The American Welfare System

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I

THE STATUTORY FRAMEWORK

This article mainly discusses the American system of welfare represented by the interrelated federal and state statutes and administrative practices and relations developed pursuant to the Social Security Act of 1935.¹ This rather narrow approach is not chosen to discount the very substantial body of related welfare law encompassed in other statutes. It is based, rather, upon two premises: First, the programs and administrative relationships established under the Social Security Act have come to be recognized generally as the public welfare program, and hence to have a certain connotation to the ordinary citizen; second, and more importantly, the 1935 enactments represent the sharpest break with previously existing patterns of welfare administration that we have experienced.

A. Antecedent Welfare Operations

Until about the middle of the nineteenth century, welfare consisted primarily of various forms of poor relief administered and financed under private auspices or by local cities or counties under laws which placed a vaguely defined responsibility upon the legal subdivision. Generally, there were no standards as to either content or amount of aid, no concept of right, and qualification for relief rested upon complete destitution and lack of any relatives to charge with support. The concept of welfare was characterized by frequent transporting of the poor back to their place of legal settlement, vagrancy practices, and methods designed to deter people from seeking help. Courts seldom considered the rights of the person in need. Court procedures frequently resembled criminal prosecutions rather than expressions of humanitarian concern. Such solicitude as was expressed tended to be mostly for communities or individuals who had gratuitously assumed some cost of maintaining an indigent person. Cases frequently dealt with recovery of costs from reluctant relatives or from jurisdictions believed to be responsible as the place of legal settlement.²

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² See generally LEVENECKER, PROBLEMS AND POLICY IN PUBLIC ASSISTANCE 21-51 (1955);
The current vestige of practice characteristic of this era generally is found in the category of General Relief, or General Assistance, frequently administered with many of the typical attitudes, and often under state statutes and local ordinances, which date back to this period.

Particularly during the last half of the nineteenth century, rather extensive development of special provisions for certain groups of dependent or needy people began to appear, and along with this, though relatively late in the game, came provisions for some minimum standard of care enforced through governmental supervisory and inspection bodies. At first these provisions tended largely to be concerned with children—the provisions usually applying to orphanages or institutions. There was no uniform pattern of public support for these institutions so that they operated as privately financed organizations, as partially or totally subsidized private facilities, or as public institutions.

This was followed by development of similar facilities and programs for other persons or groups recognized as having a particular claim on the public largesse—such as the blind, the aged, the mentally ill, the mentally retarded. These piecemeal statutory developments represented a growing recognition that the basic poor relief provisions and the increased and indiscriminate use of the “poorhouse” or almshouse were inadequate.

Leyendecker characterizes the developments during the last half of the nineteenth century and up to the depression years as the growth of “preferential assistance.” Preferential assistance was the result of a growing belief that “while the poor as a class were [to be] generally distrusted . . . some poor persons were ‘worthy’ in that their poverty was ‘no fault of their own,’ or because there seemed to be evidence that they had the capacity for ‘moral regeneration.’ . . . [T]he almshouse with its deterrent and punitive features would be the only recourse of all others who professed to be in need.”

The programs which emerged from this pre-depression period and the concepts and attitudes which accompanied them provided the prototypes both for elements of the Social Security Act and for many other specialized programs which must equally be considered part of the functioning welfare system of the United States. Most of these developments emerged during the first three decades of the current century. They may be characterized in three main ways: first, the immediate antecedents of the categorical public assistance provisions of the Social Security Act;


3 Leyendecker, op. cit. supra note 2, at 52-57.
4 Id. at 46.
second, the beginning of the variety of special service programs, many
stimulated by some form of limited federal grant-in-aid; and third, the
beginnings of social insurance programs in the states and other countries.

The forerunners of categorical assistance programs consisted of laws
enacted in a number of jurisdictions providing for noncontributory
"pensions" to the blind, the aged, veterans, and widows or other women
with children deprived of the father's support. Most state laws clearly
retained many of the conditions that reflected concern for worthiness—
factors which conditioned any concept of right. Nevertheless the popular
designation of the benefits as "pensions" carried connotations that
had not existed previously. The designation was controversial, and many
social service leaders of the times opposed it, calling it unwarranted.

