkins' chief assistant, Aubrey Williams, wrote that "[direct] relief as such should be abolished." Williams argued that the unemployed should instead be offered real jobs paying good daily wages, doing truly useful work that suited their individual skills. Unemployed workers should not be forced to submit to a means test to obtain employment, and their earnings should not be limited to a public assistance "need" level. In other words, the goal should be to provide quality employment of the sort normally associated with contracted public works, but at lower cost and with less bureaucratic delay. To minimize both cost and start-up time, the government should itself serve as contractor, and the projects undertaken should be both less elaborate and more labor-intensive than conventional public works. See BONNIE FOX SCHWARTZ, *THE CIVIL WORKS ADMINISTRATION, THE BUSINESS OF EMERGENCY EMPLOYMENT IN THE NEW DEAL 1933-1934*, at 36 (1984). See also HALLIE FLANAGAN, *ARENA: THE HISTORY OF THE FEDERAL THEATER 26-27* (1940) (quoting conversation with Hopkins concerning purposes of work relief); COMMITTEE ON ECONOMIC SECURITY, REPORT 7-10 (1935), reprinted in NATIONAL CONFERENCE ON SOCIAL WELFARE, *THE REPORT OF THE COMMITTEE ON ECONOMIC SECURITY OF 1935 AND OTHER BASIC DOCUMENTS RELATING TO THE DEVELOPMENT OF THE SOCIAL SECURITY ACT 23-30* (1985) (proposing that the federal government provide "employment assurance" to all able-bodied job seekers) [hereinafter

In addition to supporting direct job creation initiatives, liberal reformers in the New Deal period also broke with tradition in their efforts to use the law as a means of indirectly increasing the number of jobs available in the economy. The clearest example of this strategy consisted of efforts to use the law to encourage an increase in average wages and a decrease in the length of the average work week.³⁵ Legislation enacted, in part, to achieve this goal included the NIRA,³⁶ the National Labor Relations Act of 1935 (the NLRA or Wagner Act),³⁷ the Public Contracts Act of 1936 (the

REPORT OF THE COMMITTEE ON ECONOMIC SECURITY]; William W. Bremer, *Along the "American Way": The New Deal's Work Relief Programs for the Unemployed*, in THE NEW DEAL: CONFLICTING INTERPRETATIONS AND SHIFTING PERSPECTIVES 201, 201-02 (Melvyn Dubofsky ed., 1992) (describing expansive conception of work relief conceived by supporters of the policy in the 1930's).

The work relief programs actually established during the 1930's fell considerably short of this goal. The expansive vision of work relief conceived by people like Hopkins faced strong opposition, including opposition from within the Roosevelt administration. Most importantly, President Roosevelt's support for job-creation efforts was limited. He was strongly committed to providing emergency assistance to needy persons but did not have strong feelings about how the aid should be delivered and always emphasized the temporary character of the aid programs, including the administration's work relief programs. For descriptions of New Deal work relief programs, see generally NANCY E. ROSE, PUT TO WORK: RELIEF PROGRAMS IN THE GREAT DEPRESSION (1994); ARTHUR E. BURNS & EDWARD A. WILLIAMS, FEDERAL WORK, SECURITY, AND RELIEF PROGRAMS 21-75 (Work Projects Administration Research Monograph No. 24, 1941); NATIONAL RESOURCES PLANNING BOARD, *supra* note 32, at 234-80; JOHN CHARNOW, SOCIAL SCIENCE RESEARCH COUNCIL, WORK RELIEF EXPERIENCE IN THE UNITED STATES (1943); SCHWARTZ, *supra*; and HARVEY, SECURING THE RIGHT TO EMPLOYMENT, *supra* note 13, at 99-106. For a more detailed account of New Deal work relief programs in one city, see LOIS M. QUINN ET AL., JOBS FOR WORKERS ON RELIEF IN MILWAUKEE COUNTY, 1930-1994, 1-43 (Employment and Training Institute, University of Wisconsin-Milwaukee, 1995). For discussions of opposition to work relief initiatives in the 1930's, see BARBARA BLUMBERG, THE NEW DEAL AND THE UNEMPLOYED: THE VIEW FROM NEW YORK CITY 221-80 (1979); ROSE, *supra*, at 76-80, 111-14; and HARVEY, SECURING THE RIGHT TO EMPLOYMENT, *supra* note 13, at 102-05.

35. The belief that wage increases would lead to an expansion of employment was based on the notion that an increase in purchasing power would cause businesses to expand production to meet the growing demand. This expansion in production would cause a further expansion in purchasing power as workers were reemployed, causing businesses to expand production still farther. See STANLEY VITTOZ, NEW DEAL LABOR POLICY AND THE AMERICAN INDUSTRIAL ECONOMY 81-82 (1987); THEODORE ROSENOF, DOGMA, DEPRESSION, AND THE NEW DEAL: THE DEBATE OF POLITICAL LEADERS OVER ECONOMIC RECOVERY 39-43 (1975); Steve Fraser, *From the "New Unionism" to the New Deal*, 25 LAB. HIST. 405 (1984). On the Roosevelt administration's use of deficit spending to stimulate job creation, see *infra* text accompanying notes 43-46.

36. 48 Stat. 195 (1933). The means adopted under the NIRA to increase wages and reduce hours included both the Act's code-setting provisions and the protection it afforded for unionization. As President Roosevelt commented, "The aim of this whole effort is to restore our rich domestic market by raising its vast consuming capacity." ARTHUR M. SCHLESINGER, JR., THE COMING OF THE NEW DEAL 122 (1959). See also HERBERT STEIN, THE FISCAL REVOLUTION IN AMERICA 47-48, 51 (revised ed. 1990); and *Shechter v. U.S.*, 295 U.S. 495, 550 (1935) (rejecting government's argument that regulation of wages would benefit economy by providing the "necessary stimulus in starting 'the cumulative forces making for expanding commercial activity'").

37. National Labor Relations Act of 1935, Pub. L. No. 74-198, 49 Stat. 449. Supporters of the NLRA believed that collective bargaining would lead both to wage increases and reductions in hours, thereby contributing to an expansion of employment. As the bill's sponsor commented:

When wages sink to low levels, the decline in purchasing power is felt upon the marts of trade.

Walsh-Healey Act),³⁸ and the Fair Labor Standards Act of 1938 (the FLSA).³⁹ The specific means adopted in these enactments to achieve a reduction in hours and an increase in wages included support for industrial self-regulation (the NIRA), increasing the bargaining power of labor (the NIRA and the Wagner Act), and direct regulation of the terms of employment contracts (the Walsh-Healey Act and the FLSA).

In addition to pursuing policies designed to increase the total number of jobs available in the economy, New Deal social welfare reformers also took steps to reduce the number of people who were dependent on work for their subsistence. The Social Security Act of 1935 was the most significant legislative vehicle giving effect to this policy.⁴⁰ By providing non-stigmatizing forms of income assistance for persons society was willing to excuse from working, either temporarily or permanently, the Act was designed to reduce competition for available jobs while providing a substitute source of income for persons otherwise dependent on wages for their livelihood.⁴¹ Legislation banning child labor also served to encourage reduced competition for available jobs from a segment of the population not

And since collective bargaining is the most powerful single force in maintaining wage rates, its repudiation is likely to intensify the maldistribution of buying power, thus reducing standards of living, unbalancing the economic structure, and inducing depression with its devastating effect upon the free flow of commerce.

79 Cong. Rec. 7572 (1935) (Statement of Senator Wagner).

38. Public Contracts Act of 1936, Pub. L. No. 74-846, 49 Stat. 2036 (requiring most government contractors to pay "prevailing minimum wage" as determined by the Secretary of Labor and to adopt an 8 hour day and 40 hour week).

39. Fair Labor Standards Act, Pub. L. No. 75-718, 52 Stat. 1060 (requiring employers to pay covered workers no less than a statutorily fixed minimum wage and to pay a premium for hours worked in excess of a statutorily fixed number per week).

40. Social Security Act of 1935, Pub. L. No. 74-271, 49 Stat. 620.

41. The largest group benefiting from this strategy consisted of elderly workers. The Act sought to make it easier for them to retire by dramatically increasing public funding for means-tested old age pensions, §§ 1-6, and by establishing a contributory public pension system. §§ 201-10.

The Aid to Dependent Children (ADC) program, also established by the Social Security Act, pursued a similar strategy by providing pension assistance to children who had lost a breadwinner's support due to death or abandonment. §§ 401-06. Later renamed Aid to Families with Dependent Children (AFDC), this program was not intended to encourage needy single parents to become self-sufficient through work, but to make it possible for them to withdraw from the labor force in order to care for their children, thereby also reducing competition for scarce jobs. *See* REPORT OF THE COMMITTEE ON ECONOMIC SECURITY, *supra* note 34, at 56 (stating that purpose of ADC program was to release the mothers of "fatherless children" from "the wage-earning role").

Unemployment Insurance (UI), the last major program established by the Social Security Act, was conceived as a means of providing non-stigmatizing income assistance for a limited period of time to workers who lost their jobs through no fault of their own. During this period of support, recently employed workers could remain available for "immediate consideration for reemployment at their former work" and search for other private employment. Following this period of support, however, the Committee on Economic Security believed that public employment should be offered instead of extended transfer payments. *See* REPORT OF THE COMMITTEE ON ECONOMIC SECURITY, *supra* note 34, at 29-31.

considered as having a duty to labor.⁴²

The idea of using deficit spending to stimulate job creation by increasing aggregate demand was not widely accepted within the Roosevelt Administration until very late in the 1930s. The dominant view within the Roosevelt administration was that a balanced federal budget was desirable, even in a depression.⁴³ It was not until 1938, in response to the sudden and deep recession that struck the economy the preceding year, that the Roosevelt administration adopted an explicit policy of using increased spending, for its own sake, to stimulate the economy.⁴⁴

As Keynes' General Theory gained adherents, however, and especially as a result of the effectiveness of war-time spending in ending the Great Depression, Keynesian fiscal policies came to occupy a central position in strategies proposed to remedy perceived job shortages in the United States.⁴⁵ As World War II was drawing to a close, liberal supporters of the view that unemployment was caused by a shortage of jobs sought unsuccessfully to legislate a statutory commitment to the maintenance of full employment, with Keynesian demand management contemplated as the primary mechanism for achieving that goal.⁴⁶

Consistent with the pattern established during economic crises prior to the 1930s, the influence of the idea that joblessness is caused by a shortage of jobs diminished following the end of the Great Depression. The job-shortage explanation of joblessness continued to have salience in discussions of macroeconomic policy in the post World War II period, but less and less over time as the nation's commitment to "full employment" faded into a commitment to maintain unemployment at its "natural" or non-

42. Like the provisions of the Social Security Act described in the preceding footnote, efforts to end child labor were motivated by a variety of purposes, but there is little doubt that one basis for the popularity of such efforts was the perception that employers would continue to fill scarce jobs with easily exploitable children rather than adults, unless they were prohibited from doing so. See Joint Hearings Before the Committee on Education and Labor on S. 2475 and H.R. 7200, 75th Cong., 1st Sess. 45 (1937) (statement of Dr. Howard A. Dawson that "[i]n light of decreased opportunity for the employment of children and youth and of the increasing need for opportunities for employment of adults, there is small wonder that popular opinion has demanded that legislation meet the needs of society in this respect."). As with efforts to raise wages and shorten hours, the goal of ending child labor was pursued by various means. Labor codes established under the authority of the NIRA addressed the issue, see WILLIAM E. LEUCHTENBURG, FRANKLIN D. ROOSEVELT AND THE NEW DEAL 65, 69 (1963), and the Wagner Act empowered workers to seek an end to the practice through collective bargaining. In 1938, the issue was addressed directly in the statutory prohibition of "oppressive child labor" included in the Fair Labor Standards Act. Pub. L. No. 75-718, § 12, 52 Stat. 1060 (1938).

43. See STEIN, *supra* note 36, at 147-68.

44. *Id.* at 91-130.

45. *Id.* at 197-240. See also WEIR, *supra* note 16, at 27-61; and GARY MUCCIARONI, THE POLITICAL FAILURE OF EMPLOYMENT POLICY 1945-1982, at 17-45 (1990).

46. The Employment Act of 1946, Pub. L. No. 79-304, 60 Stat. 23, was the watered down fruit of this initiative. See STEPHEN K. BAILEY, CONGRESS MAKES A LAW: THE STORY BEHIND THE EMPLOYMENT ACT OF 1946, at 159-78 (1950).

inflationary rate.⁴⁷ Today, even liberals rarely complain of aggregate job shortages except during recessions.

C. *The Structuralist Approach*

Prior to the 1960s, liberal views of joblessness were informed mainly by the job-shortage explanation of the problem.⁴⁸ Since then, however, another view of the problem has come to dominate liberal thinking on the subject, at least during non-recessionary periods. In keeping with customary usage, I shall call this view "structuralist."⁴⁹ Its distinguishing feature is a focus on factors that tend to prevent certain categories of workers from being hired in available jobs. As one commentator has noted in summing up the structuralist perspective:

There are three main problems: Some of the unemployed live in the wrong *place*—in areas lacking job opportunities. Some have the wrong *skill*, or none at all. And some are the victims of *discrimination*—because of race, sex, or age.⁵⁰

Structural analyses of unemployment gained currency in American policy debates during the 1950s as a possible explanation for persistently high unemployment in depressed areas of the country,⁵¹ and possibly for elevated aggregate rates of unemployment as well.⁵² The latter claim was vigorously and effectively disputed by Keynesian economists at the time,⁵³ but the structuralist argument came to be widely accepted during the 1960s as an explanation of the special labor market problems experienced by disadvantaged population groups.⁵⁴ The result, during the 1960s, was a two-pronged attack on joblessness. Keynesian fiscal measures were used to regulate aggregate levels of unemployment,⁵⁵ while structuralist measures

47. See MUCCIARONI, *supra* note 45, at 20-45; WEIR, *supra* note 16, at 130-62.

48. For my use of the terms "liberal" and "conservative," see *supra* note 2.

49. See *infra* note 85.

50. JAMES L. SUNDQUIST, *POLITICS AND POLICY: THE EISENHOWER, KENNEDY, AND JOHNSON YEARS* 59 (1968).

51. *Id.* at 57-73.

52. See MUCCIARONI, *supra* note 45, at 32-42.

53. For a description of the development and increasingly conservative character of American Keynesianism in the post-World War II period, see *id.* at 20-32, 219. See also WEIR, *supra* note 16, at 27-61. For an account of the same development written from a more conservative perspective, see STEIN, *supra* note 36, at 197-240.

54. See SUNDQUIST, *supra* note 50, at 57-110.

55. The high point of this policy approach was the enactment of a tax cut in 1964, designed to stimulate aggregate demand. This was the first time such an action had been taken in the United States based on a Keynesian rationale. The initiative was successful. Economic growth accelerated, unemployment rates fell to 4.5% in 1965 (from 5.7 percent in 1963), and tax receipts increased despite lower tax rates. See *id.* at 13-56; STEIN, *supra* note 36, at 422-53. It should be noted, however, that using a tax cut to increase aggregate demand is the most conservative form of Keynesian fiscal stimulation. See MUCCIARONI, *supra* note 45, at 26-27.

were used to combat economic disadvantage.⁵⁶

The interest of liberal reformers in structural unemployment was shaped by very different macroeconomic conditions than had existed in the New Deal era. The 1960s was a period of unprecedented general prosperity. Jobs seemed plentiful, especially after Congress's successful 1964 tax cut,⁵⁷ and real incomes rose steadily.⁵⁸ But this prosperity didn't extend to everyone, and that caused concern. This concern was evident in the attention given to exposés of poverty such as Michael Harrington's 1962 book, appropriately entitled *The Other America*,⁵⁹ and to the organizing and educational efforts of civil rights organizations whose activities always included a strong focus on the need to provide jobs for disadvantaged population groups, regardless of race.⁶⁰

In this context, the aspect of the joblessness problem that appeared most pressing was its differential impact—the tendency for disadvantaged population groups to suffer disproportionate levels of unemployment. The structuralist view of unemployment provided both an explanation for the problem and a set of issues to be addressed in responding to it. To the extent that aggregate unemployment rates were perceived to be a problem, Keynesian policies of macroeconomic management seemed to provide a relatively easy solution, permitting reformers to concentrate their attention on conditions that caused employment opportunities to be distributed unequally.⁶¹ The New Deal's spotty civil rights record also made it clear to reformers that strategies designed to reduce aggregate job shortages did not automatically address the special problems faced by minority populations.⁶²

56. See SUNDQUIST, *supra* note 50, at 13-110. See also MUCCIARONI, *supra* note 45, at 36-42. This de facto division of labor is immediately apparent in Sundquist's account of the legislative accomplishments of the Kennedy and Johnson administrations in combating unemployment. See SUNDQUIST, *supra* note 50, at 57-154.

57. See *id.* at 13-14, 40-110.

58. Estimated annual unemployment rates averaged 19.0% from 1931 to 1940, compared to 4.7% from 1961 to 1970 and 4.0% from 1965 to 1970. During the early years of the Great Depression, real wages fell, generally recovering to their pre-depression level in the late 1930s. During the 1960s, in contrast, real weekly earnings of production or non-supervisory workers climbed steadily, as they had since the end of World War II, reaching a peak in the early 1970s more than 15% higher than current (2000) levels. Author's calculations from HISTORICAL STATISTICS OF THE UNITED STATES, *supra* note 31, at 126, Series D9, and 169-70, Series D802; HANDBOOK OF U.S. LABOR STATISTICS, *supra* note 3, at 11, 59, 140; & EMP. & EARNINGS (May 2000), at 90.

59. MICHAEL HARRINGTON, *THE OTHER AMERICA: POVERTY IN THE UNITED STATES* (1962). The book is credited with providing the initial impetus for President Kennedy's commitment to what later became known as the War on Poverty. See SUNDQUIST, *supra* note 50, at 113.

60. See DONA COOPER HAMILTON & CHARLES V. HAMILTON, *THE DUAL AGENDA: RACE AND SOCIAL WELFARE POLICIES OF CIVIL RIGHTS ORGANIZATIONS* 122-74 (1997). The 1963 March on Washington, which was officially called a "March for Jobs and Freedom," epitomized this organizing and educational effort. *Id.* at 123-28.

61. WEIR, *supra* note 16, at 67-68.

62. Generally, it is conceded that during President Roosevelt's first term in office, the New Deal did little to challenge racist employment practices, either inside or outside government, necessarily

The reform strategy implemented to address the problem of structural unemployment had three principal components corresponding to the three structural barriers described above—the geographic separation of the unemployed from jobs, their lack of marketable skills, and the existence of employment discrimination.

First, initiatives were undertaken to spur economic development in depressed areas where unemployment rates were particularly high.⁶³ Second, programs were introduced to increase educational opportunities and provide job training and job placement assistance for population groups experiencing elevated rates of joblessness and poverty.⁶⁴ Third, an effort

meaning that many New Deal policies and programs were implemented in a racially discriminatory fashion. While the administration's civil rights record improved substantially during Roosevelt's second term, civil rights organizations, which consistently provided strong support for New Deal social welfare legislation, remained keenly aware of the exclusionary effects of employment and other forms of discrimination in preventing blacks and other minority groups from sharing equally in the benefits afforded by these initiatives. See HAMILTON & HAMILTON, *supra* note 60, at 8-42; HARVARD SITKOFF, *A NEW DEAL FOR BLACKS: THE EMERGENCE OF CIVIL RIGHTS AS A NATIONAL ISSUE, VOLUME I: THE DEPRESSION DECADE 34-83* (1978).

63. Portions of this reform strategy resembled New Deal initiatives that targeted depressed regions. The most famous of these earlier initiatives was the Tennessee Valley Authority. See Donald E. Voth, *A Brief History and Assessment of Federal Rural Development Programs and Policies*, 25 U. MEM. L. REV. 1265, 1267 (1995). Legislation embodying this purpose in whole or in part during the 1960s included the Area Redevelopment Act of 1961, Pub. L. No. 87-27, 75 Stat. 47 (1961) (codified as amended principally at 42 U.S.C. § 2501 et seq. (1964)) (expired 1965) (authorizing occupational training, retraining subsistence payments, low interest loans to private businesses and public entities for land acquisition and facilities development, and grants to public entities for the same purpose in areas of high unemployment or underemployment); the Public Works and Economic Development Act of 1965, Pub. L. No. 89-136, 79 Stat. 552 (1965) (codified as amended at 42 U.S.C. § 3121 et seq. (1994)) (restructuring programs provided for under the Area Redevelopment Act and authorizing accelerated public works spending in depressed areas); Titles II and III of the Economic Opportunity Act of 1964, Pub. L. No. 88-452, 78 Stat. 508, 516-25 (1964) (codified as amended at 42 U.S.C. § 2701 et seq. (1976)) (repealed 1981) (establishing Community Action Programs to develop coordinated anti-poverty and economic development initiatives in depressed communities, as well as a loan program to promote self-employment among farmers, rural businessmen, and low-income businessmen); and Title I of the Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. No. 89-754, §§ 101-14, 80 Stat. 1255 (1966) (codified as amended at 42 U.S.C. §§ 3301-3313 (1968)) (omitted 1974) (providing funding and technical assistance for comprehensive urban demonstration programs to revitalize economically depressed areas). Legislation embodying this purpose since the 1960s has included the Community Reinvestment Act of 1977, Pub. L. 95-128, 91 Stat. 1147 (codified as amended at 12 U.S.C. §§ 2901-07 (1994)) (requiring insured depository institutions to meet the credit needs of communities in which they are located); the Community Economic Development Act of 1981, Pub. L. No. 97-35, §§ 611-633, 95 Stat. 489 (codified as amended principally at 42 U.S.C. §§ 9801-22 (1994)) (authorizing grants for nonprofit and for-profit community development corporations to establish programs supporting the economic development of urban and rural low-income areas); and Empowerment Zone and Enterprise Community legislation enacted in 1993, including the Omnibus Budget and Reconciliation Act of 1993, Pub. L. No. 103-66, §§ 13301-03, 107 Stat. 312, 543 (codified as amended 26 U.S.C. §§ 1391-1397F (1994)) (providing tax advantages for businesses operating in certain depressed communities designated as Empowerment Zones or Enterprise Communities).

