
Securing the Right to Employment

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to Employment

SOCIAL WELFARE POLICY
AND THE UNEMPLOYED
IN THE UNITED STATES

Philip Harvey

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For Adolph Lowe

We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all—regardless of station, race or creed. Among these are: The right to a useful and remunerative job in the industries or shops or farms or mines of the nation; [and] The right to earn enough to provide adequate food and clothing and recreation.

—Franklin D. Roosevelt, 1944

We're not going to rest, and not going to be happy, until every person in this country who wants a job can have one, until the recovery is complete across the country.

—Ronald Reagan, 1984

I think there will be a lot of water passing through the Mississippi and the Volga before the U.S. Congress and the Administration recognize the American people's right to protection of their social and economic rights.

—Mikhail Gorbachev, 1987

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Abbreviations

AFDC	Aid for Families with Dependent Children
AFL	American Federation of Labor
CBS	Columbia Broadcasting System
CCC	Civilian Conservation Corps
CETA	Comprehensive Employment and Training Act
CIO	Congress of Industrial Organizations
CWA	Civil Works Administration
DI	Disability Insurance
EAP	Employment Assurance Policy
FERA	Federal Emergency Relief Administration
FICA	Federal Insurance Contribution Act
FSRC	Federal Surplus Relief Corporation
GA	General Assistance
GNP	Gross National Product
NAACP	National Association for the Advancement of Colored People
NIRA	National Industrial Recovery Act
NRA	National Recovery Administration
NRPB	National Resources Planning Board
OASDHI	Old Age, Survivors, Disability, and Health Insurance
OASI	Old Age and Survivors Insurance
PWA	Public Works Administration
SSI	Supplemental Security Income
UI	Unemployment Insurance
WIC	Supplemental Food Program for Women, Infants, and Children
WPA	Works Progress Administration
YWCA	Young Women's Christian Association

Securing the Right to Employment

Introduction

THE RIGHT of all persons to a freely chosen job paying wages sufficient to support a dignified existence has been proclaimed in a number of international human rights agreements concluded since the Second World War.¹ In this country, however, the notion that the right to employment is indeed a human right—like freedom of speech, freedom of association, or the right to be protected from invidious racial discrimination—is likely to be met with some skepticism. We are accustomed to thinking of human rights as synonymous with constitutional rights. It is difficult for us to accept the idea that there may be human rights that are not afforded significant constitutional protection. Indeed, many Americans would undoubtedly dismiss such a claim as alien to our cultural and political traditions, a foreign import from the welfare states of Northern Europe or, worse, from the communist states of Eastern Europe.

In fact, there is a strong entirely indigenous tradition of support in the United States for efforts to guarantee the right to employment. Perhaps the clearest evidence of this tradition is President Roosevelt's 1944 State of the Union message to Congress.² Evoking natural rights claims drawn from the Declaration of Independence, Roosevelt characterized the exclusively political focus of the nation's original Bill of Rights as no longer adequate:

This Republic had its beginning, and grew to its present strength, under the protection of certain inalienable political rights—among them the right of free speech, free press, free worship, trial by jury, freedom from unreasonable searches and seizures. They were our rights to life and liberty.

As our Nation has grown in size and stature, however—as our industrial economy expanded—these political rights proved inadequate to assure us equality in the pursuit of happiness.

We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. "Necessitous men are not free men." People who are hungry and out of a job are the stuff of which dictatorships are made.

To correct this deficiency he called on Congress to give effect to "a second Bill of Rights under which a new basis of security and prosperity can be established for all—regardless of station, race or creed." The first

item in his proposed economic bill of rights was "the right to a useful and remunerative job." The second was "the right to earn enough to provide adequate food and clothing and recreation."³

Moreover, in expressing the view that society has a duty to secure the right to employment, President Roosevelt was entirely in step with public opinion. Almost 68 percent of those queried in a *Fortune* magazine poll conducted in 1944 supported the proposition that the federal government should, if necessary, assure jobs for everyone seeking work.⁴ Even the Republican presidential candidate that year, Governor Thomas E. Dewey of New York, took the position that, "if at any time there are not sufficient jobs in private enterprise to go around, the government can and must create job opportunities, because there must be jobs for all in this country of ours."⁵ A quarter-century later, in June 1968 and January 1969, public opinion was again tested on this issue in a Gallup poll that asked the following two questions:

As you may know, there is talk about giving every family an income of at least \$3,200 a year, which would be the amount for a family of four. If the family earns less than this, the government would make up the difference. Would you favor or oppose such a plan?