Most of the "pension" legislation enacted by states was permissive;
that is, local jurisdictions could make such grants, but usually were not
required to do so. Funding was strictly local, depending upon property
taxes. While the state laws set some standards, much as to eligibility and
benefits was left to local inclination. In the few instances where special
financing was provided, the provisions were far from adequate.

Because of the above factors, in 1934 the Mother's Pension pro-
grams were actually operative in fewer than half the jurisdictions cov-
ered by the permissive statutes, and less than one-fourth of the estimated
needy families were being served.

Special service programs provided for the areas of education and
rehabilitation rather than for basic support of dependent persons. Voca-
tional rehabilitation was one such program, with federal financial support
beginning in 1920. Various programs for child welfare and for maternal
and child health had been stimulated by the first White House Confer-
ence on Children. The Social Security Act, though not basically affect-
ing the form and substance of some of these health and welfare programs,
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provided increased financial support for what had largely been token operations. Locally, probation and parole programs developed along with the initial interest in juvenile courts.

Developments in "social insurances" afforded some basis for the major expansion undertaken by the Social Security Act. Workmen’s compensation laws had developed in many states. A number of retirement programs had developed, including the Federal Civil Service Retirement System.11

These three areas of "preferential assistance" have grown, both in conjunction with and independent of the Social Security program, and form what may vaguely be described as the "welfare system." They afford the major means we have for working with people with special problems of dependency, health, or social adjustment. That they form an organized and coordinated system that is generally available or accessible is debatable. They have, however, formed a basis for some measure of relief from economic misfortune and its related difficulties.

B. The Social Security Program

The Social Security program was not conceived as a comprehensive or integrated public welfare system. It established a series of methods to supplement the traditional ownership, employment, and wage system for distributing income to certain disadvantaged persons—an economic security system. It fell short of being an integrated, coordinated system to promote individual and collective welfare by enhancing opportunities for individual achievement.12 Attention of the designers appears to have been focused upon bringing certain large dependent groups into a different socio-economic relationship to the self-supporting public, based on assumptions as to the appropriate place of these groups vis-à-vis the labor market, rather than upon accomplishing any substantial economic status change for individuals based on increasing their capacity for social or economic achievement.

Four main areas of concern led to enactment of the Social Security


12 Cohen, Factors Influencing the Content of Federal Public Welfare Legislation, in NATIONAL CONFERENCE OF SOCIAL WORK, THE SOCIAL WELFARE FORUM, 1954, at 199-215 (1954). Cohen discusses the skepticism with which Congress regarded such ideas, when, as late as 1949, they refused to enact proposals to add specific authorization for services “designed to help families and individuals become self-supporting, to keep families together in their own homes, and to reduce the need for institutional care.” Id. at 212-13. However, earlier similar services for the blind had been authorized. He cites some belief that the effort was regarded as being promoted more for professional enhancement than in the interest of possible beneficiaries. Id. at 213-14.
Act in 1935: 18 (1) employment opportunities and protections for wage earners; (2) retirement benefits; (3) expansion of special service programs; and (4) federal support for categories of dependent persons.

1. Employment Opportunities and Protections for Wage Earners

Although the act contained no specific provision for employment opportunities, the subject was cited as of first importance. Sublime faith in the economic system's ability to utilize all able-bodied persons led the framers of the program to do little more than point out the need to buttress the private sector with substantial provisions for public works.14

In the fiscal year 1939-40, when old age insurance benefits were started, expenditures under social insurance programs came to one-fifth of that year's income-maintenance outlays of 5.2 billion dollars.16 Almost seventy per cent of that 5.2 billion went for public aid alone, including almost forty-eight per cent for work relief programs.16

That employment was often interrupted by seasonal and cyclical changes, threatening the security of many, was recognized. There were specific recommendations for compulsory, federally-supported, state-operated programs of unemployment compensation.17 The necessity for close cooperation between such an unemployment insurance program and the employment services featured in the statute had much to do

18 COMM. ON ECONOMIC SECURITY, REPORT TO THE PRESIDENT passim (1935). See generally SOCIAL SECURITY Bd., op. cit. supra note 7 passim.