64. Legislation embodying these goals included the Manpower Development and Training Act of 1962, Pub. L. No. 87-415, 76 Stat. 23 (codified as amended at 42 U.S.C. § 2571 et seq. (1968)) (repealed 1973) (establishing occupational training programs with priority given to unemployed

was made to end employment discrimination against groups that experienced elevated rates of joblessness and poverty due to such discrimination.⁶⁵

A striking feature of this strategy, as it was implemented in the 1960s, was its failure to include a significant direct job creation initiative.⁶⁶ Civil Rights organizations advocated such an initiative, and there was strong support for such a policy within certain quarters of the Kennedy and Johnson administrations, but President Johnson rejected the idea.⁶⁷ As one commentator has noted:

The poverty policies of the 1960s incorporated two decisions about the proper focus of labor market policies: such policies should be remedial measures targeted on the lowest end of the labor market, and they should aim to alter the supply of labor by modifying workers' characteristics rather than seeking to change the demand for labor.⁶⁸

Another commentator described this policy even more succinctly: "The

persons), and a number of initiatives established under the Economic Opportunity Act of 1964. These latter initiatives included work experience programs for unemployed youth like the Job Corps and Neighborhood Youth Corps, as well as those directed at unemployed fathers and other needy persons, along with a work study program for college students, and adult basic education programs. In addition, Community Action Programs established under the Economic Opportunity Act were expected to provide job training programs. Spending for vocational education and rehabilitation also was dramatically increased during the 1960s. See GARTH L. MANGUM, *THE EMERGENCE OF MANPOWER POLICY* 66-67, tbl. 3-1 (1969). In the 1970s, the job training strategy was pursued in combination with direct job creation in programs established under the Comprehensive Employment and Training Act of 1973, Pub. L. No. 93-203, 87 Stat. 839 (1973) (codified as amended at 29 U.S.C. §§ 801-999 (1976)) (repealed 1982). In the 1980s, this strategy for reducing joblessness was most clearly reflected in the Job Training and Partnership Act of 1982, Pub. L. No. 97-300, 96 Stat. 1322 (codified as amended at 29 U.S.C. § 1501 et seq.) (providing for the appointment and support of local Private Industry Councils to operate job training programs for "disadvantaged individuals and other individuals facing serious barriers to employment").

65. Legislation enacted to achieve this goal included Title VII of the Civil Rights Act of 1964, Pub. L. No. 88-352, §§ 701-16, 78 Stat. 241, 253 (current version at 42 U.S.C. 2000e (1994)) (prohibiting employment discrimination by private and public sector employers based on race, color, religion, sex, or national origin), and the Age Discrimination in Employment Act of 1967, Pub. L. No. 90-202, 81 Stat. 602 (codified as amended at 29 U.S.C. § 621 et seq. (1994)) (prohibiting employment discrimination by private and public sector employers based on age). Similarly motivated legislation enacted subsequent to the 1960s has included the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 357 (codified as amended at 29 U.S.C. § 701 et seq. (1994)) (prohibiting employment discrimination against persons with real or perceived disabilities by the federal government, federal government contractors and recipients of federal financial assistance), and the Americans With Disabilities Act, Pub. L. No. 101-336, 104 Stat. 328 (1990) (codified as amended at 42 U.S.C. § 12101 et seq. (1994)) (prohibiting employment discrimination against persons with real or perceived disabilities by private sector employers).

66. Small employment programs such as the Job Corps and Neighborhood Youth Corps were established during the 1960s, but they were conceived as job training programs rather than as a form of job creation designed to address aggregate job shortage conditions. For a catalogue of 1960s job creation initiatives, see 116 CONG. REC. 32,159 (1970) (statement of Sen. Nelson).

67. See HAMILTON & HAMILTON, *supra* note 60, at 159-67; MUCCIARONI, *supra* note 45, at 53-8.

68. WEIR, *supra* note 16, at 64.

Johnson administration's aim was 'not more jobs, but a more equitable distribution of the nation's 3.5 percent unemployment'."⁶⁹

Despite this opposition to direct job creation, support for the latter grew over the course of the 1960s, fueled by growing criticism of the inadequacy of the structuralist strategy described above.⁷⁰ Critics argued that job shortages still existed despite average unemployment rates under four percent, that these shortages were particularly severe in urban areas, and that macroeconomic policy alone could not remedy the problem. They proposed that direct job creation be used to supplement the macroeconomic and structuralist measures comprising the Johnson administration's strategy for combating joblessness.⁷¹

Faced with strong opposition from the Johnson administration and even stronger opposition from the Nixon administration, legislative efforts to fund a direct job creation initiative failed until rising unemployment rates and a recession in 1969-70 changed the political climate and led to President Nixon's signing the Emergency Employment Act of 1971.⁷² This compromise legislation established a small jobs program⁷³ designed to combat structural and cyclical unemployment, but not joblessness caused by the aggregate job shortages that some liberals complained of even at the top of the business cycle.⁷⁴

Following the expiration of the Emergency Employment Act in 1973,

69. MUCCIARONI, *supra* note 45, at 71 (quoting William J. Spring, *Congress and Public Service Employment*, in *THE POLITICAL ECONOMY OF PUBLIC SERVICE EMPLOYMENT* 135 (Harold Sheppard et al. eds., 1972)).

70. *Id.* at 72-78.

71. See NATIONAL COMM'N ON TECHNOLOGY, AUTOMATION, AND ECON. PROGRESS, *TECHNOLOGY AND THE AMERICAN ECONOMY*, pt. 2, ch. 3 (1966) (proposing that employment opportunities be created at the rear of the hiring queue for those at a competitive disadvantage), quoted in MUCCIARONI, *supra* note 45, at 73.

72. Pub. L. No. 92-54, 85 Stat. 146. For the legislative history of this act, see MUCCIARONI, *supra* note 45, at 78-83.

73. Between 1971 and 1973, the program provided between 125,000 and 200,000 jobs. See ROBERT F. COOK ET AL., *PUBLIC SERVICE EMPLOYMENT: THE EXPERIENCE OF A DECADE* 10, fig. 1-1 (1985). In comparison unemployment in this period averaged 4.75 million. *HANDBOOK OF U.S. LABOR STATISTICS*, *supra* note 3, at 11.

74. The structuralist and anti-cyclical purposes of the act are clearly spelled out in the "Statement of Findings and Purposes" included in it. According to this Statement, the act was intended to "provide unemployed and underemployed persons with transitional employment in jobs providing needed public services during times of high unemployment and, wherever feasible, related training and manpower services to enable such persons to move into employment or training not supported under this Act." Emergency Employment Act of 1971, Pub. L. 92-54, § 2, 85 Stat. 146. To give effect to these purposes, the act's budget authorization was limited to two years, see *id.* §§ 5(a), 6(a), and the bulk of the authorization (about 75%) was subject to automatic termination if the national unemployment rate fell below 4.5%, a level considered recessionary at the time. See *id.* § 5(a)(2). Approximately 25% of the authorization would remain available after such a termination, but could be used only in "areas of substantial unemployment," defined as "any area of sufficient size and scope to sustain a public service employment program and which has a rate of unemployment equal to or in excess of 6 per centum for three consecutive months." *Id.* § 6(c).

the use of direct job creation to combat structural unemployment was reauthorized under Title II of the Comprehensive Employment and Training Act (CETA) of 1973.⁷⁵ When the economy entered a serious recession accompanied by high rates of inflation in 1974, a substantially larger, counter-cyclical job program (Title VI) was added to CETA.⁷⁶

The decision of Congress and the Ford administration to use direct job creation as a counter-cyclical response to the recession of 1973-75, rather than using tax cuts or deficit spending, can be attributed to the fact that the recession was accompanied by high rates of inflation. Direct job creation was perceived to be a less inflationary way of expanding employment than the use of Keynesian methods of fiscal or monetary stimulus. This policy was endorsed by a broad range of economists, including (crucially) the conservative Chairman of the Federal Reserve Board, Arthur F. Burns.⁷⁷

When President Carter came into office, unemployment rates were still close to eight percent, and he supported another major expansion of CETA's counter-cyclical job creation initiative. Nevertheless, the program remained small compared both to the level of unemployment in the economy and to New Deal precedents. At its peak in 1978, when national unemployment levels averaged 6.2 million, CETA briefly funded 750,000 jobs in a labor force of 102 million persons, accounting for less than one percent of all employment and providing jobs for only about twelve percent of all unemployed workers.⁷⁸ In comparison, New Deal direct job creation programs employed over four million at their peak, in a labor force only half as large, accounting for between five and seven percent of all employment and providing jobs for an average of 38 percent and a peak of over 50 percent of all unemployed workers from 1936-1940.⁷⁹

CETA was a popular program in the first several years of its operation, but it also attracted strong criticism based on allegations of mismanagement and fears that local governments were using CETA to replace locally-funded public employees, saving local taxpayers money but reducing the programs net job-creation effect (a phenomenon known as "fiscal substitution"). In response to this criticism, and feeling less pressure to

75. Pub. L. No. 93-203, 87 Stat. 839 (codified as amended at 29 U.S.C. §§ 801-999 (1976)) (repealed 1982). See COOK ET AL., *supra* note 73, at 8.

76. Emergency Jobs and Unemployment Assistance Act of 1974, Pub. L. No. 93-567, Title I, 88 Stat. 1845. An appropriation of \$2.5 billion was authorized for 1975 under this new Title VI of CETA. *Id.* § 101. Underscoring the counter-cyclical character of this legislation, the act also established a special unemployment assistance program extending Unemployment Insurance (UI) benefits for workers who had exhausted their eligibility under regular UI programs. *Id.* §§ 201-210.

77. See MUCCIARONI, *supra* note 45, at 86-87. For an overall account of CETA's expansion in 1974, see *id.* at 83-90.

78. See COOK ET AL., *supra* note 73, at 10, fig. 1-1.

79. Author's calculation based on data reported in NATIONAL RESOURCES PLANNING BOARD, *supra* note 32, at 556, 557-59.

create jobs as unemployment rates fell to the 5.5 to 6.5 percent range, CETA's counter-cyclical component was drastically cut back in the last two years of the Carter administration. With the program restructured to focus exclusively on structural unemployment, CETA became less attractive to local governments (who could no longer pursue a strategy of fiscal substitution) and to most workers (who could no longer qualify for CETA jobs). Because it was now viewed exclusively as a training program, assessments of its performance were based mainly on the post-participation employment experience of enrollees. By this measure, the program was only marginally successful. With national social policies shifting sharply to the right under President Reagan, CETA was targeted for elimination, and the program was ended in 1981.⁸⁰

CETA's history illustrates the uncertain place of direct job creation in policy responses to joblessness based on a structuralist view of the problem. From a structuralist perspective, direct job creation may be viewed as a form of job training or as a compensatory measure to be utilized when other policies fail to eliminate structural barriers to equal employment opportunity. The case for direct job creation is not as compelling in these circumstances, however, as when an aggregate job shortage is recognized to exist. In the 1960s the U.S. economy experienced a period of sustained growth, with unemployment rates falling below the four percent level from 1966 to 1969.⁸¹ At the same time, economic policy advisors were expressing strong confidence in the effectiveness of Keynesian techniques of macroeconomic management.⁸² In these circumstances, policymakers implemented a structuralist strategy that did not include a substantial direct job creation component. In the 1970s, the occurrence of two recessions in quick succession created a political opening for advocates of direct job creation. The programs established as a result of this opening combined structuralist and counter-cyclical goals, but support for policies based on the job shortage approach continued to be very thin except as a counter-cyclical measure. As at the close of World War II, an attempt to mandate the achievement of full employment failed in Congress.⁸³ When the political pendulum swung to the right in the 1980s, both the structuralist and job-shortage approaches to combating joblessness suffered a relative eclipse,

80. For analyses of the growth and collapse of CETA's political support, see MUCCIARONI, *supra* note 45, at 83-104, 162-92, 195-223; and WEIR, *supra* note 16, at 117-129. For a summary of the assessment literature relating to the public service employment programs of the 1970s, including CETA, see generally COOK ET AL., *supra* note 73.

81. See HANDBOOK OF U.S. LABOR STATISTICS, *supra* note 3, at 11.

82. MUCCIARONI, *supra* note 45, at 32-45.

83. The watered-down fruit of this initiative was the Full Employment and Balanced Growth Act of 1978, Pub. L. No. 95-523, 92 Stat. 1887 (1978). For a description of the legislative history of this Act, see HELEN GINSBURG, FULL EMPLOYMENT AND PUBLIC POLICY: THE UNITED STATES AND SWEDEN 63-84 (1983); MUCCIARONI, *supra* note 45, at 93-102; & WEIR, *supra* note 16, at 131-40.

but especially the latter. Since the election of Ronald Reagan in 1980, concerns about aggregate job shortages have had little effect on public policy, even during cyclical downturns.⁸⁴ Liberal opposition to conservative policies addressing issues of joblessness has been informed mainly by structuralist approaches to the problem.

Liberal criticism of conservative welfare reform initiatives, for example, tends to emphasize that low-skilled jobs *paying adequate wages and benefits* are scarce; that this is especially true in areas where welfare recipients tend to live; that welfare recipients need more education and job training to find *good* jobs; that it is unreasonable to expect single parents to work unless affordable child care is made available to them; and that members of minority groups still suffer special disadvantages in finding work. None of these claims links the problems welfare recipients face in finding work to an aggregate shortage of jobs—a shortage that almost surely would be emphasized in liberal commentary on such a subject during a period of recession.

III.

ASSESSING THE STRATEGIES

We have seen that each of the three main strategies for combating joblessness pursued in the United States during the past century is based on a different view of the causes of the problem. Who is right? To what extent and in what ways is joblessness caused by a shortage of jobs, by barriers to equal employment opportunity, and by individually controllable behavior?⁸⁵

84. See SPENDING TO SAVE, *supra* note 20, at 10-11.

85. Economists generally distinguish between three main types of unemployment: frictional, structural and cyclical. See RONALD G. EHRENBURG & ROBERT S. SMITH, MODERN LABOR ECONOMICS: THEORY AND PUBLIC POLICY 566-589 (7th ed. 2000); LLOYD G. REYNOLDS ET AL., LABOR ECONOMICS AND LABOR RELATIONS 241-47 (11th ed. 1998); F. RAY MARSHALL & VERNON M. BRIGGS, JR., LABOR ECONOMICS: THEORY, INSTITUTIONS, AND PUBLIC POLICY 89-93 (6th ed. 1989). These types do not correspond exactly to the explanations of joblessness that are the subject of this article, but a familiarity with the terminology used by economists will be helpful in understanding the following discussion.

The term "frictional unemployment" is used to describe a type of unemployment that results from normal turnover in the labor market coupled with the fact that locating new jobs takes time. *Id.* at 278. Because job search and job screening activities take time, a certain amount of frictional unemployment would exist even if there was (1) a surplus of jobs relative to the number of people seeking work and (2) job search activities by job applicants were both vigorous and unhindered by structural barriers to employment. Still, the job search behavior of job seekers does affect the level of frictional unemployment. If job seekers increase their reservation wage (the wage they are willing to accept) or reduce the intensity of their job search activities, matching job seekers with available jobs may take longer, resulting in an increase in frictional unemployment. Thus, frictional unemployment may be thought of as including both a minimum level of unemployment attributable to acceptable job search activities and an extra quantum of unemployment attributable to inadequate job search efforts. It is this latter type that is the focus of the behavioralist explanation of joblessness. See EHRENBURG & SMITH,

A. *Job Seekers and Job Vacancies*

A logical first question to ask in this regard concerns the extent of any job shortages that may exist in the economy. It generally is conceded that job shortages may exist in particular communities or regions (e.g., inner city neighborhoods), that job shortages also may exist for particular kinds of labor (e.g., unskilled workers), and that aggregate job shortages affecting the entire labor force may exist during recessions and depressions. But what is the normal state of aggregate job availability relative to the number of persons seeking work during non-recessionary periods? Are there generally more job openings than there are job-seekers, or does the number of individuals seeking employment normally exceed the number of job vacancies?

In general, an aggregate job shortage exists at a particular moment in time if there are more job seekers than available jobs in the economy.⁸⁶ Stated more precisely, the size, at a particular moment in time, of the economy's aggregate job gap is equal to the number of unemployed workers in the economy minus the number of job vacancies that employers are seeking to fill.⁸⁷

supra at 568-76; REYNOLDS ET AL., *supra* at 241-42; MARSHALL & BRIGGS, *supra* at 89.

The term "structural unemployment" is used to describe unemployment that results from a mismatch between the skills and/or location of job-seekers compared to available jobs. This definition corresponds closely to the explanation of joblessness referred to as structuralist in this article, with the exception that joblessness resulting from racial or other forms of discrimination usually is not included under the structural heading in standard economic analyses. See EHRENBERG & SMITH, *supra* at 576-84; REYNOLDS ET AL., *supra* at 242-45; MARSHALL & BRIGGS, *supra* at 92-93.

The term "cyclical unemployment," sometimes called "deficient demand unemployment," is used to describe unemployment that results from a decline in aggregate demand, such as occurs during a recession. It is in this context that the job shortage explanation of joblessness has been most readily accepted. However, this explanation may still apply even in periods of relative prosperity, if deficient demand unemployment persists. See EHRENBERG & SMITH, *supra* at 584-92; REYNOLDS ET AL., *supra* at 245-47; MARSHALL & BRIGGS, *supra* at 92.

86. This definition abstracts from the fact that workers may want to work more (or fewer) hours than available jobs permit or require. Workers who are employed fewer hours than they want are frequently referred to as "underemployed." This means there may be a shortage of work in the economy even if there is no shortage of jobs. See David Gordon, *Counting the Underemployed*, in PROBLEMS IN POLITICAL ECONOMY: AN URBAN PERSPECTIVE (David Gordon ed., 1977). The definition of the economy's aggregate job gap below could be recast to include this complication. However, for the sake of simplicity, I will not address the issue of underemployment except where its acknowledgment is particularly important to the point under consideration.

87. This relationship can be expressed in the following formula:

$$G = U - V$$

where

G = the economy's aggregate job gap.

U = the aggregate level of unemployment in the economy.

V = the aggregate number of job vacancies in the economy.

See J.E. KING, LABOUR ECONOMICS: AN AUSTRALIAN PERSPECTIVE 204-05 (2nd ed. 1990). It should be noted that although the level of unemployment (U) and the number of job vacancies (V) cannot be less than zero, the economy's job gap (G) could be negative if there were more job vacancies

If the job shortage explanation of joblessness is correct, we would expect the economy's job gap to be positive and large. On the other hand, if the behavioralist or structuralist explanations of joblessness are correct, we would expect the job gap to be small or negative. By itself, however, the existence of a small job gap combined with significant unemployment would not mean the unemployment was necessarily being caused by factors associated with the structuralist or behavioralist explanations of the problem. It could be unavoidable frictional unemployment—that is, unemployment resulting from the fact that it takes time for job seekers and employers with jobs to fill to find one another and complete a hiring.⁸⁸ A “frictional unemployment floor” will always exist, giving rise to at least as many job vacancies as there are frictionally unemployed workers.⁸⁹

Job vacancies may be attributable to three other reasons besides unavoidable frictional unemployment. First, there may be an aggregate shortage of labor—a state of affairs in which the number of jobs employers are seeking to fill is greater than the number of unemployed persons seeking work. If this were true, the job gap would be negative.⁹⁰ Second, job vacancies may exist because structural barriers prevent willing job applicants from being hired to fill them. Third, job vacancies may exist because jobless individuals are not looking hard enough for work or because they refuse to accept jobs that are available. This last factor may be described as causing an increase in frictional unemployment,⁹¹ but for our purposes it is important to distinguish unavoidable frictional unemployment (which will exist even when the job search behavior of unemployed individuals is optimal) from unemployment attributable to the behavioral problems that are the target of behavioralist policy prescriptions.⁹²

than unemployed workers.

88. See REYNOLDS ET AL., *supra* note 85, at 278-79.

89. See MARSHALL & BRIGGS, *supra* note 85, at 92; EHRENBERG & SMITH, *supra* note 85, at 568. For each frictionally unemployed worker there must be at least one suitable job vacancy, otherwise the unemployment could not be attributable entirely to frictional factors. However, there may be more than one suitable vacancy per frictionally unemployed worker, which would be the case if there were an aggregate surplus instead of a job shortage.

90. Strictly speaking, since workers can occupy more than one job simultaneously, a labor shortage need not exist even if there are more vacant jobs than job seekers. For example, if there were one hundred part-time job vacancies, each offering twenty hours of work per week, and fifty job seekers, all of whom wanted full time, forty hour per week jobs, there would be no labor shortage.

91. See EHRENBERG & SMITH, *supra* note 85, at 566-74.

92. Limiting the discussion to the situation where a job shortage exists, total job vacancies (V) are derived from three sources. The relationship can be expressed as follows:

$$V = V_r + V_s + V_b$$

where

V_r = Job vacancies attributable to unavoidable frictional unemployment.

V_s = Job vacancies attributable to structural factors.

V_b = Job vacancies attributable to non-optimal job-search behavior on the part of jobless

Unavoidable frictional unemployment establishes a minimum level below which job vacancies cannot fall, even if there is no unemployment attributable to structural factors or non-optimal job-search behavior. In the United States, it appears that this frictional unemployment floor can be as low as one to two percent of the labor force. This was the level that U.S. unemployment rates reached during the height of World War II, when an aggregate labor shortage probably did exist and when both employers and employees were strongly motivated by both economic and patriotic motives to engage in vigorous job matching activities.⁹³ Accordingly, the job vacancy rate attributable to unavoidable frictional unemployment is probably also in the one to two percent range. To confirm that behavioralist or structuralist factors are causing unemployment, total job vacancies must be greater than the economy's frictional unemployment floor.⁹⁴

Because frictional unemployment can never be entirely eliminated, a "fully employed" labor force will still experience some unemployment. Stated differently, the economy's unemployment rate will not equal zero, even if the labor force is fully employed. The optimal level of unemployment is one in which only unavoidable frictional unemployment

individuals.