Another proposal is to guarantee enough work so that each family that has an employable wage earner would be guaranteed enough work each week to give him a wage of about \$60 a week or \$3,200 a year. Would you favor or oppose such a plan?⁶

The \$3,200 figure was the official poverty threshold for a family of four in 1965,⁷ and the intent of the questions was evidently to test popular support for both guaranteed income and guaranteed employment schemes designed to provide families with at least a poverty-level income. The guaranteed income proposal was emphatically rejected, 58 percent to 36 percent in the first survey and 62 percent to 32 percent in the second. The guaranteed employment proposal was even more emphatically endorsed, 78 percent to 18 percent in the first survey and 79 percent to 16 percent in the second. What makes these results particularly significant is that neither public policy analysts nor politicians were actively supporting guaranteed employment schemes at the time, while guaranteed income proposals were being vigorously promoted by conservatives and liberals alike.⁸ Thus, the expression of public opinion in these surveys cannot be attributed to the influence of a popular president, as those in 1944 might have been. To the contrary, it suggests the existence of a deep and enduring current of spontaneous public support for the proposition that the federal government should guarantee everyone the right to a job paying living wages.⁹

This sentiment has even survived the Reagan era. In a New York

Times/CBS News Poll conducted in late November 1987, the proposition that "the government in Washington should see to it that everyone who wants a job has a job" was supported by a margin of 71 percent to 26 percent. The only proposal receiving more support was that the government should "guarantee medical care for all people." Proposals that the federal government should "uphold traditional moral values," "see to it that day care and after-school care for children are available," "support anti-communist forces around the world," and "put limits on imports of foreign products," all received substantially less support, as did the then recently announced intermediate nuclear force reduction treaty with the Soviet Union.¹⁰

The notion that it ought to be a duty of government to secure the right to employment is anything but a foreign import to the United States. Indeed, given the broad popular support that the idea has apparently enjoyed in the United States for at least half-a-century, the question that presents itself is why efforts to secure the right to employment have fared so poorly in the legislative process. Twice since 1944 major legislative drives have been undertaken to enact statutory schemes that would have effectively guaranteed the right to employment in the United States, but neither of these efforts was successful.¹¹

Still, these efforts did lead to the enactment of statutes declaring it to be a mandatory goal of federal public policy to secure the right to employment. This aim is most clearly stated in the Full Employment and Balanced Growth Act of 1978 (the Humphrey-Hawkins Act). In it Congress "declares and establishes as a national goal the fulfillment of the right to full opportunities for useful paid employment at fair rates of compensation of all individuals able, willing, and seeking to work."¹²

Are there good reasons for Congress's refusal to go further than this and enact legislation that would actually guarantee the right to employment? If not, how can Congress's refusal to do so be explained? These are the questions addressed in this book.

In chapter 1 I consider how a policy for securing the right to employment might be structured in the United States. Borrowing the outline of my strategy from New Deal social welfare planners, I term the proposal an employment assurance policy (EAP). Its adoption would require a restructuring of the nation's social welfare system to distinguish between people who need public assistance because they are unable to work (or are not expected to do so) and people who need public assistance because they have no work. The former group would continue to receive gratuitous income transfers under existing social welfare programs. The latter group would be declared ineligible for such benefits but would instead be assured a statutory right to employment in a public sector job paying market wages. Workers who were initially unable to command market

wages sufficient to earn a poverty-level income (for instance, unskilled single parents) would be offered special training to increase their earning capacity, but with the guarantee of a job utilizing their newly acquired skills upon completion of their training.

In chapter 2 I define a set of hypothetical parameters for an EAP jobs program that would give effect to this policy. I then estimate what such a program would have cost for the ten-year period between 1977 and 1986. Though necessarily tentative, the conclusions I reach regarding the affordability of an employment assurance policy are encouraging. While an EAP jobs program would have cost more than the social welfare programs it would have replaced, the program's net funding deficit would have been surprisingly small. A 12-percent increase in Social Security tax rates over the ten-year period (from 7.15 percent to 8.05 percent in 1986) would have covered the entire deficit. Moreover, there are good reasons to believe that my estimate overstates what the actual net cost of such a program would have been.

I then turn my attention to the likely effects of an EAP jobs program. In chapter 3 I assess the effectiveness of such a program as a policy response to the closely related problems of unemployment and poverty. I argue that an EAP jobs program would constitute an effective and socially productive response to the distinct challenges posed by different types of unemployment, and that it would also provide superior antipoverty effects compared to current policies.