14 There was little particular reference to problems of technological displacement or obsolescence in most of the reports, although by 1940 there was some concern that in many respects foreshadowed current worries. See, e.g., H.R. Doc. No. 850, 76th Cong., 3d Sess. passim (1940). Public works were spoken of as the major resource for the use of manpower—slum clearance, public roads, fabricating, consumer goods, flood control, river and harbor improvement, public buildings. One House committee, however, stated: "The number of men and women who are thrown out of work because particular technical developments render their special skill or trade 'obsolete' may constitute only a small percentage of our total unemployed but their individual problems are the most acute .... [T]o change his occupation . . . is certainly no easy task for a man whose whole background of training and experience has been in one field." Id. at 83.

"In another portion, Representative Landis of Indiana filed a minority statement as part of the report of the Committee on Youth and Unemployment in which he stated: "[T]he principal cause of unemployment and low national income today is that the young people of our Nation are leaving school without being prepared for definite jobs. . . . Probably our whole system would collapse without some workers who offer unskilled manpower of the strictly brawn type. But we have too many laborers who are untrained and unskilled." Id. at 97.


17 Id. at 6.

18 SOCIAL SECURITY Bd., op. cit. supra note 7, at 92-96.
with shaping the nature of the employment services. The act contained a minimum of standards and intentionally left to the states a major amount of freedom to shape their own statutes.\(^8\)

Aside from technical matters, the prescribed standards dealt with: (a) administrative methods reasonably calculated to insure full payment of compensation when due; (b) opportunity for a fair hearing; (c) payment through public employment offices and cooperation with federal agencies concerned with employment; (d) provisions to guarantee that persons would not be denied compensation for refusing to take a job involved in a labor dispute or under less favorable conditions of work and pay than generally prevail in the community.\(^9\)

Unemployment compensation, administered under the Secretary of Labor since 1949, has had increasing public acceptance. Because the program operates under varying state laws and involves conditions of disqualification, there continues to be a tendency to regard it as a form of "welfare," with the traditional associations of worthiness and suspicion. This confusion has persisted in spite of the fact that benefits are not based on a means test. It may be stimulated by the fact that for many wage-earners there is a sequential pattern of reliance upon unemployment benefits and welfare benefits. Some persons concurrently utilize both systems because their unemployment benefits fall far short of providing the minimum needs as measured for public assistance.\(^{10}\)

Unemployment compensation programs generally exclude from coverage agricultural workers, family workers, domestic servants in private homes, the self-employed, state and local government employees, most employees of nonprofit organizations operated for religious, charitable, or educational purposes, and employees of private firms with fewer than four employees in twenty weeks of a year. These exclusions, especially among farm and other low-wage employees, generate part of the public assistance caseload. Nevertheless, about four out of five wage and salary workers were covered by the unemployment compensation program in an average week in 1963.

\(^{19}\) Id. at 34, 46-47.
\(^{20}\) In most states, the wage replacement formula is designed to compensate about fifty per cent of the weekly wage. In December 1963 the average weekly benefit for total unemployment was about thirty-six per cent of the average weekly wage in covered employment. Social Security Administration, \textit{op. cit. supra} note 15, at 23. Public assistance, therefore, provides a form of supplement to unemployment compensation allowance for many families.
2. Retirement Benefits

A national retirement system for the aged was accomplished in the Social Security Act by establishing a compulsory, contributory system of annuities,\(^{21}\) financed through taxes imposed upon both employee and employer\(^{22}\) and administered by the federal government.\(^{23}\) In 1939 this system was substantially changed to a family program by providing additional benefits to dependent members of the wage-earner’s family after his retirement and survivor’s benefits after his death.\(^{24}\) Beginning in 1956 the system was broadened to provide benefits to disabled workers.\(^{25}\) At the end of 1963, of about nineteen million beneficiaries, eleven million were retired or disabled wage-earners, three million were dependent spouses, two million were widows or dependent widowers, and 2.6 million were children.\(^{26}\)

By fiscal 1963-64, Old Age, Survivors, and Disability Insurance and Unemployment Compensation outlays accounted for more than three-fourths of all income-maintenance expenditures.\(^{27}\) Public assistance expenditures, which accounted for about twenty-two per cent of the outlays in 1940,\(^{28}\) accounted for only twelve per cent in 1964.\(^{29}\)

Improvements in the Old Age, Survivors, and Disability Insurance (OASDI) program have proceeded under direct federal administration with comparatively little controversy. The absence of a means test, as such, has avoided many of the issues associated with public assistance. OASDI has close relationships to, but lacks popular identification with public assistance.