Job availability can also be expressed as a rate. The job vacancy rate (VR) is the proportion of all jobs in the economy (vacant and occupied) that are vacant.

$$VR = V / V + E_j$$

where

E_j = The total number of occupied jobs in the economy

Accordingly, the relationship described in the first equation in this note also can be expressed in terms of rates, as follows:

$$VR = VR_f + VR_s + VR_n$$

where

VR_f = The proportion of all jobs that are vacant because of unavoidable frictional unemployment

VR_s = The proportion of all jobs that are vacant because of structural factors

VR_n = The proportion of all jobs that are vacant because of non-optimal job-search behavior by jobless individuals

It should be noted that the job vacancy rate (VR) is not strictly comparable to the unemployment rate (UR). The vacancy rate measures the proportion of all jobs that are vacant, whereas the unemployment rate measures the proportion of all members of the labor force that are unemployed. The unemployment rate can be expressed as follows:

$$UR = U / U + E_p$$

where

E_p = The total number of persons who are employed in the economy.

Nevertheless, the denominators of the job vacancy rate (all jobs, whether vacant or occupied) and the unemployment rate (all members of the labor force, whether employed or unemployed) are similar enough in magnitude that the vacancy rate attributable to a particular factor (such as unavoidable frictional unemployment) will approximately equal the unemployment rate attributable to the same factor.

93. See HISTORICAL STATISTICS OF THE UNITED STATES, *supra* note 31, at 126, Series D9.

94. Based on the relationships defined in note 92 *supra*, this condition can be expressed in either of the following ways:

$$V > V_f \text{ or } VR > VR_f$$

exists. Stated in the terms of our discussion, it is a state of affairs in which there is no unemployment attributable to a job gap and also no unemployment attributable either to structural factors or to non-optimal behavior by unemployed individuals. In this article, I shall refer to this condition as "full employment."⁹⁵ For full employment to exist, there must be more job vacancies than job seekers, and all of these job vacancies must be attributable to unavoidable frictional unemployment. This definition of full employment is associated with William Beveridge, sometimes referred to as the "father" of the British welfare state.⁹⁶ Beveridge defined full employment as follows:

It means having always more vacant jobs than unemployed men, not slightly fewer jobs. It means that the jobs are at fair wages, of such a kind, and so located that the unemployed men can reasonably be expected to take them; it means, by consequence, that the normal lag between losing one job and finding another will be very short.⁹⁷

The unemployment rate divided by the job vacancy rate tells us approximately how many active job seekers there are for every available job vacancy in the economy.⁹⁸ To achieve full employment, this ratio has to be less than one,⁹⁹ and existing unemployment must be attributable exclusively to unavoidable frictional factors.

These relationships show that valuable information concerning the causes of joblessness can be obtained from a comparison of unemployment and job vacancy data. However, despite the potential importance of the data, very little research has been conducted concerning the normal

95. Based on the relationships defined in note 87 and 92 *supra*, full employment can be said to exist when the following is true:

$$U \leq V_f = V$$

Ignoring the difference in the denominators of the unemployment rate and the job vacancy rate, the full employment condition also can be described roughly as follows:

$$UR / VR < 1 = UR_f / UR$$

Cf. HARRY J. HOLZER, UNEMPLOYMENT VACANCIES AND LOCAL LABOR MARKETS 33 (1989) [hereinafter "UNEMPLOYMENT VACANCIES"].

96. See generally BEVERIDGE AND SOCIAL SECURITY: AN INTERNATIONAL RETROSPECTIVE (John Hills et al. eds., 1994).

97. WILLIAM H. BEVERIDGE, FULL EMPLOYMENT IN A FREE SOCIETY 18 (1945). See also JOHN MAURICE CLARK, NATIONAL AND INTERNATIONAL MEASURES FOR FULL EMPLOYMENT 14 (1949). Although not as precisely defined as in Beveridge's white paper, the term "full employment" had been used by economists since the early 1920s to describe the policy goal of providing work on a continuous basis to a country's entire labor force. See, e.g., J.A. HOBSON, THE ECONOMICS OF UNEMPLOYMENT 6-7, 40 (1922); John R. Commons, *Hobson's "Economics of Unemployment,"* 13 AM. ECON. REV. 638, 642, 644 (1923).

98. The ratio is only approximate because the unemployment and vacancy rates have different denominators. See *supra* note 92.

99. The vacancy rate has to be greater than the unemployment rate for full employment to be achieved because some workers hold more than one job and some unemployed workers may want more than one job. See UNEMPLOYMENT VACANCIES, *supra* note 95.

relationship between unemployment rates and job vacancy rates in the United States. In periods of recession it generally is assumed that job shortages exist, and this assumption has played a significant role in shaping public policy responses to joblessness during such periods.¹⁰⁰ Nevertheless, there is very little data available actually confirming the existence of such shortages. Large numbers of jobs are eliminated during recessions, leaving obviously willing workers without employment. It may be natural to conclude under such circumstances that there aren't enough jobs to go around. Still, this conclusion is not logically compelled. The number of job vacancies employers are seeking to fill during a recession could still exceed the number of people seeking work. The fact that large numbers of jobs are being eliminated doesn't tell us anything definitive about the stock of available positions employers are prepared to fill. The fact that unemployment rates rise sharply during a recession could reflect frictional and structural barriers to quick reemployment rather than a shortage of jobs. In other words, it is theoretically possible for cyclical unemployment to exist even though there is no aggregate shortage of jobs.

On the other hand, the fact that unemployment rates are falling doesn't tell us that the number of available jobs exceeds the number of persons seeking work. Whether or not an aggregate job shortage exists depends on the relationship between the number of job seekers and the number of job vacancies in the economy at any point in time.¹⁰¹ Unfortunately, the job vacancy data needed to make such comparisons is not regularly collected in the United States.¹⁰² Still, a number of job vacancy surveys have been conducted in various parts of the country over the past several decades, and their results paint a consistent portrait of U.S. labor markets.¹⁰³ The surveys show that in periods of relative prosperity as well as during recessions, the number of job seekers generally exceeds—usually by a wide margin—the number of job vacancies in the labor markets surveyed.¹⁰⁴ Figure 1

100. See generally discussion in Part I.B.; and Harvey, *supra* note 1.

101. See KING, *supra* notes 87 & 95. See also UNEMPLOYMENT VACANCIES, *supra* note 95.

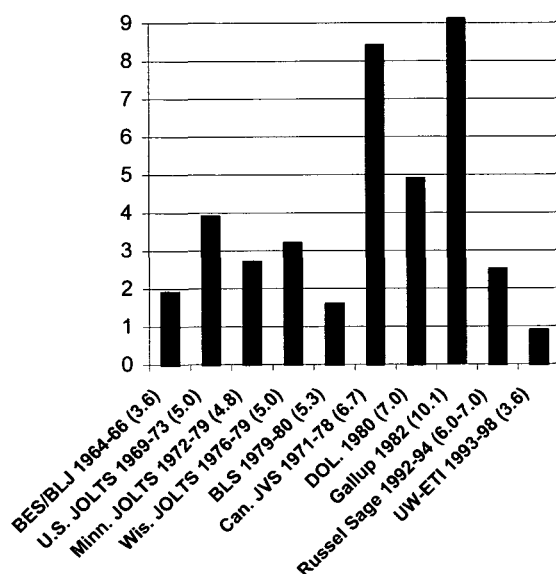
102. For a description of job vacancy data collection in the United States and other countries, see EMPLOYMENT & TRAINING INSTITUTE, UNIVERSITY OF WISCONSIN—MILWAUKEE, SURVEYING JOB VACANCIES IN LOCAL LABOR MARKETS: A HOW-TO MANUAL (Dec. 1998).

103. See Katharine G. Abraham, *Structural/Frictional vs. Deficient Demand Unemployment: Some New Evidence*, 73 AM. ECON. REV. 708 (1983). See generally UNEMPLOYMENT VACANCIES, *supra* note 95; HARRY J. HOLZER, WHAT EMPLOYERS WANT: JOB PROSPECTS FOR LESS-EDUCATED WORKERS (1996) [hereinafter "WHAT EMPLOYERS WANT"]; EMPLOYMENT & TRAINING INSTITUTE, UNIVERSITY OF WISCONSIN—MILWAUKEE, SURVEY OF JOB OPENINGS IN THE MILWAUKEE METROPOLITAN AREA (bi-annual since 1993).

104. See Abraham, *supra* note 103, at 722 (noting that if the surveys actually conducted mirrored conditions in the economy as a whole "there were roughly 2.5 unemployed persons for every vacant job during the middle 1960s, an average of close to 4.0 unemployed persons per vacant job during the early 1970s, and an average of 5.0 or more unemployed persons for every vacant job during the latter part of the 1970s."); UNEMPLOYMENT VACANCIES, *supra* note 95, at 48, tbl. 3.8 (reporting that in a study of 28 southern and Midwestern cities, there were 4.7 officially unemployed individuals for every available job

summarizes this data.

**Figure 1: Estimated Number of Officially Unemployed Persons Per Job Vacancy, Scattered Surveys 1964-1994
(Average Contemporaneous Unemployment Rate in Parentheses)**



Source: First six surveys: Katharine G. Abraham, *Structural/Frictional vs. Deficient Demand Unemployment: Some New Evidence*, 73 AM. ECON. REV. 708, (1983); Seventh & Eighth surveys: HARRY J. HOLZER, UNEMPLOYMENT, VACANCIES AND LOCAL LABOR MARKETS (1989); Ninth survey: HARRY J. HOLZER, WHAT EMPLOYERS WANT: JOB PROSPECTS FOR LESS-EDUCATED WORKERS (1996); Tenth survey: University of Wisconsin-Milwaukee, Employment and Training Institute, Survey of Job Openings in the Milwaukee Metropolitan Area. (semiannual, 1993-98).

in 1980 and 8.4 officially unemployed individuals for every available job in 1982); WHAT EMPLOYERS WANT, *supra* note 103, at 10, 143-44 (reporting that in a survey conducted between 1992 and 1994 in four large cities, job vacancy rates averaged 2.7 percent while unemployment rates ranged between about 5 percent and 11 percent in different cities at different times during the survey period); EMPLOYMENT & TRAINING INSTITUTE, *supra* note 103 (reporting bi-annual job vacancy rates and estimates of the number of persons seeking work and/or expected to work in the Milwaukee metropolitan area).

Moreover, these surveys probably understate the extent of the job shortages found. First, the surveys generally do not take into consideration categories of job needers other than officially unemployed workers. These other categories include involuntary part-time workers, discouraged workers, and able-bodied welfare recipients not already counted as unemployed or discouraged.¹⁰⁵ The job shortages shown in Figure 1 would be substantially larger if these groups were counted as job seekers. Second, there is some evidence that the proportion of all job vacancies that offer only part-time work is higher than the proportion of all job seekers who desire part-time work.¹⁰⁶ A comparison of "full-time equivalent" job vacancies to "full-time equivalent" job seekers probably would further enlarge the job shortages reported in Figure 1. Finally, since workers can (and frequently do) occupy more than one job, while job vacancies normally cannot employ more than one worker, the number of job vacancies needed to achieve full employment is greater than the number of persons seeking (or needing) work.¹⁰⁷

The job vacancy rates found in these studies generally fell in the one- to three-percent range.¹⁰⁸ If these rates are typical for the economy in general, similarly low levels of unemployment would have to be achieved for the number of job vacancies and job seekers to be in balance in aggregate terms.¹⁰⁹

If accurate, the job vacancy data reported in Figure 1 suggest that over

105. Involuntary part-time workers are persons who are working part time not by choice but because their hours have been cut due to economic conditions or because they could not find full-time jobs. Discouraged workers are persons who would like to be employed but are not actively seeking jobs because they think none are available, or that employers would not hire them. For estimates of the number of able-bodied public assistance recipients not counted as unemployed, see HARVEY, SECURING THE RIGHT TO EMPLOYMENT, *supra* note 13, at 24-26; EMPLOYMENT & TRAINING INSTITUTE, *supra* note 103. It also is true that some job vacancies are missed in these surveys. For example, a survey of employers who paid payroll taxes would miss employers whose employees are *all* paid "off the books." On the other hand, it also should be noted that unemployment statistics probably understate the actual number of persons who are seeking or want work.

106. According to data collected by the Employment and Training Institute, University of Wisconsin-Milwaukee, *supra* note 103, an average of 42% of all job vacancies in the Milwaukee metropolitan area during the periods surveyed have been part-time positions. Over the same period of time, the number of unemployed persons who were seeking part-time as opposed to full-time work in the United States averaged only 20%. See HANDBOOK OF U.S. LABOR STATISTICS, *supra* note 3, at 45; 45 EMPLOYMENT AND EARNINGS (Jan. 1998), at 201; 46 EMPLOYMENT AND EARNINGS (Jan. 1999), at 205.

107. See *supra* text accompanying note 99.

108. See Abraham, *supra* note 103, at 715, tbl. 2; UNEMPLOYMENT VACANCIES, *supra* note 95, at 32, tbl. 3.2, & 48, tbl. 3.8; WHAT EMPLOYERS WANT, *supra* note 103, at 143, tbl. B.3. It should be noted, however, that the vacancy surveys conducted by the Employment and Training Institute, University of Wisconsin-Milwaukee, *supra* note 103, have found vacancy rates in the four- to five-percent range.

109. See *supra* text accompanying note 96.

the past several decades in the United States, unemployment in excess of one to three percent of the labor force should be attributed to a shortage of jobs.¹¹⁰ This is an important conclusion. It means the great bulk of unemployment actually experienced in the United States during this period, and not just during periods of recession, has been proximately caused by an insufficiency in the number of jobs available rather than by a structural mismatch between job seekers and available jobs or by a refusal on the part of unemployed persons to seek and accept available jobs.¹¹¹

B. Wage Rates and Unemployment Rates: Supply and Demand Analysis

Relying on neo-classical economic theory, behavioralists might counter that data showing the existence of an aggregate job shortage fail to take into consideration that a decline in wages would cause employers to hire more labor, because workers would become less costly to hire relative to their productivity. An improvement in average skill levels (or other productivity-enhancing characteristics) would have the same effect if wages were held constant.¹¹²

110. See *supra* text accompanying notes 87 and 95.

111. If the unavoidable frictional unemployment floor were in the one- to two-percent range, the vacancy rate attributable to unavoidable frictional unemployment would be approximately the same, and unemployment attributable to behavioral or structural factors would be in the zero to two percent range. See *supra* text accompanying notes 93 & 94.

112. Alternatively, behavioralists might question whether the apparent surplus of labor shown by job vacancy data is real. Are all unemployed workers really seeking work? Are they all really competent to work if employment were offered to them? Maybe the market for job-seekers who truly are ready, willing, and able to work is in equilibrium. See, e.g., MEAD, *supra* note 17, at 85-109.

The problem with this objection is that it ignores strong evidence that employers and unemployed workers do find one another acceptable when the aggregate demand for labor grows. In September 1993, the unemployment rate was 6.7% in Philadelphia and 6.3% in Boston. See Emp. & Earnings (May 2000), *supra* note 58, at 142-43. In March 2000, it was 3.9% in Philadelphia and 2.3% in Boston. See *id.* at 134, 136. It does not seem reasonable to argue that the variation in these rates is attributable to changes in the quality of the Philadelphia and Boston labor forces during the intervening period, or that it is attributable to a withdrawal of non-serious job-seekers from the labor force.

Employers in Boston in 1999 were viewing persons as acceptable candidates for employment whom they would not have hired six years earlier and who still would not have been perceived as acceptable candidates in Philadelphia. Why? The most plausible explanation is that the line employers draw between "employable" and "unemployable" candidates varies depending on how many positions they need to fill relative to the available supply of labor. At the top of the business cycle and in geographic areas where aggregate demand is above average, employers find a larger portion of the labor force "employable" as compared to other points in the business cycle and in geographic areas where aggregate demand is less robust. This is not surprising. When employers collectively need more workers, they lower their standards (and maybe give up some irrational biases) in order to hire the workers they need. If labor demand were greater in Philadelphia, the city's unemployment rate almost certainly would drop to the Boston level, and if labor demand rose further in Boston, its unemployment rate almost certainly would drop still further.

The claim that jobless workers remain jobless because they lack needed skills or habits of work is not new. U.S. unemployment rates were still in the high teens in the late 1930s, and widespread concern was expressed about the employability of the nation's large public relief population. See NATIONAL

There are two versions of this theory. According to the older version, institutional impediments to the operation of market forces such as collective bargaining and minimum wage statutes prevent wages from falling to their equilibrium (full employment) level. If these impediments were removed, wages would fall and labor markets would clear, although the adjustment process might take some time and be disrupted by macroeconomic shocks. This theory was already fully developed in nineteenth century neo-classical criticism of the labor market effects of trade union activity,¹¹³ and it continues to be articulated today.¹¹⁴

A more recent version of this theory posits that market forces may push wages above the market-clearing (full-employment) level, as employers raise their wages above the going rate to create incentives for their workers to remain in their jobs (thereby reducing the employer's recruitment and training costs) and to work harder (by giving them more to lose if they are terminated). These "efficiency wages" are profit maximizing, provided that the increase in worker productivity exceeds the increase in wages. Competitive pressures force other employers to follow suit, thereby pushing market wages above the market-clearing level. This dissipates the advantage individual employers enjoy from paying efficiency wages (since competing employers now offer the same wage), but the existence of involuntary unemployment provides a substitute incentive for employees to remain in their jobs and work hard enough to avoid being fired.¹¹⁵

RESOURCES PLANNING BOARD, *supra* note 32, at 125-33. Yet, a few years later, with war production at its height, employers found virtually anyone who was willing to accept a job attractive enough to hire. The U.S. unemployment rate dropped from 17.2% in 1939 to 1.2% in 1944. See HISTORICAL STATISTICS OF THE UNITED STATES, *supra* note 31, at 126, Series D9. Public assistance rolls plummeted at the same time—even though the number of jurisdictions offering aid grew, eligibility standards in some programs were relaxed, and average benefit levels rose. The number of persons receiving General Assistance in the United States fell by 90%, from 4.7 million in 1939 to fewer than 500,000 in 1944, *id.* at 356, Series H361, and the number of families receiving Aid to Dependent Children - a population limited to widowed or abandoned mothers who were not expected to work - declined by 35% (from 391,000 in 1941 to 254,000 in 1944). *Id.* at 356, Series H358; GERTRUDE SCHAFFNER GOLDBERG & SHEILA D. COLLINS, WASHINGTON'S NEW POOR LAW: "WELFARE REFORM" AND THE ROADS NOT TAKEN, 1935 TO THE PRESENT 63-4 (forthcoming 2000). This period was probably the last time genuine full employment was achieved in the United States. The economy's job gap was not closed during this period because the behavior of unemployed workers changed. Rather, employers created more jobs than there were workers because markets for goods and services were booming (and because available supplies of labor were drastically reduced by the expansion of the armed forces). Suddenly, to employers, Rosie looked like a riveter rather than a housewife—because no other potential employees were available.

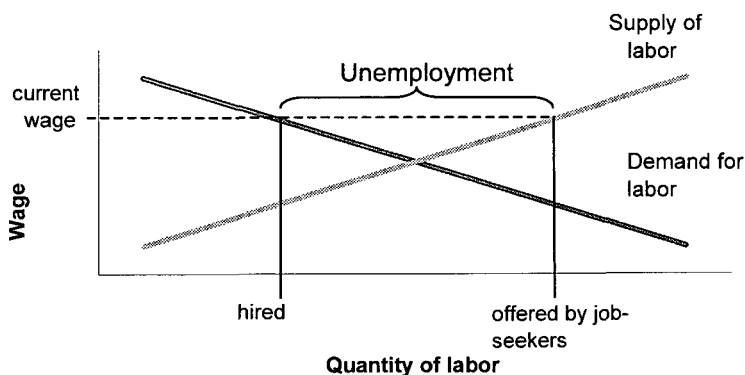
113. See MARSHALL *supra* note 85, at 709-10.

114. See RICHARD A. POSNER, ECONOMIC ANALYSIS OF LAW 332-33 (4th ed. 1992); Daniel Shaviro, *The Minimum Wage, the Earned Income Tax Credit, and Optimal Subsidy Policy*, 64 U. CHI. L. REV. 405, 436-59 (1997).

115. See CARL DAVIDSON, RECENT DEVELOPMENTS IN THE THEORY OF INVOLUNTARY UNEMPLOYMENT 125-48 (1990).

Both the old (wage rigidity) and new (efficiency wage) version of the neo-classical explanation of persistent unemployment rests on the assumption that involuntary unemployment exists because actual wage levels are above a market-clearing level. This claim is based on the belief that standard supply and demand analysis applies to aggregate labor markets in approximately the same way that it does to other markets (or would but for efficiency wage effects). Figure 2 portrays this view. An upward sloping supply curve crosses a downward sloping demand curve. If prices are maintained above the point of intersection of the two curves, the market will experience excess supply. In labor markets, excess supply assumes the form of involuntary unemployment—people seeking more work at market wages than employers are willing to provide.¹¹⁶

Figure 2: Simple Neo-Classical Theory of Unemployment



Economist Thomas Sowell has compared this theory to the law of gravity in physics, a truth not to be lightly dismissed.¹¹⁷ An examination of the evidence (or lack of evidence) supporting the theory, however, suggests that it stands on very shaky legs.

The Demand for Labor: Consider the presumed shape of the demand curve for labor, remembering that it is the aggregate demand for labor that matters, not the demand of particular firms or industries. Will the aggregate demand for labor increase if wages decrease? Careful analysis is important here, because the fallacy of composition can easily mislead us. What is true for one firm may not be true for all firms if they behave similarly. An

116. See, e.g., EHRENBERG & SMITH, *supra* note 85, at 43-44.

117. Thomas Sowell, *Repealing the Law of Gravity*, FORBES, May 22, 1995, at 82.

individual whose view of the stage is blocked at a concert may see better if she stands up, but the same strategy is likely to produce the opposite result if everyone follows the same strategy. An individual employer may find it advantageous to lower prices and expand production and employment if her employees agree to accept a cut in wages. By cutting prices she can sell the additional output and expand her market share at the expense of her competitors. But if all employers follow suit, will their aggregate sales increase or decrease? Will they hire more workers or fewer?