In chapter 4 I analyze the economic side effects of an EAP jobs program. Some of these would be beneficial and some would not. The most serious problem attributable to the program would probably be its near-term inflationary effect. At the same time, however, I argue that the program would also make it easier to deploy effective antiinflation policies. Indeed, I suggest that the overall effect of the program would be to enhance our ability to fight inflation, regardless of the source of the inflation.

In chapter 5 I examine the administrative problems that such a program would be likely to encounter. It is in this area that the policy raises the most serious questions. Could government officials be prevented from undermining the program's employment effect by using it to replace rather than to supplement existing public sector jobs? Could potential labor relations conflicts with regular government employees be managed? Could useful work be found for the program's workforce? Without minimizing these problems, I argue that they are manageable. I also point out that these problems would be accompanied by extraordinary opportunities to improve and expand the delivery of public services in the United States. Considering all the social benefits likely to flow from

an EAP jobs program, it is my contention that the administrative challenges that would accompany such a program are worth facing.

Having drawn the general conclusion that a practical program to secure the right to employment is both feasible and desirable in the United States, I turn in chapter 6 to the question of why efforts actually to secure this right have met with so little success. If realization of the right to employment really is an accepted goal of federal public policy, and if deliberate public sector hiring to achieve that goal really would be superior to existing employment and antipoverty policies, then why has such an approach not been tried? I seek an answer to that question in the political history of past efforts to secure the right to employment in the United States. I argue that the political problems that such initiatives have consistently faced are not based on a lack of popular support for the idea of providing employment assurance, but reflect the entrenched political power of special interest groups that oppose the idea. Unfortunately, given the continuing strength of these interest groups, I conclude that it is probably unrealistic to expect the right to employment to be secured in the United States any time soon.

Disheartening as this conclusion may be for people sympathetic to the claims advanced in this book, I believe my overall analysis presents a two-pronged challenge to defenders of existing public policy in this area. First, it calls current policies into question on strictly utilitarian grounds by suggesting that a substantial sacrifice in aggregate economic welfare is being endured in this country for reasons that do not bear close scrutiny. At the same time, however, my analysis also raises a human rights issue. If access to a job paying decent wages is a human right, as international agreements proclaim and as President Roosevelt's 1944 State of the Union message suggests, then we are not dealing with a matter of purely discretionary public policy. Viewed as a human rights issue, the question that must be addressed is not whether current policies maximize national income, but whether they are responsive to the fundamental obligations that humanity is beginning to regard as binding on all governments.

Human rights advocates have traditionally devoted almost all of their time and energy to the promotion of civil and political human rights.¹³ One of the reasons for this is the uncertainty that surrounds the definition of performance standards for assessing the adequacy of a government's efforts to secure economic and social human rights. Relevant international human rights agreements generally require governments to do no more than promote the progressive realization of economic and social human rights, while requiring them to guarantee civil and political human rights immediately.¹⁴ For example, state parties to the International Covenant on Economic, Social and Cultural Rights promise only "to take steps . . . to the maximum of [their] available resources, with a view to

achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”¹⁵ In contrast, state parties to the companion International Covenant on Civil and Political Rights promise “to ensure to all individuals within [their] territory and subject to [their] jurisdiction the rights recognized in the present Covenant.”¹⁶ Here international law mirrors the United States example, criticized by President Roosevelt, of providing less protection for economic and social human rights than for civil and political human rights.

This poses a problem for those seeking to hold governments accountable for their performance in securing economic and social human rights. How do you assess whether a government’s efforts to “promote” a right are adequate? Performance standards are clearly needed, but they are not easy to define. The problem is aggravated when the object of scrutiny is our own government’s performance, because the United States is not a party to the international agreements mentioned above and is therefore not legally bound to observe even the very vague performance standards these agreements do impose.¹⁷

As I have noted, however, the federal government of the United States does have a statutory obligation to promote the right to employment, based on the Employment Act of 1946 and the Full Employment and Balanced Growth Act of 1978,¹⁸ which is essentially the same as that incurred by state parties to international agreements in this area. Thus, the legal duty of the United States with respect to the realization of the right to employment is substantively similar to that of countries that have ratified these agreements.