It is important to note, however, that while coverage has been expanded and benefits upgraded, substantial numbers of OASDI beneficiaries in all classifications receive supplemental payments from public assistance programs to enable them to meet their minimum maintenance expenses. In California, for example, about seventy per cent of the individuals receiving state Old Age Security grants under the public assistance program also receive OASDI benefits.\(^{30}\)

\(^{26}\) SOCIAL SECURITY ADMINISTRATION, op. cit. supra note 15, at 9.
\(^{27}\) Id. at 6.
\(^{28}\) Ibid.
\(^{29}\) Ibid.
\(^{30}\) Data compiled by the Division of Research and Statistics, California State Depart-
3. Special Service Programs

Special services were expanded through increased federal support of the state programs referred to earlier—vocational rehabilitation,\textsuperscript{31} child welfare services,\textsuperscript{32} child and maternal health\textsuperscript{33} (including a new provision for care and service to crippled children\textsuperscript{34}). These programs involved some new aspects of administration and administrative relationships but did not enjoy the same support and financial commitment that the employment and retirement titles did.

4. Special Categories of Dependent Persons

Federal support of state-administered programs for special categories of dependent persons was provided by including in the act a system of "non-contributory pensions" for the aged\textsuperscript{35} and for mothers of dependent children.\textsuperscript{36} A comparable provision for the blind\textsuperscript{37} was added by the Senate, although it was not in the recommendations to the President or in the House adopted bill.\textsuperscript{38}

C. Summary

The American welfare system thus can be described as a series of provisions in each state for: (1) federally aided public assistance to specified categories of needy people; these provisions are known generally as "Old Age Assistance," "Aid to the Blind," "Aid to the Disabled,"\textsuperscript{39} and "Aid to Families with Dependent Children" (including, since 1961, families in need because the parent is unemployed\textsuperscript{40}); (2) a residual

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\textsuperscript{38} H.R. REP. No. 628, 74th Cong., 1st Sess. (1935).
\textsuperscript{40} 75 Stat. 75 (1961), as amended, 42 U.S.C. § 607 (1964). The name of the program was changed in 1962. See Public Welfare Amendments of 1962, § 104(a)(3), 76 Stat. 185. Prior to that, and still in some state legislation, the program was designated "Aid to Dependent Children" (in some states, "Aid to Needy Children"). In the same year a single
program, financed locally or by the state or in some combination, called "General Assistance," "General Relief," or some similar designation; plus (3) associated programs such as "Child Welfare," special state categories (for example, California's Aid to Potentially Self-Supporting Blind), and other local or state programs such as those for licensing facilities for crippled children, probation service, vocational rehabilitation, and the care of children and aged.

The system is administered either by a state department or by local departments under the supervision of a state department. The degree of supervision over local operations may vary between federally aided programs and those established solely by the state. For example, in California the State Department of Social Welfare exercises no standard setting, supervisory, or financial functions with respect to General Assistance. In a few states General Assistance is administered completely separately from federally assisted programs.

II
HOW THE SYSTEM FUNCTIONS
A. Organization and Structure

Federal public welfare functions under the Social Security Act are carried out by the Welfare Administration in the Department of Health, Education, and Welfare, headed by a Commissioner, and within that organization by the Bureau of Family Services with respect to public assistance and by the Children's Bureau for child welfare. The functions of program planning and development, formulating of standards, and deciding whether state plans qualify, are exercised by the professional and technical staff of the bureaus in Washington.

Bureau representatives are stationed in regional offices of the Department to provide field consultation and assistance to states and for performing most of the related field work. The regional staff members are responsible to the Washington bureaus but work under the Regional Director, who is responsible to the Secretary of the Department of Health, Education, and Welfare.

Accounting and auditing, merit system operations, and similar technical functions are carried out under other bureaus of the Department. Regional offices also include representatives of the United States Public Health Service, the Office of Education, Vocational Rehabilitation, and other branches of the Federal Department.