The neo-classical theory of the demand for labor is intuitively persuasive when used to describe the behavior of an individual firm in a static economic environment. If all other economic conditions remain unchanged, including the wage rates paid by a firm's competitors, there is good reason to expect the firm to increase its hiring as the wage rates it pays for a particular quality of labor decline (the behavior described by a downward sloping demand curve for labor). Lower wage costs mean lower unit costs of production. If unit costs fall, the firm can lower its prices. If the firm's prices fall relative to those charged by its competitors, its sales are likely to expand at the expense of those competitors. This is important, because it means the firm's sales can grow even if industry-wide sales remain constant or fall. Since the firm's need for workers is likely to grow with its sales, the chain of causation is complete. Lower wages will likely result in increased hiring.

The neo-classical model is less compelling, but still persuasive, when used to describe industry behavior. Industry employment depends on the allocation of consumption expenditures among products rather than on the market share captured by individual producers in a single-product market. Cross elasticities of demand for the products of different industries are much lower than for the products of different firms within an industry. Still, consumers can and probably do substitute purchases of one industry's product for that of another when the relative prices of the products change. If the soft drink industry has managed to reduce the relative wages it pays, and thus, can reduce its prices relative to the fruit juice industry, employment in the soft drink industry may very well go up.

At the aggregate level, however, the neo-classical model loses its coherence. The reason increased sales can be projected to follow a decline in wages at the firm or industry level is that the wages of workers employed by other firms or by other industries are assumed to remain constant. In other words, the model assumes that aggregate demand remains constant while one firm or one industry experiences declining costs. The favored firm or industry can charge lower prices in an otherwise unchanged market and enjoy increased sales at the expense of other firms or industries.

That scenario seems realistic at the firm or industry level, but not when wages fall at the aggregate level, i.e., throughout the economy. If workers

in general are receiving lower wages, aggregate levels of consumption are likely to fall. Investment spending, too, is likely to suffer, since employers tend not to invest in shrinking markets. The fact that labor has become cheaper won't cause employers to hire more workers if the market for their output is shrinking. In fact, layoffs seem more likely.

An inquiry into the aggregate effects of falling wages requires macroeconomic analysis, and such an analysis is likely to produce different conclusions depending on cyclical conditions and government policy variables. I am not saying that an argument cannot be made that falling wages will cause employment to expand under certain circumstances, but that conclusion certainly cannot be based on the supply and demand model portrayed in Figure 2. If falling wage rates are associated with declining unemployment, the association seems more likely to depend on the way in which wage changes interact with macroeconomic variables over time, producing shifts in the demand curve for labor, rather than on the short-term equilibrating mechanisms of the simple neo-classical model.

Standard labor economics texts generally ignore this difficulty. After explaining the theoretical and empirical basis of the neo-classical theory of labor demand as applied to individual firms, the texts typically leap to the conclusion that the aggregate demand curve for labor has the same general shape as the individual firm's demand curve for labor. The reason for this, the texts assert, is that the aggregate demand curve for labor is a summation of all the individual firm demand curves in the economy.¹¹⁸ As I have explained, this is a leap of faith rather than persuasive reasoning, a classic example of the fallacy of composition. What is true for an individual firm or industry may not be true for all firms or all industries if they pursue a common course of action. If anything, declining wages at the aggregate level seem more likely to cause employment levels to fall rather than to rise.

More sophisticated treatments of the subject acknowledge that the theoretical and empirical foundation of the neo-classical theory of labor demand is weak at the aggregate level. Indeed, despite efforts by neo-classical economists to show otherwise, the scholarly literature tends to support the conclusion that real wage rates and employment levels are positively rather than negatively correlated over the course of the business cycle.¹¹⁹ If true, this suggests that the *aggregate* demand curve for labor may be upward sloping rather than downward sloping, a conclusion that neo-classical economists resist with more conviction than rational

118. See, e.g., EHRENBERG & SMITH, *supra* note 85, at 71; REYNOLDS ET AL., *supra* note 85, at 83-84; MARSHALL & BRIGGS, *supra* note 85, at 164-65.

119. See DANIEL S. HAMERMESH, LABOR DEMAND 336-39 (1993).

argument.¹²⁰ In any event, neo-classical economists concede that the aggregate demand curve for labor is very steep.¹²¹ In other words, even if falling wages would cause employment levels to rise, the increase is not likely to be very great.¹²²

While the seductive plausibility and broad applicability of conventional supply-and-demand analysis help explain popular acceptance of the neo-classical model of aggregate labor demand, real world economic trends also play a role. The first and oldest of these trends is the trend towards mechanization of labor processes. Technological innovation can and frequently does reduce the demand for certain kinds of labor, destroying the jobs of identifiable individuals in the process. In the face of this trend, it is easy to believe that rising wages will cause the aggregate demand for labor to decline by encouraging employers to substitute capital for labor. Similarly, it seems plausible that declining wages should have the opposite effect.

Once again, however, the fallacy of composition can mislead us. While it may be true that firms have a tendency to substitute capital for labor as wages rise, it does not necessarily follow that rising wages will cause a drop in aggregate employment. There are two reasons for this. The first is the often-noted tendency for technological innovation to create new occupations—small comfort to individual workers who lose their jobs but a counteracting tendency to any aggregate loss of employment as a result of technological innovation. The second reason is really an instance of the first, but it warrants special comment because capital goods tend to be perceived as a substitute for labor when, in aggregate terms, they are actually a form of indirect or “stored” labor. In other words, it requires labor to produce capital goods, and while such goods may replace more labor than is required to produce them, this saving occurs only over the life of the equipment. In the short run, more labor is likely to be spent producing capital equipment than the equipment is likely to displace. For this reason, increased capital-goods investment may be associated with a rising aggregate demand for labor rather than a declining demand, at least in the short run.

Also, even if it could be established that capital-goods investment caused a decline in the aggregate demand for labor, it would not necessarily follow that a fall in wages would have the opposite effect. Would employers respond to falling wages by turning back the technological clock, substituting labor for capital in the production process? If they did, would

120. See, e.g., *id.* at 339 (“I believe . . . that as with Voltaire’s view of the deity, if [a downward sloping] aggregate labor demand [curve] did not exist we would have to invent it.”); Sowell, *supra* note 117 (comparing the neo-classical theory of aggregate labor demand to the “law of gravity” in physics).

121. HAMERMESH, *supra* note 119, at 134-36.

122. *Id.*

employment gains stemming from the technological retreat exceed employment losses in capital-goods-producing industries? What would be the macroeconomic effects of declining investment expenditures following a decline in wages? Is this really a recipe for expanding employment?

If wage increases or decreases are associated with the substitution of labor and capital for one another, this association is likely to be discernable only over time and to be deeply embedded in both macroeconomic changes and long-term trends in the development of production techniques. Sorting out the employment effects of wage changes in this context is fraught with difficulty. Once again, I am not saying that it is impossible to argue that falling wages will reduce unemployment through the substitution of labor for capital, but the argument is not a simple one; and it certainly cannot rest on the intuitive appeal of simple supply-and-demand analysis.

Economic globalization trends also support popular acceptance of the neo-classical theory of aggregate labor demand. Workers in individual firms or industries are facing growing competition from foreign suppliers of the goods and services they produce. The neo-classical claim that wage and employment levels are inversely related at the aggregate level seems a simple reflection of the fact that wage increases may cause a loss of jobs to lower-paid workers abroad.

Here again, however, the question is not whether employment at the firm or industry level is sensitive to the relative wages earned by domestic and foreign workers, but whether aggregate employment levels in a country are threatened by the relative wages earned by its workers compared to workers in other countries. Would a general decline in U.S. wages, compared to European or Latin-American wages, cause U.S. employment to expand? With certain restrictive assumptions in place, the neo-classical theory of comparative advantage predicts that it wouldn't make any difference,¹²³ but as with the macroeconomic effects of declining wages, the answer in practice is likely to depend on other variables, including currency market conditions and trade policies that can vary dramatically over time and from country to country.¹²⁴ International differences in employment levels among trading partners are not a simple function of their relative wage levels, a fact that neo-classical economists are quick to point out in policy debates over free trade.

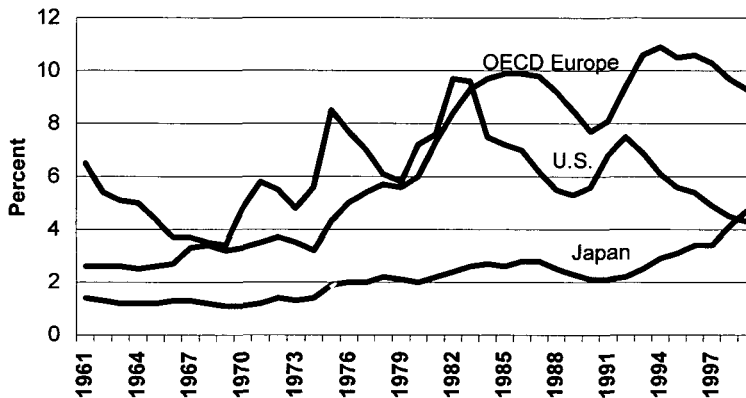
Perhaps the most important economic trend in recent years that has

123. See EHRENBERG & SMITH, *supra* note 85, at 133-39.

124. For a discussion of the effects of globalization trends on employment from a variety of perspectives, see ORGANIZATION OF ECONOMIC COOPERATION AND DEVELOPMENT, THE OECD JOBS STUDY: EVIDENCE AND EXPLANATIONS (1994); INTERNATIONAL LABOR OFFICE, WORLD EMPLOYMENT 1996/97: NATIONAL POLICIES IN A GLOBAL CONTEXT (1996); DEPARTMENT OF ECONOMIC & SOCIAL AFFAIRS, DIVISION FOR SOCIAL POLICY & DEVELOPMENT, UNITED NATIONS, ASPECTS OF WORLD EMPLOYMENT STRATEGY (1997).

reinforced popular acceptance of the neo-classical theory of aggregate labor demand has been the relative unemployment experience of the United States and Europe since the mid-1980s. Figure 3 shows that the U.S. unemployment rate has declined more or less steadily since the deep recession of the early 1980s, while European rates have remained stubbornly high. This difference has been widely attributed to the greater flexibility of the U.S. labor market, including its greater wage flexibility.¹²⁵

Figure 3: Average Unemployment Rate, 1961-1999



Source: OECD, Labour Force Statistics, 1964-84, Table 5.1; OECD, Labour Force Statistics, 1977-1997, Table 5.1; OECD, Standardized Unemployment Rates (1), (PAC/COM/NEWS (99) 74, July 9, 1999).

The lesson to be drawn from this comparison, however, is not clear-cut. United States unemployment rates just as consistently exceeded European levels prior to 1980, yet the institutions complained of in European labor markets are not of recent origin. Why did Europe experience less unemployment than the United States prior to the 1980s if the relative flexibility of their labor markets controls the outcome? Moreover, if international comparisons are to be relied upon, the relatively “inflexible” labor markets of Japan appear to provide a better model for achieving consistently low levels of unemployment than those of either the United States or Europe.¹²⁶ As Figure 3 shows, Japan’s unemployment rate

125. See, e.g., Horst Siebert, *Labor Market Rigidities: At the Root of Unemployment in Europe*, 11 J. ECON. PERSPECTIVES 37 (1997).

126. Japanese labor markets are characterized by a high degree of job security, a relatively flat wage distribution, earnings linked to seniority rather than job title, and a higher level of unionization than in the United States (though less than in many European countries). See REYNOLDS ET AL., *supra* note 85, at 303-12.

has been both lower and less volatile than unemployment rates in either the United States or Europe throughout the past four decades. Even in 1999, with Japan in the trough of its worst recession since World War II, the nation's unemployment rate was only slightly above the best level the United States had achieved in three decades. It may be possible, of course, to explain these apparent anomalies,¹²⁷ but in the search for evidence that aggregate unemployment can be reduced by lowering real average wage rates, international comparisons provide a very muddled picture.¹²⁸

Moreover, even if we were persuaded that wage reductions and other forms of labor market flexibility reduce aggregate unemployment, it is not clear how much flexibility would be required to achieve full employment and whether the social costs of such a policy would be acceptable. The U.S. job vacancy data discussed earlier suggests that substantial job shortages still exist in the United States even with unemployment rates in the four-percent range, so we still have not reached full employment. It is widely acknowledged that American wage flexibility imposes substantial social costs on both employed and unemployed workers.¹²⁹ The existence of these social costs raises troubling moral issues about the acceptability of relying on wage flexibility to achieve full employment even if we had good reason to believe the strategy would work.

Another source of doubt that such a policy would work is found in recent empirical research concerning the employment effects of changes in minimum wage laws. Until recently, neo-classical economists accepted as a matter of faith that increases in the minimum wage would cause increased unemployment among low-wage workers,¹³⁰ with the implication being that if the minimum wage were reduced (or if minimum wage protection were

127. A symposium on the issue in the *Comparative Labor Law & Policy Journal* provides a good overview of this literature from a variety of perspectives. See *The U.S. "Employment Miracle": Employment Protection and Job Generation*, 19 COMP. LAB. L. & POL'Y J. 280-329 (1998). See also Stephen Nickell, *Unemployment and Labor Market Rigidities: Europe Versus North America*, 11 J. ECON. PERSPECTIVES 55-74 (1997); Peter G. Gahan, *European Unemployment: The Role of Labor Market Regulation?*, 19 COMP. LAB. L. & POL'Y J. 455-72 (1999). For an analysis of Japanese labor market institutions written from a neo-classical perspective, see generally MASANORI HASHIMOTO, *THE JAPANESE LABOR MARKET IN A COMPARATIVE PERSPECTIVE WITH THE UNITED STATES* (1990).

128. It also is important to note that based on other measures of economic performance—including GDP growth per capita and productivity growth—western European economies have outperformed the United States since the early 1980s. See John Schmitt & Lawrence Mishel, *The United States Is Not Ahead in Everything That Matters*, 41 CHALLENGE 39-59 (November-December 1998). If enhanced labor market flexibility lowers unemployment rates, it should also have a positive influence on other measures of economic performance, but this appears not to be the case.

129. See Sheldon Friedman & Christian Weller, *One More Time: Labor Market Flexibility, Aggregate Demand, and Comparative Employment Growth in the U.S. and Europe*, 19 COMP. LAB. L. & POL'Y J. 307-20 (1998) ("Stagnant or declining real wages, rising inequality, increased economic insecurity, and high levels of poverty, even among full-time, year-round workers are among the negative consequences of U.S.-Style labor-market flexibility.").

130. See Shaviro, *supra* note 114, at 436-38.

eliminated entirely) unemployment rates would fall. Empirical studies supporting this conclusion, however, generally found that the effect of changes in the minimum wage on employment were quite small. A widely cited survey concluded that in the 1970s and early 1980s, a ten-percent increase in the minimum wage caused a one- to three-percent drop in teenage employment, with the lower end of that range considered more likely. The effect on young adult employment (twenty to twenty-four year olds) was found to be smaller, and no effect was detected on adult employment. Studies conducted in the 1980s and early 90s found a smaller effect—between 0.5% and 1% of teenage employment and no effect on young adult employment.¹³¹

Even this limited support for the claim that minimum wage laws cause unemployment has been challenged, however, in a widely-cited study published in 1995 by David Card and Alan Krueger.¹³² According to this study, which relied on several types and sources of data, there is no convincing evidence that moderate increases in the minimum wage have any negative effect on employment, and there is some evidence that the effect may be slightly positive.

Card and Krueger's conclusions have been vigorously disputed by more conservative neo-classical economists,¹³³ but the disagreement is a limited one. The conventional view is that the demand curve for low-wage labor is very steeply sloped but slightly negative. Card and Krueger argue that the demand curve may be vertical or slightly positive. The numerical difference in these estimates is small, even though the symbolic importance of the disagreement is large. For example, if the higher employment effects found in studies conducted in the 1970s and early 80s are accepted, the effect of changes in the minimum wage on employment still are very small. Based on these estimates, Professor Shaviro estimated that the approximately twenty percent increase in the minimum wage enacted in 1996 (from \$4.25 to \$5.15 an hour) caused a total loss of 100,00 to 200,000 jobs.¹³⁴ With unemployment averaging 7.2 million in 1996, this would not have made much difference in overall levels of joblessness in the economy. Business cycle dynamics demonstrate that there are many factors that have a powerful influence on the aggregate demand for labor, but moderate changes in the wage level may not be among them.¹³⁵

131. See DAVID CARD & ALAN B. KRUEGER, MYTH AND MEASUREMENT: THE NEW ECONOMICS OF THE MINIMUM WAGE 180-82 (1995).

132. *Id.*

133. See, e.g., THE EFFECTS OF THE MINIMUM WAGE ON EMPLOYMENT (Marvin H. Kosters ed., 1996).

134. Shaviro, *supra* note 114, at 457.

135. There may, of course, be indirect mechanisms whereby wage changes influence the aggregate demand for labor in the context of business cycle dynamics. For example, if rising wages were to induce higher rates of inflation and/or lower rates of profit, a range of other effects might be set in

The Supply of Labor: The supply side of the labor market also may not work in the way portrayed in Figure 2. As with the analysis of labor demand, the problem arises on the aggregate level rather than at the level of the individual firm or industry. It undoubtedly is true that individual firms or industries will attract more job applicants if they raise their wage offers relative to other firms or industries, and that the number of applicants will shrink if they reduce their wage offers. But will the aggregate supply of labor increase if market wages rise; and more importantly for our analysis, will the aggregate supply of labor decrease if wages fall?

If the price of automobiles falls, it seems reasonable to assume that producers will cut back on their output of the product.¹³⁶ This is one blade of the supply-and-demand scissors that cause markets to clear when prices fall. But labor is not produced for sale. Nor can it be stored for future sale, left fallow, or junked. Workers must eat, even when they are unemployed, and so must their children. Their living expenses may not be fixed, but dramatic reductions in consumption come hard and are likely to be avoided if possible. We certainly cannot presume, under these circumstances, that the supply of labor will respond to wage changes in the same way that the supply of automobiles does.

In fact, neo-classical theory recognizes that labor is special. The supply of labor is explained as a reflection of individual decisions about how much time to spend working and how much time to spend in leisure activities (the labor-leisure choice). This choice is presumed to be controlled by two conflicting effects of a change in wage rates. On the one hand, an increase in wages will increase the opportunity cost of leisure, because the cost of the leisure is the wage a worker gives up to enjoy it. This "substitution" effect will tend to induce workers to give up more leisure as that leisure becomes more "costly," that is, as hourly wage rates increase. On the other hand, as hourly wage rates go up, workers will enjoy greater income, and that will increase their demand for things that give them pleasure, including leisure time. This "income" effect will tend to induce workers to purchase more leisure by working fewer hours as their income increases. Which of these effects will dominate cannot be predicted theoretically, although it sometimes is assumed that the supply curves of individuals are upward sloping at lower wage levels and backward sloping

motion that could powerfully effect employment. The role of the business cycle in regulating the demand for labor will be discussed in Part III.C. *infra*.

136. The standard explanation of this behavior is based on the assumption that, in the short run (a period of time short enough that at least one factor of production is fixed), marginal costs of production will rise with the level of output, due to the law of diminishing returns. Accordingly, if product prices increase, higher levels of production will be profitable. See PAUL A. SAMUELSON & WILLIAM D. NORDHAUS, *ECONOMICS* 59-60 (13th ed. 1989); or any other standard textbook.

at higher wage levels.¹³⁷

The neo-classical claim that a change in hourly wage rates will give rise to conflicting income and substitution effects, with no determinate outcome, is hard to fault; but it obviously provides no support for the assumption that the aggregate supply curve for labor is upward sloping at actually prevailing wage levels. At very low wage levels, it probably makes no sense to even posit a labor supply curve. At wage levels that permit earnings above either a physical or culturally conditioned subsistence level, hours of work are physically bound at the extreme. Workers have to earn enough to feed themselves, and the need for sleep provides equally compelling upper bounds on working time. In between those bounds, however, the factors that determine the relative strength of the income and substitution effects at different wage levels are both murky and subject to cultural conditioning—with no clear link between hourly rates of pay and preferred hours of work based on existing wage differentials.

Available empirical evidence confirms this indeterminacy. Both time-series and cross-sectional data on labor force participation rates suggest that the slope of the labor supply curve of men is probably slightly negative and that the slope for women, especially married women, is probably more strongly positive but also inconsistent over time.¹³⁸ Data on changing hours of work suggest that labor supply curves were negatively sloped in the United States during the early part of the twentieth century, but may no longer be so. This latter data is clouded, however, by the strong role played by employers in determining average hours of work.¹³⁹ Moreover, all of these tendencies are heavily influenced by historical and cultural trends that may not persist in the future.

It also bears emphasis that research on the shape of the labor supply function has been dominated by natural experiments in which only the effects of rising wage rates have been measured. This limitation is important, because experimental research in behavioral economics suggests that the supply curve of labor may not have the same slope above and below currently prevailing wages. This latter research has shown that people are strongly averse to losses. In fact, they appear to attach roughly twice as much value to something they have possessed and lost as they do to the same thing before they possess it.¹⁴⁰ Whether an event is perceived as

137. See EHRENBERG & SMITH, *supra* note 85, at 183-84; DAVID SAPSFORD & ZAFIRIS TZANNATOS, *THE ECONOMICS OF THE LABOUR MARKET* 26-27 (1993).

138. See EHRENBERG & SMITH, *supra* note 85, at 198-202; REYNOLDS ET AL., *supra* note 85, at 59.

139. See EHRENBERG & SMITH, *supra* note 85, at 180-82; REYNOLDS ET AL., *supra* note 85, at 48-50.

140. RICHARD H. THALER, *THE WINNERS CURSE: PARADOXES AND ANOMALIES OF ECONOMIC LIFE* 63-78 (1992).

a loss or gain, however, can be varied by contextual factors that frame the event. For example, a seven percent cut in real wages is more likely to be perceived as a loss if money wages are cut in a period of no inflation than if money wages are increased only five percent when inflation is running at a twelve percent rate.¹⁴¹

How might this “endowment effect” influence the supply curve of labor? Consider the following thought experiment. Imagine that your hourly wages have been reduced. At the same time, however, you are told you can adjust your hours of work up or down to any extent you want. What would you do? I believe I would increase my hours of work to avoid or at least reduce my loss of income. Does this make sense?