Human rights advocates need not limit their activities, of course, to the monitoring of a government’s record of compliance with the human rights obligations it has formally acknowledged under domestic or international law. The goal of human rights advocacy is not only to ensure that governments live up to their express promises, but to press them to assume as-yet-unacknowledged responsibilities for the protection of human rights. The inherent difficulty of defining standards for the assessment of a nation’s performance in realizing economic and social human rights remains the same, however, whether it is the protection of acknowledged or unacknowledged rights that is being monitored.

One way of overcoming this difficulty is to compare the performance of different countries with respect to the realization of particular rights, judging one nation’s performance by what other nations at a similar stage of economic development have managed to achieve. Another way is to judge a government by its own past performance, holding it strictly accountable for any deterioration in the protection it affords particular

rights and insisting that it demonstrate steady progress in efforts to fully realize those rights.

While both of these methods are worth pursuing, they have limitations. Perhaps the most serious of these is that conditions beyond a nation's control may reasonably prevent it from duplicating either the performance of other nations or its own past performance in realizing certain economic and social human rights, even though the nation's efforts to realize the rights may surpass those of the standard-setting nation or its own past efforts. This problem is likely to be particularly pronounced where the right to employment is at issue because of the inherently cyclical character of employment levels in market economies.

Thus, to properly assess a government's efforts to secure the right to employment, a performance standard is needed that defines the level of protection a nation is capable of affording the right at any given time. One possible way of developing such a standard is to undertake an analysis of whether there are means currently available to a nation whereby it could better realize the right without undermining other legitimate public policy commitments. If such means are available, then the nation might be deemed to have an obligation to match the level of performance that could be achieved through these means, whether or not those particular measures are the ones adopted to achieve this goal.

This method of defining performance standards for the realization of the right to employment has its own limitations. The kind of policy analysis that is needed to develop standards of this type is exceedingly complex. Also, speculative standards are relatively easy to dismiss as unrealistic. It is much more difficult to dismiss performance standards based on actual past or concurrent practice. Still, I believe the effort to develop such standards is worth undertaking. Advocates of conservative economic and legal doctrines have demonstrated the effectiveness of joining economic and legal discourse in pressing a particular social agenda, despite the fact that their claims are often based on purely theoretical analyses of the likely performance of market institutions in a less regulated economic environment.¹⁹ There is no reason why joint advocacy of other economic and legal doctrines should not prove similarly effective, and policy debate regarding the realization of economic and social human rights seems ideally suited for such efforts.

This book can be viewed, therefore, as an experiment in this type of legal argument as well as a straightforward policy analysis of the feasibility and desirability of using government resources to guarantee the right to employment. More precisely, I argue that self-interest alone should direct the nation to adopt measures securing the right to employment, and my study may therefore be regarded as an effort to address the concerns of conventional policy analysis. At the same time, however, it is

also possible to view my study as an effort to advance a human rights claim that effective governmental action to secure the right to employment is morally and possibly even legally obligatory in the United States. If it actually would be possible for the United States to secure the right to employment, without ignoring other legitimate public policy commitments, then human rights advocates have strong grounds for pressing the country to do so. My specific proposal need not be adopted, but legitimate demands can be made that effective alternative measures must be adopted.

In other words, the case for recognizing the right to employment can be made strictly on utilitarian grounds, but it need not be limited to such arguments alone. Moreover, if a legitimate human rights claim demanding protection for the right to employment can be made, then both political and moral considerations argue for making that claim as forcefully as possible. Consider, for example, the history of the civil rights movement in the United States. It would certainly have been possible to argue for an end to racial discrimination strictly on utilitarian grounds. Neoclassical economic theory suggests that such discrimination is economically irrational. Does anyone believe, though, that it would have been politically wise for the civil rights movement to have limited itself to such arguments? More pointedly, does anyone believe that it would have been morally acceptable for the country to continue to tolerate slavery, or school segregation, or employment discrimination, if such practices could in fact have been shown to be more "efficient" than nondiscriminatory ones?

The unemployed are a substantially powerless minority in the United States. Experience has shown that so long as unemployment does not threaten too large a segment of the population, very few demands will be made on behalf of the unemployed through the electoral process. Add to this the strength of the political opposition that exists to measures that would secure the right to employment in the United States, and the prospects for securing that right appear very bleak indeed. This political reality will not be altered merely by adding a human rights claim to more utilitarian arguments for securing the right to employment, but efforts to join the two arguments would at least help to sharpen debate over the direction social welfare policy should take in the United States. It could also help to mobilize public support for new initiatives designed to secure the right to employment, thereby extending the horizons of what is politically thinkable in this area.