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41 CAL. WELFARE & INST'NS CODE §§ 13000-102.
State public welfare functions are ordinarily carried out by a state department or commission established under state law, responsible for administering the program or supervising its administration by local authorities. As of 1964, twenty-eight state programs were state-administered and twenty-two state-supervised. The three territorial programs and the District of Columbia were classified as "state" administered.\(^4\)

The responsibilities of state departments frequently go beyond those required by the Social Security Act. The department may be in charge of such other major operations as mental health, corrections, parole and probation, and various institutions of a medical or custodial character,\(^3\) or it may only supervise closely associated services, such as licensing, adoptions, or other specialties not specifically within the Social Security Act framework.

The difference between state-administered and state-supervised systems is one of relationship rather than structure. There is universally a headquarters staff that is responsible for overall program planning and direction, state plan development and maintenance, relationships and negotiations with federal authorities, and program evaluation. There is a field staff responsible for keeping local operations in conformance with standards and goals. In some states, the field staff are located in district offices.\(^4\) In others, they function as extensions of program or technical bureaus or as a field division, headquartered in the state central office.

Local offices are, of course, a universal necessity. Under a state-administered system, there is greater flexibility in establishing offices so as to secure optimal effectiveness considering the staff resources and the distribution of the risk population. When the program is administered as a part of a local jurisdiction—usually a county—many additional problems are posed. The problems range from that of smaller organizational units than may be desirable to ones of complex conflicts over methods, philosophies, and goals. Usually under such systems the local unit operates as a part of a local governmental structure responsible to the local governmental body, either directly or through a board or commission. Fiscal and budget operations must conform to local arrangements and usually differ from one jurisdiction to another. Ordinarily, state-supervised plans involve local sharing of costs. Arrangements as to state-local division of costs vary between states and sometimes within states as between purpose or programs.\(^5\) In California, for example, the county


\(^4\) *E.g.*, California and New York.

\(^5\) See Bureau of Family Services, *op. cit. supra* note 42 *passim.*
share of costs of aid given varies by program from one-seventh of the nonfederal remainder of the cost of Old Age Assistance to 32.5 percent of the nonfederal cost of Aid to Families with Dependent Children. Also, California provides no share of the nonfederal cost of administration. For programs not encompassed in the public assistance titles of the Social Security Act, state funds may or may not be provided to the locality. When the local administration is responsible to the local legislative body—which is accustomed to determining the policy within its jurisdiction—there is much opportunity for sharp conflicts, competitive interests, and major disagreements over statewide policies. Under these circumstances, personnel in the local units may find themselves severely circumscribed or having to meet additional local criteria and conditions.

Internally, organization of local administrations generally follows similar patterns regardless of the state relationship. Such differences as do exist tend to reflect size and complexity of the operation more than basic differences in organizational concepts. Usually there is a “direct operations” or case-carrying staff responsible for findings and decisions about applicants and recipients and for the agency’s relationships with such persons vis-à-vis benefits and services. The staff functions under one or more levels of supervisory personnel, depending on the size and complexity of the agency. The staff is ordinarily organized and assigned under concepts of social work operations, whether or not they have any particular training or background in social casework. They may be divided into units responsible for particular categorical groupings—aged, blind, disabled, for example, or in some instances by specialty or function—for example, intake, child welfare, and licensing. Casework personnel in larger organizations may be backed up by a number of specialty units or assignments—for example, special units for fraud investigation or for establishing property or relatives’ support resources, homemaker or out-of-home care arrangements and placement, medical social services, vocational and physical rehabilitation, and training.

Generally, the time and effort of local “direct operations” personnel have been pre-empted by requiring them to keep a system of elaborate cost control devices. These devices consist of investigatory procedures designed to assure down to the last cent the validity of each individual eligibility determination and to ascertain that each penny of the recip-

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46 CAL. WELFARE & INST’NS CODE § 15201.
47 CAL. WELFARE & INST’NS CODE § 15200.
48 CAL. WELFARE & INST’NS CODE §§ 15150, 15151.
49 In 1960 it was reported that public assistance agencies had “only 2% of qualified social workers among their caseworkers and about 15% in addition with partial social work training.” Advisory Council on Public Assistance, Report on Findings and Recommendations, S. Doc. No. 93, 86th Cong. 2d Sess. 28-29 (1960).
ient's is considered in computing the grant. This pre-emption of caseworkers' time has been coupled with a lack of organized service resources—other than those available through the native competence, ability, or general knowledge of the caseworker. Agency personnel generally lack specific formal training in direct services work, and other public and private agencies are not attuned to the needs and characteristics of the dependent population. These factors have combined to make the welfare system a method for assuring the continued existence of individuals at a level which effectively precludes much constructive achievement rather than a program of planned support geared to accomplishing a set of social and personal goals.