According to standard neo-classical theory, if workers determined their own hours of work before the change in wage rates, they might decide to work more or less after the cut in wages depending on whether the income or substitution effect of the pay cut was greater. But now add the assumption that workers value losses twice as much as equivalent gains. If workers were to reduce their hours of work after the pay cut, they would gain leisure, but they would value their attending loss of income twice as much. The substitution effect would have to be more than twice as great as the income effect at that point on the workers’ labor supply curve for them to cut their hours of labor. This seems highly unlikely.

But does it make sense to expect that workers would increase their hours of work? This is a framing question, since the choice is between two losses—income or leisure. I suspect that most workers would perceive a loss of income imposed by their employers as more of a loss than a self-imposed loss of leisure. If this assumption is correct, most workers would probably increase their hours of work in an effort to maintain their old income (because they would value their threatened loss of income more than their self-imposed sacrifice of leisure). If workers viewed both options equally as losses, they might split the difference, thereby confining both losses to the marginal region of their preference curves for both goods—income and leisure.¹⁴² These workers, too, would choose to work longer hours, although not enough to make up for their entire loss in income. The only workers who would not increase their hours of work in these circumstances would be those who viewed a self-imposed loss of leisure as more of a loss than a loss of income imposed by their employer.

Direct evidence that individual labor supply curves have a negative rather than a positive slope is provided by a study of cab drivers in New York City. The hourly earnings of New York cab drivers vary significantly

141. *Id.* at 74-77.

142. This would make sense if both income and leisure had diminishing marginal utility for the workers and the slopes of their marginal utility curves were the same for both goods.

from day to day depending on the relative amount of time they spend between fares. These drivers, who controlled the number of hours they worked on a day to day basis, exhibited a strong tendency to work longer hours on bad days (when their hourly earnings were low) and to quit work early on good days (when their hourly earnings were high).¹⁴³ This was true despite the fact that they could have both increased their income and reduced their total hours of work if they had pursued the opposite strategy of working long hours on good days and knocking off work early on bad days.

These findings suggest that the labor supply function may be dominated by a desire to make a target level of income (reflecting normal earnings). If labor supply is modeled as a function of the wage rate and expected income, the result is a negatively sloped labor supply curve. This view of the labor supply function is consistent with a correlate of loss aversion—the tendency for people to prefer the status quo over alternatives to it.¹⁴⁴ Earnings expectations can change, of course, and people do reject the status quo by voluntarily leaving jobs for better ones. But to the extent their behavior is controlled, at least in the short run, by a desire to maintain expected levels of income, especially in the face of losses, there is strong reason to believe the short-run supply curve of labor is negatively sloped, and more negatively sloped below existing wage rates than above them.

The possibility that the supply and demand curves for labor are accurately portrayed by Figure 2 seems slim indeed. If the empirical evidence weighing on the question were considered without any preconceived notion about how supply and demand curves *should* look, it is hard to imagine that anyone would offer up Figure 2. Based on the available evidence, Figure 4 might come closer to the truth.

I am not proposing that Figure 4 be substituted for Figure 2 as a model of either wage or employment determination. The distinguishing feature of Figure 4—as of any other set of non-intersecting supply and demand curves we might draw—is that it cannot explain either wage or employment levels.¹⁴⁵ My point is that the neo-classical model portrayed in Figure 2 is

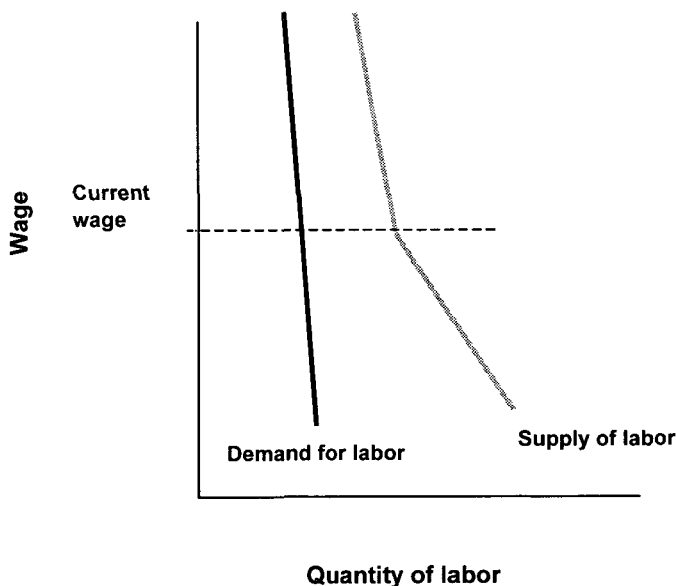
143. Colin Camerer et al., *Labor Supply of New York City Cabdrivers: One Day at a Time*, 112 Q.J. ECON. 407, 407-41 (1997).

144. For an explanation of the status quo bias, see THALER, *supra* note 140, at 68.

145. If the level of wages and employment were a simple function of the interaction of the supply and demand curves for labor, then Figure 4 would describe an unstable market in which wages would tend to spiral downward while unemployment rates rose. Thus, even if Figure 4 were accepted as accurate, some other explanation of wage and employment levels would be needed. With regard to wage levels, for example, it could be posited that prevailing wages are set by a variety of historical and institutional factors. The relationship of labor supply and demand to one another would constitute just one of these factors. See CARD & KRUEGER, *supra* note 131, at 8-9 (describing work of “social economics revisionists” who argued in the 1950s and 60s that “a number of non-economic considerations, such as fairness and ability to pay, influence wage setting and employment” in addition to the forces of supply and demand). For a more recent institutional account of wage determination,

implausible when applied at the aggregate level. Average wage levels may play a role in determining the size of the economy's job shortage, but the nature and extent of that role is anything but clear. There certainly is no warrant for assuming that the economy's job shortage would shrink if real wages fell.

Figure 4: Plausible Shape of Aggregate Supply and Demand Curves for Labor



see JAMES K. GALBRAITH, *CREATED UNEQUAL: THE CRISIS IN AMERICAN PAY* (1998). For precursors of the institutionalist perspective, see, e.g., DAVID RICARDO, *PRINCIPLES OF POLITICAL ECONOMY AND TAXATION* 118 (Penguin Books 1971) (1817) (asserting that the "natural price of labor . . . varies at different times in the same country, and very materially differs in different countries. It essentially depends on the habits and customs of the people."); & 1 KARL MARX, *CAPITAL* 171 (International Publishers 1967) (1867) (asserting that the "value of labor power" contains an "historical and moral element" reflecting "the conditions under which, and consequently on the habits and degree of comfort in which, the class of free laborers has been formed.").

C. Macroeconomic Barriers to Full Employment

While considerable uncertainty exists concerning the influence of real wage rates on unemployment, there is no uncertainty that the overall level of economic activity exerts a powerful effect. Business cycle fluctuations demonstrate that changes in the rate and direction of an economy's growth path have an immediate and dramatic effect on unemployment rates, and periods of genuine full employment generally are linked to circumstances (frequently wars) that boost aggregate demand to exceptionally high levels. Accordingly, an understanding of the source of the United States economy's persistent job gap requires an understanding of macroeconomic barriers to full employment.

In the United States, macroeconomic analysis of the problem of joblessness has focused on the question of how to avoid or ameliorate recessionary tendencies in the economy.¹⁴⁶ As noted earlier, classical and neo-classical economists prior to the 1930s tended to discount the possibility that an economy might experience persistent involuntary unemployment. Keynes characterized (some would say caricatured) this perspective as a blind faith in the validity of Say's law, the doctrine that supply creates its own demand, thereby ensuring that business "gluts" (depressions or recessions) will be both temporary and self-correcting.¹⁴⁷ Keynes argued that a variety of factors might interfere with the adjustment mechanism upon which Say's law relied and, consequently, that market economies might not exhibit a tendency to achieve full employment.¹⁴⁸

In the period following World War II (and substantially as a result of the war experience) most professional economists became convinced that full employment could be achieved through the manipulation of aggregate demand, whether or not the economy displayed natural tendencies in that direction.¹⁴⁹ Keynesianism dominated macroeconomic thinking. Liberal Keynesians envisioned a regulatory regime in which government spending to satisfy social needs would lift aggregate demand as needed. Conservative Keynesians envisioned a regulatory regime in which tax cuts would administer the same fillip.¹⁵⁰

At the same time, however, the meaning of this full employment goal began to erode. In the 1940s it was accepted that full employment meant

146. The focus of macroeconomic inquiry has not been so limited in all countries. In Sweden, for example, the highly influential work of Gosta Rehn and Rudolf Meidner in the early 1950s focused on the question of how inflationary pressures could be controlled at the top of the business cycle in order to permit the achievement of genuine full employment. See GINSBURG, *supra* note 83, at 114, 122-24.

147. On the content of "Say's Law" and Keynes characterization of it, see William J. Baumol, *Say's Law*, 13 J. ECON. PERSPECTIVES 195, 195-204 (1999).

148. See MARK BLAUG, *ECONOMIC THEORY IN RETROSPECT* 151-52 (5th ed. 1997).

149. See STEIN, *supra* note 36, at 169-96; MUCCIARONI, *supra* note 45, at 20-25.

150. See MUCCIARONI, *supra* note 45, at 25-30.

the existence of enough jobs to provide work for everyone able and willing to work at the going wage.¹⁵¹ This was the policy goal implicit in President Roosevelt's assertion, in his 1944 State of the Union message to Congress, that the nation had come to accept a "second Bill of Rights" which included "[t]he right to a useful and remunerative job in the industries or shops or farms or mines of the nation."¹⁵² It also was the policy goal adopted as a binding treaty obligation in the United Nations Charter,¹⁵³ and as an aspirational goal in the Universal Declaration of Human Rights.¹⁵⁴ It was because this meaning of the term "full employment" was so clearly understood in the 1940s that conservatives fought so hard to exclude its use in the Employment Act of 1946.¹⁵⁵

Among economists, however, this seemingly clear understanding of the meaning of full employment became increasingly clouded over time. In a paper originally presented in 1954, Albert Rees described five distinct ways in which full employment could be defined and measured.¹⁵⁶ These definitions included the one generally accepted in policy discussions in the 1940s, but the list also included an alternative definition that has since come to dominate macroeconomic policy in the United States. According to this definition, full employment is equated with the minimum level of unemployment consistent with price stability.¹⁵⁷ Rees borrowed this definition from a 1949 article by Bertil Ohlin,¹⁵⁸ but it reflected a much

151. See *supra* note 97.

152. Franklin D. Roosevelt, "Unless There is Security Here at Home, There Cannot be Lasting Peace in the World"—*Message to the Congress on the State of the Union (Jan. 11 1944)*, reprinted in 13 THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT 32, 41 (Samuel I. Rosenman ed., 2d ed., 1969).

153. U. N. Charter, art. 55 (binding member states to promote "full employment").

154. Universal Declaration of Human Rights, G.A. Res. 217 (III), U.N. Doc. A/811, art. 23, at 71 (1948) (proclaiming that "[e]veryone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment"). In explaining the terms of the Declaration in discussions preceding its adoption, Eleanor Roosevelt (the official United States Representative on, as well as the elected chairperson of, the committee that drafted the Declaration) made it clear that all of these formulations were understood to mean essentially the same thing.

In the opinion of the United States delegation, the right to work, in this Declaration, meant the right of the individual to benefit from conditions under which those who were able and willing to work would have the possibility of doing useful work, including independent work, as well as the right to full employment.

Summary of statement by Eleanor Roosevelt, quoted in Nehemiah Robinson, *The Universal Declaration of Human Rights* 135, note 2 (1958).

Early drafts of the Universal Declaration had used the following language in stating this goal: "The state has a duty to take such measures as may be within its power to ensure that all its citizens have an opportunity for useful work." *Id.* at 135. See also Helle Kanger, *Human Rights in the U.N. Declaration* 133-34 (1984).

155. See SECURING THE RIGHT TO EMPLOYMENT, *supra* note 13, at 106-10.

156. Albert Rees, *The Meaning and Measurement of Full Employment*, in NATIONAL BUREAU OF ECONOMIC RESEARCH, *THE MEASUREMENT AND BEHAVIOR OF UNEMPLOYMENT* 13-49 (1957).

157. *Id.* at 39-49.

158. *Id.* at 40.

older tradition in economic policy debates which posited that price stability should be the primary goal of macroeconomic policy.¹⁵⁹ This point of view featured prominently in conservative criticism of the New Deal throughout the 1930s, as well as in conservative opposition to full employment legislation at the end of World War II.¹⁶⁰ The suggestion that full employment should be defined in a manner consistent with the maintenance of price stability was nothing more than a restatement of this position, since there is no guarantee that the level of unemployment thus defined will correspond to the level required to achieve full employment in the original sense of the term. As Rees notes, "The question naturally arises whether such definitions are definitions of full employment in anything more than a purely formal sense; that is, do they imply reasonably low levels of unemployment?"¹⁶¹

Sensitivity to this fact has caused economists to use terms other than "full employment" to describe the level of unemployment required to maintain price stability. The alternatives include terms such as the "non-accelerating inflation rate of unemployment" (NAIRU)¹⁶² and the "natural rate of unemployment."¹⁶³ Still, the use of the term "full employment" for this purpose is not uncommon,¹⁶⁴ a fact that undoubtedly has caused confusion in the public's understanding of what economists believe to be the state of the labor market when they express concern about the unemployment rate falling too far.¹⁶⁵ It is to avoid such confusion that I have elected to define and use the term full employment as it was defined and used in the 1940s.

An empirical relationship between rising rates of inflation and

159. Irving Fisher was the most influential advocate of this position prior to the Great Depression. See STEIN, *supra* note 36, at 142.

160. See THEODORE ROSENOF, DOGMA, DEPRESSION, AND THE NEW DEAL: THE DEBATE OF POLITICAL LEADERS OVER ECONOMIC RECOVERY 35-39 (1975); STEIN, *supra* note 36, at 200-01; BAILEY, *supra* note 46, at 131.

161. Rees, *supra* note 156, at 40.

162. The term was first used by James Tobin in a 1980 review of economic stabilization policy in the 1970s. See Richard Layard, *Non-Accelerating-Inflation Rate of Unemployment*, in 3 THE NEW PALGRAVE DICTIONARY OF MONEY AND FINANCE 39-40 (Peter Newman et al. eds., 1992).

163. The term was coined by Milton Friedman in his 1967 Presidential Address to the American Economics Association. See M. Hashem Pesaran, *Natural Rate Hypothesis*, in 3 THE NEW PALGRAVE DICTIONARY OF MONEY AND FINANCE, *supra* note 162, at 7-9.

164. See, e.g., G.D.N. Worswick, *Full Employment*, in 2 THE NEW PALGRAVE DICTIONARY OF MONEY AND FINANCE, *supra* note 162, at 200-03.

165. For example, in a widely-reported speech following the 1994 Congressional elections, Alice Rivlin—a past president of the American Economics Association then serving as President Clinton's Budget Director—criticized tax cut proposals in the Republican's "Contract with America," by arguing that they would lead to larger budget deficits and that it was a bad time for such an economic stimulus because "we're at full employment now or close to it." The unemployment rate at the time was 5.6%. Quoted in Robert Pear, *Clinton Aide Criticizes G.O.P. Plans for Tax Cuts*, N.Y. TIMES, Nov. 16, 1994, at A16.

declining rates of unemployment has been widely noted by economists since the 1950s. The relationship is expressed in the so-called Phillips curve which posits the existence of an inverse relationship between the unemployment rate and the rate of wage or price inflation. (See Figure 5). Empirical data tend to confirm that such an inverse relationship exists, but the terms of the tradeoff are unstable over time. It is widely accepted, for example, that the Phillips curve shifted outward during the 1970s, so that given rates of inflation were associated with higher rates of unemployment than in the 1950s and 60s.¹⁶⁶ Given this trend, it was common for economists in the 1980s to argue that the NAIRU had increased to the six-percent range or even higher.¹⁶⁷

What explains this apparent linkage between unemployment and price stability? More importantly for our inquiry, when the rate of inflation begins to rise following a decline in the unemployment rate, does it mean that full employment has been achieved?

The simple explanation for the relationship between unemployment and price stability is that when unemployment falls below a certain level, there is a tendency for wage rates to rise, and since wages constitute the largest single component of production costs for the economy as a whole, the result is rising prices.¹⁶⁸ The key question, therefore, is why falling unemployment can cause wages to rise and whether that tendency, when it manifests itself, is indicative of the economy having reached full employment.

For a market economy to achieve full employment without inflation, production would have to be expandable to the full employment level without unit costs of production rising. Rising unit costs of production can be caused by an increase in the price or a reduction in average levels of efficiency of any factor of production.¹⁶⁹ If the economy's existing capital stock is being utilized at levels below its optimally efficient design capacity, then output can be expanded without increasing unit capital costs. If, on the other hand, the economy's capital stock already is operating at its optimally efficient design capacity, any further increase in output will result in reduced efficiency in the short run (until the capital stock can be expanded or its less efficient components replaced). During this period, the price of available capital goods of given quality will tend to rise, and less efficient capital goods will be brought "on line." The result will be an

166. See MARSHALL & BRIGGS, *supra* note 85, at 104-08.

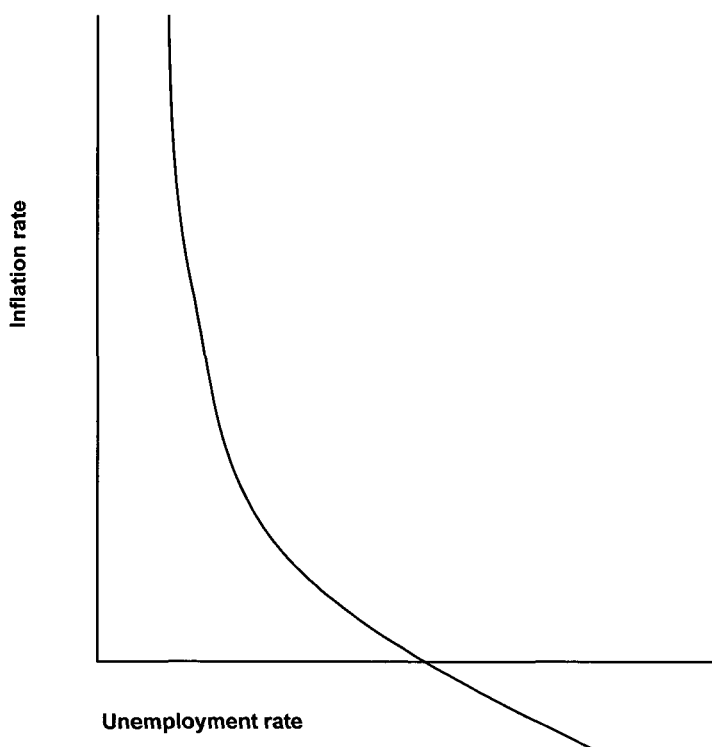
167. See, e.g., STAFF OF JOINT ECONOMIC COMMITTEE, 97TH CONG., THE "NATURAL" RATE OF UNEMPLOYMENT 16 (Comm. Print 1982) (prepared by Lowell E. Gallaway and Richard K. Vedder.)

168. See MARSHALL & BRIGGS, *supra* note 85, at 105 n.51.

169. If the price of a factor of production remains unchanged, but its average efficiency diminishes, then the price of the factor measured in terms of its productivity will have increased. Stated differently, the price of a unit of the factor of given quality will have increased.

increase in unit costs of production, and average prices for final goods and services will tend to go up with their costs of production. The rate of inflation will go up whether or not wages are rising.

Figure 5: The Phillips Curve



Source: Ray Marshall & Vernon M. Briggs, Jr., *LABOR ECONOMICS: THEORY, INSTITUTIONS, AND PUBLIC POLICY* 106 (1989).

A similar analysis can be applied to labor. When additional quantities of labor are required to expand production in response to an increase in aggregate demand, can the required supplies of labor be obtained without increasing wages and/or engaging less efficient labor? As unemployment rates fall in response to rising aggregate demand, employers might bid up wages in an effort to attract the quality of labor they are accustomed to hiring, or they might have to hire less qualified workers at the old rates, accepting a decline in productivity. This would tend to drive unit labor

costs and prices up. At the same time, institutional factors such as trade union strength and societal perceptions of fairness might limit or enhance this market effect—rendering the terms of the tradeoff between unemployment and inflation unstable over time. There would be no reason to assume that full employment had been achieved or was being approached simply because a decline in unemployment rates was accompanied by wage-induced inflation.

Rising wage levels also might affect the level of aggregate demand in complex ways. Profit margins could be squeezed, causing rates of investment to decline. Alternatively, rising wages might cause consumption expenditures to increase, giving a boost to aggregate demand. Rising inflation could cause nominal interest rates to increase with consequent adjustments in asset values and possibly in expectations concerning future interest rates and price levels. The psychological impact of these adjustments could be substantial, with uncertain behavioral consequences for various categories of consumers and investors.

Most important of all, the nation's monetary authorities may react to rising wages by driving up real interest rates in an effort to slow the rate of economic growth (thereby dampening inflationary tendencies at the cost of higher unemployment). Since this last policy response is likely to dominate other effects that rising wages might have on the level of aggregate demand, it is almost a foregone conclusion that unemployment rates in the United States will not be permitted to fall to the full employment level. Indeed, it is fair to say that the current policy of the Federal Reserve Board is to prevent the economy from reaching full employment, because of fears that genuine full employment would be inflationary.