The 1962 amendments to the Social Security Act provide concepts and fiscal support for administrative efforts to enhance positive achievement. Fortunately, since the passage of the amendments, many favorable shifts are occurring. The added impetus given by the Economic Opportunity Act of 1964 has had a stimulating effect both in the immediate welfare system and among the related agencies. Progress is apparent in isolated instances but will be slow and is apt to be disappointing to the public, since it often is measurable only in terms of individuals rather than in significant trends. The hard fact remains that now, as when the Social Security Act was adopted in 1935, self-support independent of public aid cannot be a realistic goal for many nor an immediate goal for most. Providing a reasonable level of maintenance in such a way as to encourage preparation to use future opportunity will remain the basic service that can be provided. The manner in which this service is conducted will largely condition the degree of future dependence of the handicapped, the disabled, and the children and their "able-bodied" parents.

B. Supervisory Methods

In general, the processes of supervision between the Federal Department and state departments are comparable to those between state departments and the local branches. The following discussion surveys the commonly used methods.

1. Standard-Setting

Standard-setting is the process of formulating and enunciating standards having to do with benefits, procedures, and operations. Standards consist of: (a) required practice or provisions stated as "requirements"
or regulations; (b) recommended practice or policy regarded as desirable but not mandatory; (c) guides that define processes thought to be constructive ways of exercising responsibility or carrying out various functions, or that define criteria as to facts or evidence to be weighed in arriving at decisions. These three types may be separately set forth or combined in some form of handbook or manual.

The Federal Department in setting standards has used “implied” as well as specific requirements in the Social Security Act; but for the most part it has moved slowly and preferred to define standards “in terms of relatively flexible ‘principles’ instead of detailed methods or practices. Thus, the Bureau . . . does not apply detailed rules and regulations to state administrative methods comparable to those used by the national administrators of unemployment compensation grants . . . . The policy . . . does not, however, satisfy the need in definition of requirements for clear and distinct rules. . . . Under pressure from state and national sources, the Bureau . . . has turned increasingly to the use of more objective criteria for measuring state conformity . . . . [I]t has gradually felt it necessary, if not desirable, to ‘spell out’ methods of practices that the states must adopt in order to qualify for funds.”

Perhaps recognizing that a program’s goals can be compromised or circumvented by the way the program is administered, the Federal Department has tended to concentrate on methodology rather than results. This has led to criticisms by state administrators that the Federal Department has become too engrossed in administrative detail for which state authorities are responsible. States would prefer more definition of desired results and designation of criteria for measuring results than is now set forth. State administrators believe that they could be held responsible for achieving specified results expressed in “people” terms and for planning and executing such operations as may be necessary to achieve those results.

Perhaps one factor that has slowed the application of mandatory federal requirements has been the difficulty states have had in securing judicial review of controversies with the Federal Department. A recent enactment may provide this judicial review and afford the Secretary of the Department a better opportunity for standard-setting by freeing him from being the court of last resort.

The lack of definite federal standards has left to the states a significant role in standard-setting and establishing supervisory mechanism. What in effect has become the standard has tended to be, in terms of

“people results,” the lowest level of performance, process, benefit, or practice reflected among the state plans negotiated with and accepted by the Federal Department.

Even what constitutes a state plan has been quite indefinite. In essence, it has consisted of little more than a requirement that the state "submit for approval whatever materials are conceivably pertinent to the national conditions for grants. In practice this has included laws, administrative orders made in accordance with the laws, opinions of the attorney general, judicial decisions, manuals for state or local welfare staffs, annual reports, administrative bulletins, and administrative organization charts. For merit system plans, it has included all compensation and classification plans."

The concept that plans consist of statutory and operational detail rather than formulated goals and methods by which they may be achieved has been extremely confusing to those with whom state administrators must work. It certainly has not led to public understanding or to best relationships with legislators and control agencies. It has also tended to obscure for the poor what they may appropriately expect of the welfare system. There is some evidence that this concept of state plan is changing and that there may be positive developments that focus on purpose and results. For example, in the amendments of 1962 and of 1965 emphasis is placed on long-term goals and their achievement.