For all of these reasons, inflationary tendencies associated with low rates of unemployment pose a major threat to the achievement of full employment. No serious strategy for combating joblessness can ignore this problem. At the same time, the fact that this problem exists provides no valid grounds for denying that there may be too few jobs to provide employment for everyone who is seeking work, even though declining unemployment rates may be threatening to trigger increased inflation. Economists who use the term “full employment” to describe the point at which inflationary tendencies emerge in the economy, without regard to whether jobs are available at that point for everyone who is seeking work, run the risk of confusing the public (and possibly themselves) about the actual state of labor market conditions in such circumstances.¹⁷⁰ The level of unemployment necessary to insure that there are as many jobs as there

170. As explained earlier in this article, whether there is a job shortage in the economy depends upon whether the aggregate number of job vacancies is greater or less than the aggregate number of unemployed persons in the economy (with appropriate adjustments for phenomena such as involuntary part-time employment and “discouragement”). See *supra* note 87.

are job seekers in the economy may be significantly lower than the level of unemployment normally needed to keep inflation in check. Thus, while advocates of the job-shortage strategy may be right in attributing joblessness to an aggregate shortage of jobs in the economy, they face major problems in devising policies that will lower aggregate unemployment rates at the top of the business cycle without causing unacceptable levels of inflation.

D. Perceptions of Job Availability and Job Turnover Rates

If a large and persistent job shortage exists in the United States, what accounts for popular perceptions that jobs are plentiful?¹⁷¹ The fallacy of composition may provide part of the answer. Because people who seek work with determination and flexibility almost always find jobs, it may be assumed that if everyone sought work with the same determination and flexibility, that everyone would achieve the same success. Similarly, because people with more education and/or better skills suffer less unemployment than others, it may be assumed that everyone would experience less unemployment if they acquired more education and/or increased their level of skill. But will they?

If the number of people that employers are willing to hire remains unchanged, the fact that either job seekers in general or some subset of job seekers have increased the intensity of their job search activities would have no effect on the overall unemployment rate.¹⁷² It might result in changes in who was employed and who was not, but to the extent unemployment rates are determined by the availability of jobs, suggestions that the experience of successful job seekers could be extended to all job seekers constitutes a classic example of the fallacy of composition.

It can be argued, however, that if job seekers demonstrated a greater commitment to finding jobs and performing them adequately, employers would increase their hiring.¹⁷³ This argument can be understood in two ways. In one form, it merely repeats the claim that the demand for labor will increase if job seekers lower their wage demands.¹⁷⁴ In its second form,

171. For a summary of arguments supporting the claim that jobs are plentiful, see MEAD, *supra* note 17, at 85-109.

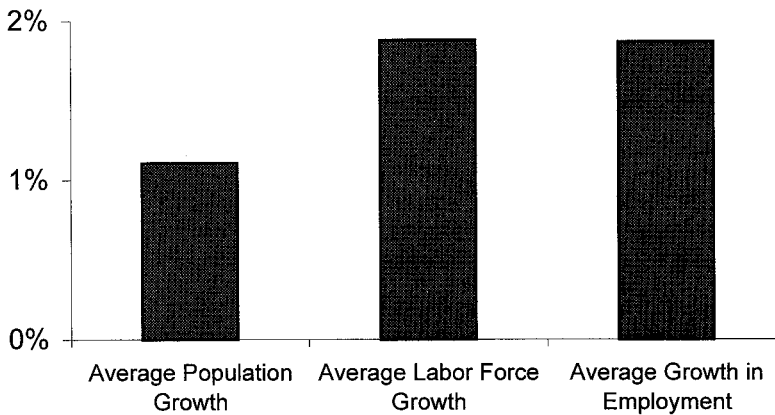
172. It is possible that frictional unemployment rates might decrease with increased job search activity, but this is not certain to occur. Unless employers feel constrained in making hiring decisions by a lack of qualified applicants, increasing job search activity is unlikely to reduce frictional unemployment rates. It might even increase frictional unemployment if increased job application rates cause employers to spend more time screening applicants in search of the best candidate.

173. See, e.g., MEAD, *supra* note 17, at 86-87.

174. Determined and flexible job seekers are more attractive to employers because they promise, explicitly or implicitly, to be more productive for the same price (or just as productive for a lower price) than other job seekers (and/or the employers' current employees). In other words, they are offering to sell a given quantity or quality of labor for a lower price. The problems with this claim are discussed in

this argument focuses on the macroeconomic effects of increased labor force participation. Employment does tend to grow with the size of the labor force. Figure 6 shows that job growth in the United States has exceeded population growth since 1960 by a wide margin but has closely followed the growth path of the labor force. As the baby boom generation entered the labor force, jobs were created to accommodate them. Says Law—the idea that supply creates its own demand—does seem to work in the labor market. The additional purchasing power created by the hiring of additional workers provides a market for the products they supply. If increased job search activity on the part of jobless individuals is viewed as the equivalent of an increase in their labor force participation, it can be argued that it should result in increased job formation and reduced unemployment.

Figure 6: Job, Population and Labor Force
Growth, 1960-1994



Source: HANDBOOK OF U.S. STATISTICS: EMPLOYMENT, EARNINGS, PRICES, PRODUCTIVITY, AND OTHER LABOR DATA 11 (Eve Jacobs ed. 1997); STATISTICAL ABSTRACT OF THE UNITED STATES 1995, 9 (115th ed. 1995).

The problem with this argument is that it still doesn't take into consideration the macroeconomic barriers to full employment discussed in Part III.C. of this article. The mechanisms underlying Say's Law do work, but rarely well enough to push the economy all the way to full employment. The fact that employment tends to expand in response to labor force growth doesn't mean the last three or five or ten percentage points of demand needed to provide work for all job seekers will be forthcoming. Says Law might more accurately be termed a ninety-five percent law in recognition of the fact that countervailing economic forces—including the intentional slowing of economic growth by monetary authorities seeking to restrain inflationary pressures—typically prevent the economy from achieving full employment, and even more typically prevent it from sustaining full employment if it ever is achieved.

There is one way, however, in which increased job search activity on the part of jobless individuals might push back the barriers to full employment. If job seekers reduced their wage demands and increased the intensity of their job search activities as unemployment rates fell, it would tend to counteract the tendency for falling unemployment rates to increase the bargaining power of labor. Consequently, unemployment rates could fall farther before employer-initiated wage increases started to drive prices up. Something like this effect might explain why inflationary pressures remained subdued in recent years as unemployment rates fell below the five- to six-percent range within which most economists believed the NAIRU fell. Concern about job security, fears of international competition, and two decades of wage stagnation accompanied by relatively high rates of unemployment may have caused American workers to lower their wage expectations, or at least their aggressiveness in seeking higher wages.

The same result would follow, of course, if additional capital were required to increase production at the peak of the business cycle, and owners of underutilized supplies of capital responded by lowering their demand price for its use. The question is whether it is reasonable to expect the owners of either capital or labor to respond to tightening factor markets in this fashion as a matter of course. Forgoing a bargaining advantage probably isn't something we should expect to happen spontaneously.

Incomes policies designed to contain inflationary pressures in periods of high aggregate demand are designed to achieve the same goal. By preventing economic actors from taking advantage of favorable market conditions to win factor price increases, the proponents of such policies hope that aggregate demand can be pushed closer to the full employment level without unleashing inflationary wage-price and/or profit-price

spirals.¹⁷⁵

Let us return now to the question posed at the beginning of this section of the article. If a large and persistent job shortage exists in the United States, what accounts for popular perceptions that jobs are plentiful? We have seen that the fallacy of composition provides part of the answer, but a better explanation may lie in what people mean when they say jobs are plentiful.

Consider, for example, the following game of musical chairs. There are one hundred players in the game but only ninety-six chairs. Each chair has an "owner" who is not one of the one hundred players. When the game begins, ninety-five of the players are sitting down, five are standing, and there is one vacant chair. When the music begins, the five standing players start dancing in an effort to get the "owner" of the empty chair to let them sit down. In the "fast" version of the game, the dancing lasts for one minute before a winner is declared (by the "owner" of the vacant chair) and permitted to sit down. In the "slow" version of the game, the dancing lasts for three minutes before a winner is declared and permitted to sit down. In both the "fast" and "slow" version of the game, a new round begins as soon as the old one is completed, with one of the ninety-six seated players randomly selected to lose her or his seat and join the dancers. Games last thirty minutes, and at the end of the game everyone who is sitting down is declared a winner.

In both versions of the game there are always five players dancing for the opportunity to sit down in one vacant chair. In other words, the "unseatedness rate" is five percent and the "seat vacancy" rate is slightly over one percent ($1/96$). But are vacant chairs equally plentiful in both versions of the game? In the "fast" game, a total of thirty-four competitors would compete for thirty available chairs over the course of the game, so that eighty-eight percent of those forced to dance would get a seat. In the "slow" game, a total of fourteen competitors would compete for ten available chairs over the same period of time, so only seventy-one percent of those forced to dance would get a seat. Still, even those odds look a lot better than the twenty percent chance (one in five) that participants in each round have of winning a chair.

The competition for jobs in a market economy is much more complicated than a game of musical chairs. But, as in the game described above, an individual's chance of winning a place (being hired) depends not only on how many jobs are vacant at any point in time compared to the number of persons competing to be hired, but also on how rapidly jobs "turn over." One measure of job turnover is the "gross hiring rate," which can be defined as the ratio of new hires to total employment for a particular

175. See WEIR, *supra* note 16, at 144-53.

period of time such as a month or a year.¹⁷⁶

Like job vacancy data, gross hiring data is not regularly collected and reported in the United States. Net changes in employment are reported from month to month, but that doesn't tell us how many persons were hired. A net addition to employment of two occupied jobs could mean that two people were hired while no one's employment was terminated, or it could mean that 102 people were hired, counterbalanced by one hundred voluntary or involuntary terminations.

Available data touching on this issue suggest that gross hiring rates are very high in the United States. In one recent survey of both public and private sector employers in four major metropolitan areas, the average vacancy rate was found to be 2.7 percent, while the gross hiring rate was 25.7 percent a year.¹⁷⁷ This means an employer with one hundred employees would, on average, have had fewer than three vacancies to fill at any point in time during the year, but would have hired about twenty-six people over the course of the year. Employment did not grow by the latter amount; the "net hiring rate" for the sample (the net increase in total employment from one year to the next) was only 1.3%.¹⁷⁸ In other words, the bulk of the hiring reported in this study resulted from labor turnover—employers hiring new workers to fill existing jobs that became vacant due to voluntary or involuntary terminations—rather than from the creation of new jobs. Quit rates (voluntary terminations) in the sample averaged 14.3% per year and discharge rates (involuntary terminations) averaged 6.8% per year.¹⁷⁹ In other words, about 21% of all existing jobs became vacant as a result of persons quitting or being fired during the twelve-month period preceding the survey.¹⁸⁰ Filling these vacated jobs would have accounted for about 82% of all hiring that occurred during the year, with the creation of new jobs (not including recalls from layoff) accounting for the balance.

The high rates of labor turnover found in this study are consistent with the findings of other studies.¹⁸¹ Although the number of job vacancies employers seek to fill at any point in time is relatively small, the number of

176. See HOLZER, *supra* note 103, at 25-26.

177. *Id.*, at 143, tbl. B.3.

178. See *id.* Employers reported much higher net hiring rates (eight percent) than were implied by their hiring and termination data. See *id.*, at 28.

179. See *id.*

180. These figures did not include layoffs (involuntary terminations resulting from the elimination of a job). See *id.* at 25-26.

181. See STEVEN J. DAVIS ET AL., *JOB CREATION AND DESTRUCTION* 34 (1996) (noting other studies which place the percentage of new job incumbents at 28.2 % in 1978 and extrapolating from this and other data that between one-third and one-half of total worker reallocation is typically attributable to job reallocation); & Patricia Anderson & Bruce Meyer, *The Extent and Consequences of Job Turnovers*, BROOKINGS PAPERS ON ECON. ACTIVITY—MICROECONOMICS 177-248 (1994) (reviewing literature on the extent of job turnovers in the U.S. and reporting job turnover data derived from Unemployment Insurance files of eight states).

vacancies they fill over a period of time is quite large. A steady stream of job openings appear in the labor market, and they are filled just as steadily. The limited available data suggest that most of these openings occur because existing jobs are vacated (voluntarily or involuntarily), rather than as a result of new job creation. Still, job creation generates a much larger number of vacancies than overall rates of employment growth suggest. The implied annual job creation rate in the study described above was 4.6 percent of total employment (the gross hiring rate of 25.7% minus the sum of the quit and discharge rates—14.3% and 6.8% respectively), even though the net increase in employment totaled only 1.3% on an annualized basis.¹⁸²

Job creation can be a substantial source of job opportunities even when it is accompanied by equally substantial job destruction. A recent study found that between 1973 and 1988, an average of 9.1% of all manufacturing jobs had been newly created within the past year, while an average of 10.3% of all jobs in the sector were eliminated each year.¹⁸³ Thus, despite the fact that manufacturing employment shrank an average of 1.1% a year over the fifteen-year period studied, annual job creation rates averaged close to 10%. If you add vacated jobs to these newly created ones, it is apparent that even in a sector where employment is shrinking, a large number of jobs are becoming available on a continuous basis.¹⁸⁴

The national labor market picture that emerges from these data is one of continuous and substantial job creation, reallocation, and destruction. Large numbers of new jobs continually appear to replace a similarly large number of jobs that regularly disappear, while an even larger number of existing jobs regularly become vacant. On the supply side of the market, a significant portion of the nation's labor force seeks and finds work each year. Some become job seekers involuntarily, forced into unemployment by layoffs or discharges; others leave jobs voluntarily to seek other employment; and some seek new jobs before giving up their old ones. The breadth, frequency, and success of this job search activity may explain perceptions that jobs are plentiful. The number of available jobs may not be sufficient to provide work for everyone who is seeking work at any moment in time, but a continuous stream of job vacancies appear in the market, providing job seekers with multiple opportunities to compete for

182. The implied job destruction rate cannot be calculated from the reported data because recall and layoff data was not reported for the sample. We only know that recalls exceeded layoffs by 3.3 percentage points during the year preceding the survey (which was conducted at different times in the four survey cities between the spring of 1992 and the spring of 1994, a period of recovery from the recession of 1990-91). See *WHAT EMPLOYERS WANT*, *supra* note 103, at 6-7, 28 n.19.

183. See *DAVIS ET AL.*, *supra* note 181, at 19 tbl. 2.1, 3.3(e).

184. This study found that most of the job creation occurred at a relatively small number of rapidly growing plants, and most of the job destruction occurred at a relatively small number of rapidly shrinking plants. See *id.* at 21-31. The study also provides data that cast doubt on the widely accepted view that small business account for a disproportionately large share of all job creation. See *id.* at 57-75.

available jobs over time. With so many individuals succeeding in finding work over time, it is easy to conclude that jobs are plentiful.

In considering job availability over time, however, it also should be remembered that the total number of job seekers competing for available jobs over a period of time is greater than the number of unemployed job seekers at any moment in time. Over the past two decades, for example, about 3.6 times as many people became unemployed during a typical year than were unemployed at any one point during the year. In 1996, when the unemployment rate averaged 5.4%, about 16.7% of the labor force became unemployed at some point during the year.¹⁸⁵

Also, job seekers do not consist of only the unemployed. Currently employed individuals also compete for available jobs. A recent study found that during a three-month period in the winter of 1994-95, a total of 5.6% of all wage and salary workers actively looked for a new job while still employed.¹⁸⁶ During the same period the national unemployment rate averaged about 5.5% with a mean duration of unemployment of about seventeen weeks.¹⁸⁷ Because of turnover within the population of unemployed persons, the total number of persons who were unemployed at some point in the three-month period would have exceeded the total number of persons who sought work while still employed. Nevertheless, literally millions of currently employed job seekers competed with unemployed job seekers for vacant jobs during the period.

In theory, at least, it is possible for an economy to have both a high job vacancy rate and a high job turnover rate without any unemployed job seeker every finding work. All that is required is a high rate of job search activity among currently employed workers and a hiring preference on the part of employers for employed job applicants over unemployed job applicants. Consider, for example, how outcomes in the game of musical chairs described above would likely be affected if the rules were changed to permit seated players to join the competition for vacant chairs without giving up their right to retain their own chairs if they lost the competition. If one of the ninety-five seated players in the game elected to compete for each vacant seat, the number of players competing for the thirty available chairs during the course of the "fast" game would increase from thirty-four to sixty-four, and only 47% of those who competed for vacant chairs would win them, instead of the 88% success rate under the original rules described above. If currently seated players had an advantage over unseated players

185. Author's calculation based on the simplifying assumption that both unemployment and the average duration of unemployment remained constant during each year. See SAPSFORD & TZANNATOS, *supra* note 137, at 388-90.

186. U.S. BUREAU OF LABOR STATISTICS, *Issues in Labor Statistics: Looking for a Job While Employed*, BLS Summary 97-14 (1997).

187. See 42 EMPLOYMENT & EARNINGS, March 1995, tbls. A-1 & A-12.

in the competition for vacant chairs, the success rate of chairless players would be further reduced.

Perceptions of job availability are also strongly influenced by recessions and depressions, a fact consistently evidenced by changes in public policy responses to jobless individuals during such periods since the late nineteenth century.¹⁸⁸ If perceptions of job availability are based more on gross hiring rates over time rather than the relationship between vacancy rates and unemployment rates at a moment in time, why is it so widely assumed that a shortage of jobs exists during recessions? The rate at which job openings appear in the economy does decline during recessions. This is attributable both to declining quit rates¹⁸⁹ and a declining rate of new job creation.¹⁹⁰ At the same time, layoff rates increase,¹⁹¹ so a growing number of job losers compete during a recession for a shrunken number of job openings—not only at a point in time but also over time.

Whether this fact wholly accounts for changing perceptions of job availability during recessions is hard to say. Job opportunities are less plentiful during recessions than during periods of economic growth, and competition for them is more intense; but it still is true that a continuous stream of job vacancies present themselves over time. The average “waiting time” for a job may increase, but this change is a matter of degree rather than a movement from full employment to less than full employment in labor markets. It is not clear why this change should cause people to conclude that a shortage of jobs exists during recessions while the number of jobs available at other times is presumed adequate. Even in a recession or a depression, job seekers who exhibit exceptional determination and flexibility in seeking work are more likely to find it than are other job seekers. Witnessing their success, people *could* believe that if all job seekers showed equal determination and flexibility, they would all achieve equal success.

Perhaps people are especially sensitive to changes in the average length of time that job seekers must search for new jobs, but the composition of the unemployed population probably influences popular perceptions of job availability more than the length of average unemployment spells. Compared to periods of expansion, the ranks of job seekers during recessions include a much larger number of normally

188. See Harvey, *supra* note 1, at 22-40.

189. See EHRENBERG & SMITH, *supra* note 85, at 367 fig. 10.4.

190. In the manufacturing sector, at least, changes in the rate of job creation vary less across the business cycle than changes in the rate of job destruction. In other words, increasing unemployment rates during recessions are attributable more to increasing rates of job loss than to declining rates of job formation. See DAVIS ET AL., *supra* note 181, at 31-34 (noting that annual job destruction rates vary approximately 50% more than annual job creation rates across the business cycle).

191. See *id.* See also EHRENBERG & SMITH, *supra* note 85, at 367 fig. 10.4.

employed individuals who have been laid off from jobs they obviously wanted to keep. Going back to the nineteenth century, it was the appearance of this population of job seekers among the unemployed that challenged conventional assumptions about the ready availability of work during recessions.¹⁹² The same may be true today, with perceptions of job availability changing over the course of the business cycle based mainly on changes in the composition of the unemployed population (and the implicit testimonial effect of their experience) rather than on changes in the average duration of unemployment.

E. What the Structuralist and Behavioralist Explanations of Joblessness Explain

In the game of musical chairs described above, the “unseatedness rate” of five percent reflected both the fact that there were too few chairs to permit everyone to sit down and the fact that, according to the rules of the game, unseated players had to dance for the opportunity to claim any vacant chair, and it took a certain amount of time to complete these dance competitions. The “Unseatedness” rate in the game could be described as consisting of one percent “frictional unseatedness” (reflecting the time it took to determine who would get to sit down in vacant chairs) and four percent “chair shortage unseatedness” (reflecting the fact that there were four percent fewer chairs than players in the game).

If the “owners” of the chairs imposed limits on the categories of players who could sit in certain chairs, another source of “unseatedness” could arise. If, for example, a particular “owner” announced that only dancers who could do the tango would be considered, and none of the standing players could tango, the chair would remain vacant until a player who could dance to the “owner’s” satisfaction stood up. Until then, the game would proceed with two vacant seats and six standing players. The “seat vacancy” rate would increase to two percent, and the “unseatedness” rate would increase by one percentage point. This additional percentage point of unseatedness could be termed “structural unseatedness” (attributable to a mismatch between available seats and the qualifications of standing players). For structural factors to cause an increase in the “unseatedness rate,” the “seat vacancy” rate must increase by an approximately equal amount.¹⁹³

Now suppose the “owner” of the vacant chair limited the competition to players who could dance the tango, but at least one player who was standing knew the dance and could perform it satisfactorily (from the chair owner’s perspective). The “structural” barrier to finding a seat would then

192. See Harvey, *supra* note 1, at 22-40.

193. See *supra* note 92.

have no effect on either the “seat vacancy” rate or the overall “unseatedness” rate, but it would affect the composition of the group of four players left standing at the end of the game. Players who could not dance the tango would be more likely to be left standing. Would it be correct to say under these circumstances that the tango requirement caused any “unseatedness”? That depends on whether we have in mind the overall level of “unseatedness” (which would *not* be affected) or the distribution of “unseatedness” among particular subgroups within the overall population of players (which *would* be affected).

The same analysis would apply if other structural factors—for example, racial discrimination against non-white players or geographic limitations on which players could compete for vacant seats—interfered with the ability of some players to compete for vacant seats. Behavioral tendencies affecting the level of effort exhibited by certain players in competing for vacant chairs would have a similar effect. If none of the standing players chose to compete for a vacant chair—because they didn’t like that particular chair, because they mistakenly thought the “owner” of the chair wouldn’t consider them, or because they simply didn’t feel like dancing—then the chair would remain vacant until a player stood up who was willing to dance for it. This would increase both the “unseatedness” rate and the “seat vacancy” rate by one percentage point, the same as if a “tango dancers only” requirement were attached to a vacant chair that none of the standing players could satisfy. This increase in unseatedness would not occur, however, as long as at least one player was willing to dance. In that case, the identity of the players left standing at the end of the game would depend on the adequacy of their “chair-search” effort, but neither the “unseatedness” rate nor the “seat vacancy” rate would be affected.

The same distinction needs to be recognized in deciding whether structural barriers to equal employment opportunity and/or non-optimal job-search behavior on the part of job seekers cause joblessness. To the extent that structural and/or behavioral problems exist, they are almost certain to affect the distribution of joblessness, as long as structural and/or behavioral problems influence the relative success of different individuals or groups in finding work. On the other hand, structural and/or behavioral problems will affect the overall level of joblessness only if those problems result in jobs going unfilled. The latter result appears much less likely to occur. It is easy to imagine hiring decisions being influenced by structural and/or behavioral factors. It is much harder to imagine hiring decisions being so constrained by structural and/or behavioral factors that vacant jobs go unfilled.

Despite repeated claims during the past several decades that structural

change in the U.S. economy has caused unemployment rates to rise,¹⁹⁴ the empirical evidence linking rising unemployment to structural problems is thin.¹⁹⁵ One of the stronger arguments in favor of these claims is a demographic one. Younger workers and non-white workers both experience significantly higher rates of unemployment than other workers. Until the early 1980s, female workers also experienced significantly higher rates of unemployment than male workers.¹⁹⁶ Over time, and especially during the period when the baby-boom generation was entering the labor force, members of these population groups came to constitute a growing proportion of the labor force. It has been argued that this pushed overall unemployment rates up by at least one percentage point by the late 1970s compared to the 1960s.¹⁹⁷ Claims that behavioral problems have caused unemployment rates to rise also have been made with a fair degree of regularity, with the strongest support for these claims coming from studies showing that receipt of government transfer benefits increases the duration of unemployment spells by increasing the reservation wage of recipients and reducing their job-search activity.¹⁹⁸

If factors such as these have caused unemployment rates to rise, however, the increase should have been accompanied by an increase in job vacancy rates.¹⁹⁹ Because job vacancy data has not been collected with any regularity in the United States, it cannot be determined with certainty whether or not this happened, but the generally low job vacancy rates found in surveys suggest that if structural and/or behavioral factors have elevated aggregate unemployment rates, it hasn't been by very much.

The evidence that structural and/or behavioral problems have affected the *distribution* of unemployment is much stronger. Before considering this evidence, however, it will be useful to ask why the possible existence of such problems has caused concern. Why does it matter whether structural or behavioral problems exist that prevent certain groups of people from competing on equal terms with other groups of people in finding jobs? One possible reason is that structural and behavioral barriers to the reallocation

194. See MARSHALL & BRIGGS, *supra* note 85, at 590-93.

195. See *id.* at 117-21.

196. See HANDBOOK OF U.S. LABOR STATISTICS, *supra* note 3, at 70. It should be noted that it is possible to attribute this disparity in unemployment rates either to structural factors (e.g., training deficits and employment discrimination) or to behavioral factors (e.g., relative deficits in the seriousness of job-search activity).

197. See EHRENBERG & SMITH, *supra* note 85, at 594.

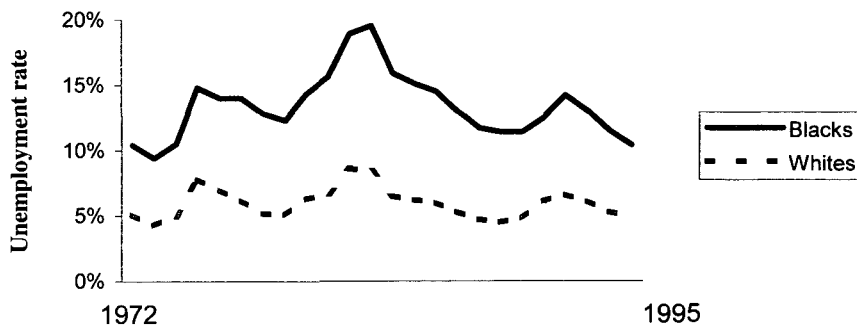
198. See, e.g., DANIEL S. HAMERMESH, *JOBLESS PAY AND THE ECONOMY* (1977) (unemployment insurance); Robert Moffitt, *Incentive Effects of the U.S. Welfare System: A Review*, 30 J. ECON. LITERATURE 1 (1992) (public assistance); and Bruce D. Meyer, et al., *Workers' Compensation and Injury Duration: Evidence from a Natural Experiment*, 85 AM. ECON. REV. 322 (1995) (workers' compensation).

199. See *supra*, note 92. For a further discussion of this point, see LLOYD G. REYNOLDS, *LABOR ECONOMICS* 193-94 (8th ed. 1982). Cf. MARSHALL & BRIGGS, *supra* note 85, at 118.

of labor among jobs tend to reduce allocative efficiency. A more pressing concern in public debates, however, is the question of whether the differing labor market experience of various population groups contradicts the equal opportunity principle that undergirds contemporary conceptions of fairness and justice.

We live in a society in which both wealth and power are unequally distributed. The legitimacy of that arrangement in the eyes of many people depends on the degree to which opportunities to obtain wealth and power are perceived to be fairly distributed. The achievement and maintenance of equal employment opportunity is therefore a key policy goal in American public policy debates, and the existence of structural barriers preventing certain individuals from enjoying the same employment opportunities as others is likely to be perceived as deeply offensive. On the other hand, if differences in labor-market outcomes are attributable to behavioral problems on the part of seemingly disadvantaged populations, the fairness of existing economic institutions is called into question only to the degree that they foster the behavioral problems at issue.

Figure 7: Unemployment Rate by Race, 1972-1995



Source:

HANDBOOK OF U.S. STATISTICS: EMPLOYMENT, EARNINGS, PRICES, PRODUCTIVITY, AND OTHER LABOR DATA 81, 83 (Eve Jacobs ed. 1997).

It is the relative economic position of African Americans and white Americans that has caused the greatest concern in this regard. Unemployment rates are consistently higher for African Americans and Hispanics than for whites. As Figure 7 illustrates, African Americans have consistently experienced about twice the level of unemployment as whites. Since these ratios tend to be maintained across the business cycle, it means that proportionately twice as many African Americans gain employment during periods of rapid economic expansion, and twice as many become unemployed during recessions.²⁰⁰

Structural explanations of this disparity focus on three types of barriers to equal employment opportunity—barriers related to educational level and training, barriers related to the geographic distribution of employment opportunities, and barriers related to employment discrimination.

Education and Training: It is clear that changes in the supply of and demand for workers with particular educational and skill credentials will affect the relative likelihood that individuals possessing those credentials will find and keep employment. Auto mechanics may enjoy more security of employment during one period of time and dental technicians during another. The structural barriers that prevent auto mechanics and dental technicians from obtaining employment in the other's occupation (in response to shifts in supply and/or demand for their respective skills) are unlikely to elicit public concern unless the changes in market conditions are very dramatic and the number of people affected by them are very large or geographically concentrated.

Perhaps the best example of changes of this sort leading to calls for a public policy response are plant closures where the specific skills of the laid-off workers are obviously not in local demand. No one doubts that structural barriers contribute to the heightened unemployment rates suffered by laid-off workers in such circumstances, and educational and training initiatives may be proposed to overcome those barriers.

Analogous structural barriers may also affect the labor force participation of older workers. Unemployment rates for older workers are actually lower than for younger age cohorts,²⁰¹ but labor force participation rates also decline with age and may reflect disguised involuntary unemployment as well as genuinely voluntary retirement.²⁰² It is difficult to say how much of the reduced labor force participation of older workers is truly voluntary. Even the workers themselves may have difficulty sorting out the motives that lead them to retire, but one factor that may influence

200. See NATIONAL RESEARCH COUNCIL, A COMMON DESTINY: BLACKS AND AMERICAN SOCIETY 296 (Gerald David Jaynes & Robin M. Williams, Jr. eds., 1989).

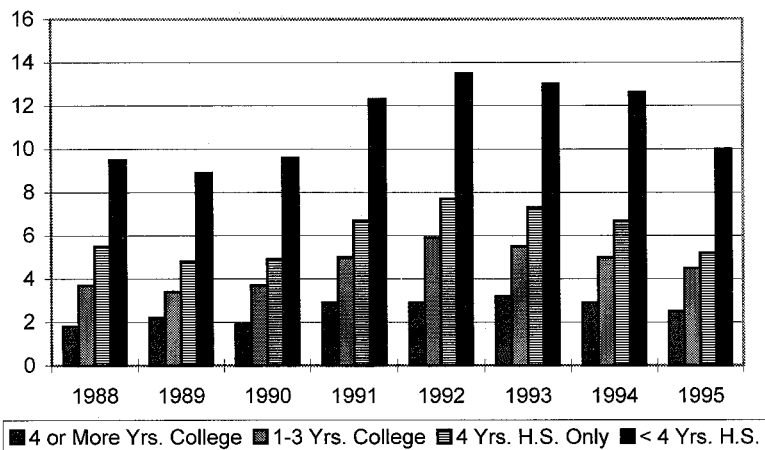
201. See HANDBOOK OF U.S. LABOR STATISTICS, *supra* note 3, at 78.

202. See *id.* at 24, 31.

these decisions is the relative non-transferability of specific skills obtained during many years of work with a single employer.

Reduced access to education and training opportunities (and/or the receipt of poorer quality education) probably also contributes to the heightened unemployment rates suffered by non-white workers and by the poor. As Figure 8 illustrates, average unemployment rates for persons with fewer than four years of high school are more than four times as high as corresponding rates for persons with four or more years of college. Even in periods of relative prosperity, low-wage workers experience levels of unemployment normally associated with recessions, while during recessions, their unemployment rises to depression levels.

**Figure 8: Unemployment Rates of Persons
25 to 64 Years of Age by
Educational Attainment**



Source: HANDBOOK OF U.S. LABOR STATISTICS 110 (Eva E. Jacobs, ed., 1997)

The relationship between levels of education and unemployment has a particularly deleterious effect on the African-American population in the United States. A significant gap still exists between the total number of years of schooling received, on average, by African Americans and whites in the United States, even though the gap has narrowed over time.²⁰³ African American males also receive significantly less post-school training compared to whites.²⁰⁴ The relative quality of the education received by African Americans and whites is harder to measure, but to the extent that

203. See NATIONAL RESEARCH COUNCIL, *supra* note 200, at 331-89.

204. See MARSHALL & BRIGGS, *supra* note 85, at 233.

educational quality is correlated with average levels of either family or community income, African Americans also suffer a significant quality gap.²⁰⁵ Since the chance that an individual will suffer unemployment decreases as the individual's education and skill level increases, it seems likely that barriers to equal educational opportunity do contribute to higher levels of unemployment suffered by African Americans, and the same conclusion also would apply to lower-income whites.

Geography: As with education and training, it is obvious that changes in the supply of and demand for workers varies across geographic areas and that this affects unemployment rates. The finer the regional breakdown, the greater the variation. In May 1999, seasonally adjusted regional unemployment rates in the United States ranged from a low of 3.3 percent in New England to a high of 4.7 percent in the "West South Central" region.²⁰⁶ At the state level, seasonally adjusted unemployment rates varied from a low of 2.5 percent in Minnesota, New Hampshire, and South Dakota, to a high of 6.6 percent in Alaska.²⁰⁷ Rates in metropolitan areas (not seasonally adjusted) ranged from a low of 1.1 percent in Joplin, Missouri to a high of 33.9 percent in Yuma, Arizona.²⁰⁸ If data were available for smaller areas, the differences presumably would be even more extreme.

Where you live appears to play a significant role in determining the likelihood that you will be unemployed. What makes this fact important in discussions of equal employment opportunity, however, is not the bare disparity in unemployment rates across geographic areas. It is the additional fact that where you live, especially within metropolitan areas, is strongly correlated with both income and ethnicity. Econometric analysis suggests that between thirty and fifty percent of the gap between the employment rates of white and African-American youths is accounted for by residence-based differences in access to jobs.²⁰⁹ Thus, barriers to geographic mobility may create substantial inequalities in employment opportunities based on income level and race.²¹⁰

If it is true that employment opportunities are more readily available to suburbanites than to otherwise similar inner-city residents—a hypothesis

205. This is the premise, of course, of litigation challenging state school-financing laws. For a recent restatement of this premise, see Timothy D. Lynch, *Education as A Fundamental Right: Challenging The Supreme Court's Jurisprudence*, 26 HOFSTRA L. REV. 953, 957 (1998).

206. 46 EMPLOYMENT AND EARNINGS, July 1999, at 125 tbl. C-1.

207. *Id.*, at 127-31, tbl. C-2.

208. *Id.*, at 132-37, tbl. C-3.

209. Keith R. Ihlanfeldt & David L. Sjoquist, *Job Accessibility and Racial Differences in Youth Employment Rates*, 80 AM. ECON. REV. 267, 272 (1990).

210. In the scholarly literature, this generally is termed the "spatial mismatch" hypothesis. See, e.g., WHAT EMPLOYERS WANT, *supra* note 103, at 73.

that experimental evidence confirms²¹¹—then African Americans and Hispanics both suffer a substantial labor market disadvantage. In 1980, only twenty-eight percent of the African-American population and thirty-two percent of the Hispanic population of twenty-nine metropolitan areas lived in the suburbs compared to fifty-eight percent of whites. In 1990, the comparable percentages were thirty-two percent for African Americans, thirty-four percent for Hispanics, and sixty percent for whites.²¹²

The reasons for the heavy concentration of minority populations in American central cities are varied, but persuasive research suggests that housing discrimination continues to be a contributing factor.²¹³ Whatever the sources of existing residential patterns may be, however, the concentration of non-white minorities in central-city neighborhoods almost surely causes them to experience more unemployment than other persons.

Employment Discrimination: The most obvious structural barrier to equal employment opportunity is employment discrimination based on personal characteristics that are not related to a person's job performance. Major portions of American employment law are dedicated to the elimination of such discrimination.²¹⁴ Most research on the labor-market effects of employment discrimination has relied on multivariate analyses that attempt to determine the effect of observable variables like education on labor market outcomes. Unexplained residuals in employment experience between groups or the observed influence of variables that may suggest discriminatory conduct (such as a tendency for firms with mostly white customers to hire fewer blacks) are then hypothesized as possibly evidencing employer discrimination.²¹⁵ This research supports the conclusion that discriminatory conduct by employers is still a significant

211. James E. Rosenbaum & Susan J. Popkin, *Employment and Earnings of Low-Income Blacks Who Move to Middle-Class Suburbs*, in *THE URBAN UNDERCLASS* 342 (Christopher Jencks & Paul E. Peterson eds., 1991).

212. Franklin J. James, *Minority Suburbanization in Denver*, in *RESIDENTIAL APARTHEID: THE AMERICAN LEGACY* 95, 99 tbl. 4.1 (Robert D. Bullard et al. eds., 1994). See also Nancy A. Denton, *Are African Americans Still Hypersegregated*, in *RESIDENTIAL APARTHEID: THE AMERICAN LEGACY* 49 (asserting that "African Americans are more highly segregated on more dimensions simultaneously than any other contemporary or historical group in American society").

213. Perhaps the clearest evidence that such discrimination exists is found in audit studies in which matched pairs of testers from different racial groups respond to the same housing advertisement. See Margery Austin Turner, *Limits on Neighborhood Choice: Evidence of Racial and Ethnic Steering in Urban Housing Markets*, in *CLEAR AND CONVINCING EVIDENCE: MEASUREMENT OF DISCRIMINATION IN AMERICA* 117, 152 (Michael Fix & Raymond J. Struyk, eds., 1992). For background on the attitudes of whites and non-whites concerning residential segregation, see NATIONAL RESEARCH COUNCIL, *supra* note 200, at 140-46.

214. See *supra* note 65.

215. For a particularly thorough example of this methodology, see HOLZER, *supra* note 103, at 98-104, 128. For brief descriptions of and citations to the scholarly literature on this issue, see *id.*, at 3 n.3; and *CLEAR AND CONVINCING EVIDENCE: MEASUREMENT OF DISCRIMINATION IN AMERICA*, *supra* note 213, at 7-9.

barrier to employment for certain groups of job seekers, particularly African-American males, but this conclusion is not uncontested.²¹⁶

More direct evidence of racial discrimination in hiring has been provided by a small number of audit studies using matched pairs of African-American and white or Hispanic and white testers to apply for entry-level jobs. The results of the studies have varied, but they generally have found a significant level of discriminatory conduct on the part of employers in hiring decisions.²¹⁷

Taken together, research on the effect of structural barriers to equal employment opportunity supports the view that such barriers do affect the distribution of joblessness in the United States. These factors appear to cause certain groups, particularly African Americans, to experience more joblessness than other groups. As explained above, however, this does not mean that structural factors play a significant role in elevating aggregate levels of unemployment in the United States. In other words, structural explanations of unemployment provide a good explanation of why unemployment rates are higher for some population groups than they are for others, but they aren't much help in explaining aggregate levels of unemployment. Using the game of musical chairs described above for purposes of illustration, structural factors help explain which players will be left standing at the end of a game, but they don't tell us how many players will be left standing.

Behavioral Factors: Behavioralist explanations of why some groups experience more joblessness than others focus on the relative effectiveness or ineffectiveness of job-search activities by members of the various groups.²¹⁸ Generally, these explanations are advanced in opposition to structuralist explanations. To understand the conflict between structuralist and behavioralist explanations, however, it is necessary to exercise some care in identifying points of contention. There is no disagreement, for example, concerning the importance of individual behavior in determining individual labor market outcomes. No one doubts that individuals who look harder for work and are more flexible in accepting available jobs are less likely to experience unemployment than less vigorous, more rigid job seekers. There also is broad agreement that jobless individuals, particularly those who live in neighborhoods of concentrated poverty, exhibit behavioral traits that make it more difficult for them to find and keep

216. For a discussion and critique of studies attributing the difference in the employment experience of African Americans and whites to cultural factors, see William Darity, Jr., *What's Left of the Economic Theory of Discrimination?*, in *THE QUESTION OF DISCRIMINATION: RACIAL INEQUALITY IN THE U.S. LABOR MARKET* 335-76 (Steven Shulman & William Darity, Jr. eds., 1989).

217. For descriptions and discussions of these studies, see *CLEAR AND CONVINCING EVIDENCE: MEASUREMENT OF DISCRIMINATION IN AMERICA*, *supra* note 213, at 16-25, 165-275.

218. See *supra* Part I.A.

employment, thereby causing them to experience more joblessness than otherwise similarly situated individuals.²¹⁹

Behavioral factors are acknowledged to be important, therefore, in explaining variations in the amount of joblessness experienced by similarly situated individuals. Environmental factors are also acknowledged as a possible cause of certain populations exhibiting common behavioral patterns that cause them to experience increased rates of joblessness. To that extent, virtually all analysts of joblessness are behavioralists, just as they all recognize the importance of job shortages in periods of recession and depression.

The conflict between behavioralist and structuralist explanations of the distribution of joblessness involves assessments of the importance of other possible causes of the behavioral patterns that increase the amount of joblessness suffered by certain population groups. A key issue in these debates has been whether transfer programs that provide income assistance to able-bodied adults (e.g., unemployment insurance or means-tested public assistance) foster attitudes of dependency on the part of the recipient population, causing reduced or non-serious labor force participation on their part, thereby increasing their rate of joblessness.

In discussions of this issue it generally is not disputed that the availability of gratuitous transfer benefits does result in diminished job search activity by the recipients of those benefits.²²⁰ The points in contention are (1) whether this effect is large enough to render the programs harmful to participants and (2) whether the appropriate policy response to the problem is (a) to make the benefits less attractive²²¹ or (b) to provide additional benefits designed to give participants more incentive to find work and better equip them to overcome the barriers to employment that stand in their way.²²²

219. Compare WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* 51-86 (1996); MEAD, *supra* note 17; and CORNEL WEST, *RACE MATTERS* 11-20 (1993).

220. See *supra* note 198.

221. Embracing the behavioralist view that jobless individuals should be held responsible for their own fate, conservatives tend to argue that transfer programs should offer minimal aid conditioned on the performance of work requirements and the satisfaction of other obligations tending to reduce the attractiveness of the aid package to recipients. The welfare reform measure enacted by Congress in 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, reflects the influence of this perspective by increasing work requirements for program participants and by establishing time limits for the receipt of benefits.

222. Embracing the structuralist view that societal constraints should be held responsible for the joblessness of public assistance recipients, liberals have argued that additional forms of assistance (especially job training) are needed to help transfer benefit recipients overcome barriers to their employment. The influence of this perspective has been reflected in various educational and work supporting measures included in existing and past public assistance law. See, e.g., Family Support Act of 1988, Pub. L. No. 100-485, §§ 201-04, 301-04, 102 Stat. 2343, 2356-93 (1988) (establishing "Job Opportunities and Basic Skills Training Program" and employment-related supportive services for enrollees in Aid for Families With Dependent Children program).

This pattern of debate—agreement that a problem exists accompanied by vigorous disagreement over the extent of the problem and over the appropriate public policy response to it—is also characteristic of discussions of structural barriers to equal employment opportunity. Behavioralists do not deny that such barriers exist. They dispute the height of the barriers and, even more, how public policy should respond to them.

Weighing the *relative* importance of the structural and behavioral factors that may affect the distribution of joblessness is beyond the practical capacity of social science. The behavior at issue is too complex, and reliable measures of the range of possibly relevant variables simply do not exist. Consider, for example, the problem of assessing the impact of changes in public assistance law designed to increase the job search activity of welfare recipients, a natural experiment that should tell us something about what causes high levels of joblessness in this population. Even before Congress's major restructuring of federal public assistance law in 1995, the Clinton administration had granted waivers to forty-three states permitting them to alter AFDC eligibility requirements under existing law. By 1996, approximately half of all states had been granted state-wide waivers permitting them to impose additional benefit reduction or denial sanctions on welfare recipients who failed to comply with the JOBS requirements of the Family Assistance Act of 1988.²²³

In a report issued in the spring of 1997, the President's Council of Economic Advisors (CEA) tried to assess the effect of these waivers on AFDC caseloads, which declined by twenty percent nationally between January 1993 and January 1997.²²⁴ The CEA analysis attempted to distinguish between the effect of waivers, declining aggregate unemployment rates, and other unidentified factors. The study concluded that approximately forty-four percent of the caseload reduction was attributable to declining unemployment; approximately twenty-two percent to the implementation of JOBS program sanctions; approximately nine percent to the "threat effect" of advance publicity that waivers of any type were being sought, and approximately twenty-five percent to other unidentified factors.²²⁵

An Urban Institute publication reviewing this study, however, has questioned the reliability of these conclusions.²²⁶ The authors of this review, Alberto Martini and Michael Wiseman, criticize the CEA study for misspecifying the effective date of the program changes permitted by

223. Council of Economic Advisors, Technical Report: Explaining the Decline in Welfare Receipt, 1993-1996 (May 9, 1997).

224. *Id.*

225. *Id.* at tbl. 3.

226. Alberto Martini & Michael Wiseman, *Explaining the Recent Decline in Welfare Caseloads: Is the Council of Economic Advisors Right?* (Urban Institute, July, 1997).

waivers,²²⁷ for including in their study only those waivers that were approved during the period that AFDC caseloads were falling,²²⁸ for failing to differentiate between the effect of JOBS program sanctions and other changes in the programs that states likely implemented in conjunction with the sanctions,²²⁹ for assuming that falling caseloads were an effect rather than a cause of state waiver applications,²³⁰ and for assuming that the tendency for caseloads to decline in states that received waivers *before* the waivers were approved was the result of a “threat effect” rather than some other cause.²³¹

This kind of debate is typical in the field. The CEA study did not even purport to measure the effect of waivers on the amount of joblessness experienced by welfare recipients—only their effect on AFDC caseloads. Nevertheless, even where a seemingly simple and straightforward causal relationship seems likely to exist (program requirements affecting program caseloads), the methodological problems associated with trying to measure such an effect are formidable. The CEA study may be right in its assessment of the effect of waivers on caseload levels, but it will take a lot more research before that point is clearly established. Even more research would be needed to find out what happened to those people who left welfare rolls because of JOBS program sanctions. Did they end up employed or still jobless? And what additional factors would have to be taken into consideration in deciding why they were either employed or still jobless? This kind of research is important and much can be learned from

227. The CEA assumed the changes became effective as of the date the waivers were approved, whereas actual implementation of the waivers was often substantially delayed.

228. AFDC caseloads rose dramatically during the recession of 1990-91. As both the CEA study and the Martini and Wiseman review of it note, the size of this increase has puzzled researchers. *See supra* note 226.

229. Martini and Wiseman suggest, for example, that states may have been more likely to obtain waivers permitting increased JOBS program sanctions if their programs were functioning well. If this was true, the putative effect of sanctions (a behavioralist initiative) may have been attributable to the better quality of JOBS programs (a structuralist initiative) in states that obtained waivers. *See id.*

230. Martini and Wiseman argue that states with falling caseloads may have had more resources available for experimentation, and that governors in state's with declining caseloads also may have been more likely to seek waivers, because the publicity associated with such requests calls attention to the declining caseloads (for which governors would want to take political credit). *See id.*

231. Martini and Wiseman point out, for example, that the pre-waiver decline in caseloads experienced by states that obtained waivers is consistent with their claim that waiver applications may have been an effect of declining caseloads rather than their cause. They point out, in this context, that the CEA attributed a “threat effect” to all waiver applications, not just requests for authority to increase JOBS sanctions, even though the latter type of program change was the only one for which statistically significant correlations were found with declining caseloads. They also criticize the CEA for measuring the putative threat effect of obtaining a waiver for an arbitrary 12-month period before the waiver was granted rather than from the time the waiver application was made and/or obtained significant publicity in the state. Finally, they criticize the CEA for not including in their study an analysis of the possible “threat effect” of the 1995 change in federal law which mandated the imposition in all states the same kind of sanctions that previous waivers had imposed. *See id.*

it, but it is not likely to tell us any time soon what the relative strength of structural and behavioral factors is in determining the distribution of joblessness among population groups.

Fortunately, for purposes of this article, it is not necessary to determine the relative merits of structuralist and behavioralist explanations of the distribution of joblessness. Debate on this point is intense in both academic and policy-making circles, and given the ideological content of the debate, it is unlikely to be settled any time soon. What matters here is that both structuralist and behavioralist explanations of unemployment address the same aspect of the problem. Neither explanation tells us very much about how the *level* of joblessness is determined in the economy. That level (i.e., the amount of joblessness endured by the nation's labor force in excess of unavoidable frictional unemployment) appears to be determined almost entirely by the size of the economy's job gap, as assumed by the job-shortage explanation of the problem. This does not mean, however, that the structuralist and behavioralist explanations of the problem are false, only that their influence is limited to another aspect of the problem—the *distribution* of joblessness among population groups. In other words, the structuralist and behavioralist explanations of joblessness tell us why some people suffer more joblessness than others, even if they don't help us very much in understanding why there is as much joblessness in the economy as there is.

IV.

POLICY IMPLICATIONS

We have seen that the job-shortage, structuralist, and behavioralist explanations of joblessness all tell us something about the origins of the problem, but only if we are careful to specify what we mean by the "problem." The aggregate level of joblessness—the total amount of joblessness suffered at any point in time—seems to be determined almost entirely by the level of aggregate demand relative to aggregate supply in the nation's labor markets. Both structural and behavioral factors could increase the aggregate level of joblessness, but they appear not to have much effect on it in practice. In other words, the reason there is as much joblessness as there is in the United States is because there aren't enough jobs to provide work for everyone who is seeking it, rather than because jobless individuals are failing to seek work with adequate determination, or because structural problems prevent willing workers from being hired to fill available jobs.

On the other hand, the level of aggregate demand does not determine how joblessness is distributed among individuals and population groups. Since the burdens of joblessness are not evenly shared, the "who" of the

nation's joblessness problem is an important question requiring explanation. It is in addressing this question that structural and behavioral explanations are important and compete with one another. Both structural and behavioral factors appear to matter in determining how the burdens of joblessness are distributed, but the relative strength of the two sets of factors and their mutual influence on one another presents a tangled knot of causation that social scientists are struggling to sort out.

In light of this conclusion—that joblessness is a dual problem involving both a dimensional and a distributional aspect—it is important that discussions of possible public policy responses to the problem be clear about the goals the policies are pursuing. What is it that these policies should strive to achieve? Should the goal be the reduction or elimination of joblessness, a redistribution of its burden, or the provision of compensation for its victims?

The goal of the job-shortage strategy for combating joblessness is clear. It is to reduce aggregate levels of joblessness by reducing the size of the economy's job gap, either by increasing the total number of available jobs or by decreasing the number of persons competing for those jobs. The goal of the structuralist and behavioralist strategies is less clear. The objective of these strategies could be to lower aggregate levels of joblessness, but this goal seems ill-conceived in light of the relatively slight role played by structuralist and behavioralist factors in elevating aggregate unemployment rates. Structuralist and behavioralist policies are better understood as aiming to equalize the burdens of joblessness among population groups.

This latter objective is not an unreasonable goal. If, for example, unemployment averaged five percent over the course of a year, an equal sharing of its burden would imply that each member of the labor force would be out of work just five percent of the time—approximately one day a month or two-and-a-half weeks per year. This could be viewed as equivalent to unpaid vacation time, in anticipation of which workers reasonably might be expected to take individual precautions. Alternatively, the policy goal might be to ensure that any individual who was experiencing financial or other difficulties as a result of involuntary unemployment could be assured of finding work quickly through diligent job search measures. In effect, this policy would move needy job seekers to the front of hiring queues, thereby forcing job seekers who can more easily bear the burdens of joblessness to endure more of it.

While these objectives constitute a reasonable response to the problem of joblessness, substantial barriers exist to their achievement. To either equalize the burdens of joblessness or move needy job seekers to the front of hiring queues would require some combination of the following: (1) the elimination of significant structural barriers to the hiring of less-advantaged

job seekers, (2) modifications in the way employers make hiring decisions, and/or (3) improvements in the intensity and quality of job-search activities by disadvantaged job seekers. Advocates of structuralist explanations of joblessness could be expected to argue that the first two changes are the key ones. Advocates of behavioralist explanations of joblessness could be expected to argue that the last change is the key one.

In either case, the nature of these changes makes them difficult to achieve. Efforts to reduce either structural or behavioral barriers to the employment of disadvantaged persons must overcome significant institutional and personal inertia. Aggregate unemployment rates can go up and down with dizzying speed compared to the institutional and personal changes required to make structuralist and behavioralist interventions work. Changes in aggregate labor market conditions exert a quick, certain, and dramatic effect on levels of joblessness and public assistance reciprocity within disadvantaged population groups.²³² Reducing joblessness through structuralist and behavioralist interventions requires a different kind of change—a qualitative change in the way institutions function and in the way individuals behave rather than a mere quantitative change in the level of economic activity. Under conditions of less than full employment, these difficulties increase.

First, labor markets tend to reward success with more success and punish failure with more failure. Under conditions of full employment, this tends to sort workers among jobs. But under conditions of less than full employment, it creates special disadvantages for jobless individuals who are seeking work, even in the absence of structural or behavioral impediments to their employment. Labor market analysts sometimes describe unemployed workers as “queuing” for jobs,²³³ but it is a hiring queue that functions differently from most other waiting lines. The distinguishing characteristic of most queues is that people move from the back to the front of the line as they wait. Hiring queues probably move in the opposite direction. The longer job seekers remain unemployed, the less attractive they are likely to become to potential employers. The most attractive applicants to employers probably are persons who haven’t even joined the hiring queue—currently employed individuals who are looking for new jobs before leaving their old ones—and available data suggest there may be as many of them as there are unemployed job seekers.²³⁴

This doesn’t mean that jobless individuals can’t find work, but it

232. See Richard B. Freeman, *Employment and Earnings of Disadvantaged Young Men In a Labor Shortage Economy*, in *THE URBAN UNDERCLASS*, *supra* note 211, at 103-21; Paul Osterman, *Gains from Growth? The Impact of Full Employment*, in *THE URBAN UNDERCLASS*, *supra* note 21, at 122-34; and Council of Economic Advisors, *supra* note 223.

233. See, e.g., HOLZER, *supra* note 103, at 29; MEAD, *supra* note 17, at 86.

234. See Bureau of Labor Statistics, *supra* note 186.

makes it harder for them.²³⁵ Nor does it mean that efforts to help jobless individuals find work will fail when an aggregate job shortage exists, but such efforts are working against a natural tendency for markets to discriminate against such persons. The larger the economy's aggregate job shortage, the longer hiring queues will be, and the farther back in line unemployed job seekers, especially disadvantaged job seekers, are likely to find themselves.

Second, to the extent special efforts to help disadvantaged job seekers succeed, the population most likely to sacrifice jobs to the newly employed are workers who are only marginally better situated and who probably have very similar personal characteristics to the assisted population. A redistribution of the burdens of joblessness among the lowest strata of the labor force isn't likely to reduce the social harms caused by the problem.²³⁶ The severity of this problem is linked to the size of the economy's job gap, because that is what determines the intensity of competition for available jobs among employed and unemployed workers.

Third, efforts to increase the employment of disadvantaged individuals may also elicit a nullifying counter-response from more privileged workers. This counter-response may take benign forms, such as increased investment in education, or it may take less benign forms, such as growing resentment directed at disadvantaged groups accompanied by increased opposition to access-broadening initiatives. Opposition by white workers to the use of hiring preferences to increase the employment of minority and women job-seekers may illustrate this kind of reaction. This reaction is likely to be more intense when jobs are perceived to be scarce and competition for them is greater. Individual efforts by more privileged workers to "keep ahead" in the competition for jobs (by investing more in their own education and that of other family members, by manifesting a greater willingness to move where job opportunities are more plentiful, and by intensifying their own job search activities when unemployed) are also likely to be influenced by the size of the economy's job gap. Whatever form it takes, the defensive behavior of more privileged workers threatened with a reduction in their

235. The likelihood a job-seeker will have received a job offer necessarily increases with the length of time the individual has been unemployed. This is because the number of job applications increases with time, however, not because the job seeker's "turn" has arrived. Even if your chances of winning a lottery declined each time you played (as an unemployed workers chances of being hired as a result of any particular job application probably decline over time) it still would be true that your chances of winning would increase the longer you played.

236. Increased cycling on and off public assistance rolls may be one result of such a policy. This kind of cycling was already common in the AFDC program before recent reforms were enacted in an effort to increase participant job search activity. See Roberta Spalter-Roth et al., *Welfare That Works: The Working Lives of AFDC Recipients* (Institute for Women's Policy Research 1995). (finding that in two-year period studied, 50% of AFDC recipients combined work and benefit receipt in one way or another and another 23% unsuccessful sought work).

own job security is likely to frustrate efforts to reduce unemployment rates among less advantaged workers.

Finally, to the extent the distribution of joblessness is a product of discriminatory hiring practices, the existence of a significant job gap makes it much harder to alter employer practices. Surplus labor supplies provide both a cover for discriminatory practices and an economic cushion that allows employers to indulge their biases. Proving discriminatory treatment is very difficult when large numbers of workers apply for a small number of jobs and are evaluated according to multiple, incommensurable hiring criteria. This may be one reason for the prevalence of discriminatory firing cases over discriminatory hiring cases in employment discrimination litigation.²³⁷ The existence of labor surpluses also permits employers greater latitude in deciding where to locate their businesses, avoiding minority populations if they want, without fear of not being able to recruit adequate numbers of workers.²³⁸ As the economy's job gap shrinks, the economic pressure on employers not to discriminate increases, and the deterrent effect of anti-discrimination law probably becomes more effective.

For all of these reasons, it may be unrealistic to expect dramatic results from either structuralist or behavioralist attempts to reduce the relative amount of joblessness experienced by disadvantaged population groups in a job-short economy. The history of efforts to reduce poverty and its attendant ills by means of behavioralist and structuralist measures certainly provides no cause for optimism that the goal is achievable without closing the economy's job gap. Neither the behavioralist strategies that were consistently pursued in the United States prior to the 1930s,²³⁹ nor the structuralist strategies that have been pursued in recent decades, can claim much of a victory against joblessness. It is especially disheartening that unemployment rates for African Americans continue at roughly twice the rate for whites over thirty years after the legislative history accompanying the Civil Rights Act of 1964 cited that disparity as a primary reason for

237. In the first few years after Title VII was enacted, more discriminatory hiring claims were filed under the act than discriminatory firing claims, and in the early 1970s, the number of hiring and firing claims brought were approximately equal. Since the mid 1970s, however, the number of discriminatory firing cases has grown dramatically, while the number of discriminatory hiring cases has remained constant or declined. See John J. Donohue III & Peter Siegelman, *The Changing Nature of Employment Discrimination Litigation*, 43 STAN. L. REV. 983 (1991). The initial growth in discriminatory hiring cases brought in the 1960s and early 1970s may have reflected the relative ease of litigating cases involving obvious instances or patterns of discriminatory hiring. Once blatant practices were eliminated, however, the problems of proof in hiring discrimination cases involving large number of applicants for a small number of available jobs loomed larger. In firing cases, in contrast, the relevant comparison group for judging whether discriminatory treatment has occurred is much smaller, making proof of unlawful discrimination much easier.

238. See HOLZER, *supra* note 103, at 131.

239. See Harvey, *supra* note 1.

making employment discrimination illegal.²⁴⁰ Expressing faith in the adequacy of the structuralist strategy, the legislative history accompanying the legislation asserted that:

A nation need not and should not be converted into a welfare state to reduce poverty, lessen crime, cut down unemployment, or overcome shortages of skilled occupational categories. All that is needed is the institution of proper training programs and the elimination of discrimination in employment practices.²⁴¹

That optimism now seems naive, as do analogous expressions of faith in the ability of behavioralist policies to move disadvantaged job-seekers into jobs.

I am not arguing that these policies are totally ineffective. There is good, albeit disputed, evidence, for example, that anti-discrimination legislation has improved the economic position of African Americans in the United States.²⁴² But the benefits traceable to structuralist interventions such as this have not come close to equalizing the burdens of joblessness between African American and white population groups, nor have they provided a reliable means of moving needy workers into jobs. Joblessness is still very unequally distributed, and it still causes substantial harm to its victims. The resurgence of support for behavioralist policies in recent years reflects, in part, the limited success that structuralist initiatives have been able to demonstrate in resolving the nation's joblessness problem. The public may not remember that behavioralist policies pursued prior to the 1930s could claim no greater success.

The problem may not be with the policies, however, but with the assumption that they can work against the countervailing forces set in motion by job shortages. This difficulty is implicitly acknowledged by the shift in public policy that occurs during recessions, when structuralist and behavioralist initiatives temporarily take a back seat to measures designed to increase aggregate job availability. When an aggregate job shortage is recognized to exist, efforts to address the problem of joblessness with behavioralist and/or structuralist strategies alone are presumed inadequate. Why shouldn't the same presumption apply to non-recessionary periods, if it is true that substantial job shortages also exist during such periods?

What this analysis suggests is that the success of structuralist and behavioralist policies may depend upon the implementation of a successful strategy to reduce aggregate levels of joblessness. To combat joblessness by means of structuralist and behavioralist policies alone may be

240. See U.S. Code Cong. & Admin. News, 88th Cong., 2d Sess. (1964), at 2513-15.

241. *Id.*, at 2515.

242. See John J. Donohue III & James Heckman, *Continuous Versus Episodic Change: The Impact of Civil Rights Policy on the Economic Status of Blacks*, 29 J. ECON. LIT. 1603 (1991).

tantamount to giving up the fight. There are other reasons, however, why a concerted effort to reduce aggregate levels of joblessness makes good sense. If given a choice between eliminating an unwanted burden and redistributing its weight so that everyone bears an equal share, who wouldn't choose to eliminate the burden? Diluting a noxious substance may reduce its harmful environmental effects, but not as surely or as well as eliminating it from the environment entirely. Unless good reasons can be cited for not pursuing the goal of full employment, it is an inherently more desirable objective than the equalization of rates of joblessness across population groups.

Because rates of unemployment fluctuate over the course of the business cycle, we regularly witness the benefits that flow from reductions in the level of joblessness. For example, in the Council of Economic Advisors' study described earlier, declining rates of unemployment were found to have a far more powerful effect on AFDC caseloads than changes in program requirements.²⁴³ Based on that study, the appropriate conclusion to draw would seem to be that efforts to reduce welfare dependency are likely to be most effective if they concentrate on increasing job availability. That is not to say that increasing job availability would eliminate all joblessness or resolve all of the personal and social problems associated with it, only that the size of the economy's job gap is likely to be more important in determining the fortunes of needy job seekers than any effects likely to flow from either structuralist or behavioralist reforms of social welfare law. Structuralist and behavioralist measures may be important in combating the negative effects of joblessness, but it seems unwise to concentrate exclusively on such measures unless nothing can be done to close the economy's job gap.

I am not suggesting that it would be easy to reach this goal. My earlier discussion of macroeconomic barriers to the achievement of full employment shows that inflationary tendencies associated with low rates of unemployment present a major political and economic hurdle that would have to be circumvented.²⁴⁴ Nevertheless, ignoring the job shortage problem can hardly be considered an appropriate response to this difficulty. Problems are not solved by pretending they don't exist. Realities should be faced, and the reality is that structuralist and behavioralist policies may be impotent to solve the problem of joblessness unless they are joined to an effective strategy to close the economy's aggregate job gap.

It is beyond the scope of this article to consider the likely effectiveness of various policy initiatives that might be adopted to reduce aggregate levels of joblessness in the United States. My earlier discussion of the job-

243. See *supra* note 223.

244. See *supra* Part II.C.

shortage strategy shows that the United States has had substantial experience with such initiatives during the New Deal period and recurrently during recessions since then.²⁴⁵ Relatively little attention has been devoted, however, to considering how these policies, or others designed to reduce job shortages, might be adapted for use during non-recessionary periods when inflationary tendencies are most constraining. I believe effective policies do exist for reducing aggregate levels of joblessness at the top as well as at the bottom of the business cycle, and I have discussed what I consider to be the most attractive option—government financed direct job creation—in other work.²⁴⁶ Still, a thorough analysis of the ways in which American employment and social welfare law could be used to help close the nation's job gap remains to be done. What this article demonstrates, I believe, is the importance of that work in designing an effective strategy for combating joblessness. The virtually exclusive focus of current policy debates on structuralist and behavioralist measures is a serious mistake. Taking steps to equalize the burdens of joblessness is an important goal, but it is foolish to ignore the need to close the economy's aggregate job gap at the same time.

Fortunately, the three strategies for combating joblessness described in this article are not incompatible with one another, despite a history of strong disagreements among proponents of the different approaches. The compatibility of the structuralist and job shortage approaches is readily apparent. It would be theoretically possible for a society to suffer from a severe aggregate job shortage, yet achieve absolute equality of employment opportunity among its members. Similarly, a society could have more than enough jobs to provide work for all its members, yet deny employment to certain segments of the population based on their race, where they live, their educational background or other such factors. In the real world, of course, we face both aggregate job shortages and barriers to equal employment opportunity, and policies based on the structuralist and job shortage approach complement one another.

The job-shortage and structuralist approaches to the problem are also compatible, at least in theory, with the behavioralist approach. The job shortage and structuralist problems on which liberals tend to focus could exist simultaneously with the behavioral problems on which conservatives tend to focus their attention. If joblessness is caused simultaneously by all three factors discussed in this article, joint policies compatible with all three approaches are at least conceivable, even though the preferences of liberals and conservatives with respect to the content of such joint policies might run in different directions.

245. See *supra* Part I.C.

246. See *supra* note 13.

For example, it would be possible to conceive a policy that would deny gratuitous income assistance to able-bodied persons (the behavioralist element) while guaranteeing such persons public sector jobs if they could not find private employment (the job shortage element) and also making job-training and other opportunity-equalizing measures readily available to disadvantaged workers (the structuralist element). Such a policy might not be the first choice of either conservatives or liberals, but its different elements are operationally compatible with one another. It may be that success in the battle against joblessness lies in this direction—through a fusion of the three strategies discussed in this article rather than in the adoption of any one to the exclusion of the other two.