State standards for guidance of local operations tend to be much more definite than those of the Federal Department for the states. Their adequacy and their application with equity may be open to question but, for the most part, they provide a more specific guide for local operations. This is, of course, a necessity for state-administered plans. As to the state-supervised plans, many of the same criticisms of state standards exist that have been noted with respect to the federal standards.

2. Field Consultation

Field consultation is performed on a regular basis in the Federal Department through regional representatives and technical staff and in the states by various arrangements for field representatives or consultants. State representatives are sometimes assigned on a general basis and sometimes as technical specialists. Consultants provide an important avenue of interpretation, advice, and aid to local administrations, and serve as liaison between headquarters and local personnel. In both

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54 RAUP, op. cit. supra note 52, at 57.
the federal and state systems, such personnel commonly are not delege-
dated final authority, this being reserved in many respects to head-
quarters personnel. Field personnel commonly function in a sort of
"middleman" role. They are extremely important in maintaining good
relationships and in planning program substance.

Local administrations range in size from one man to thousands of
employees. Each size requires a different type of help from field person-
nel. The larger local administrations often command among their own
employees persons of considerably more technical competence and
experience than does the state administration in its field staff. The Fed-
eral Department has similar problems as between state departments of
differing size and complexity.

3. Administrative Reviews

The Federal Department and most states maintain some pattern of
administrative review of state and local operations. The patterns vary
from periodic specific evaluative assessments made by a field represen-
tative to rather broad studies performed by teams of technical and ad-
ministrative specialists. One former weakness of evaluative procedures
was that for the most part they were confined to a review of records and
documents, even with case reviews. This deficiency has been substan-
tially corrected by the "quality control" system discussed below. Ad-
inistrative review now tends to focus on operations and organization
rather than on cases.

4. Budget Estimates and Review

Most states maintain some system of budgetary review and ap-
proval. States are required to submit periodic estimates to the Federal
Department. In state-supervised systems, such as California's, much of
the budgetary control may be exercised by the local governing organiza-
tion. Greater authority and responsibility tends to rest at the level that
provides the least funds.

5. Expenditure Reports and Other Statistics

Federal and state agencies require caseload and expenditure reports
as part of an extensive reporting system designed to reflect the quality
and quantity of local operations. A chronic complaint of operating levels
is the heavy amount of paperwork involved. The entire area of data
accumulation is receiving major attention in many quarters.

57 RAUP, op. cit. supra note 52, at 64-65, 71-72.
58 See, e.g., LOCKHEED Missiles & SPACE CO., CALIFORNIA STATEWIDE INFORMATION
SYSTEM STUDY—FINAL REPORT (1965).
6. Fiscal Audit

Audits of lower departmental operations are required and carried out by both state and federal departments. They are usually carried out on a test-check basis, believed to be sufficient to test the integrity of fiscal transactions. Common practice is to deduct questioned items from amounts claimed unless the validity of the item can be established. Serious departures indicated by test-check findings may be followed up with audit operations in depth, and corrective action may be required.

7. Quality Control

A rather recent development in federal-state-local relationships and supervisory practices has been the federal requirement that states maintain a statewide test check sufficient to demonstrate the validity of case decisions. This requirement was imposed following the rather extensive congressional inquiry in 1961-62 into the question of welfare fraud. It is a logical extension of the "case-review" discussed above, but utilizes methods designed to correct some of the deficiencies of that system. For example, it requires interviews with recipients as well as record review.

When conducted at a level which satisfies only federal requirements, this operation has little value for state supervision of local practices. However, it is capable of expansion to provide both state and local administrators with comparative data as between local operations. Such data was formerly unobtainable, except through occasional studies. The methodology of quality control is still in a developmental state. Its scope is limited largely to testing the validity of eligibility and grant determinations. Its applicability to testing the quality of services to and relationships with the recipient and risk population is a potential yet to be explored.

8. Enforcement of Personnel Standards

The nearly universal use of merit employment systems throughout the welfare system is generally regarded as assuring high standards of performance. The imposition of civil service standards was an early source of controversy and was not required until 1939.69 The enforcement of merit system practices has absorbed a tremendous amount of effort and has detracted more attention from the development of staffing, performance, and workload standards than is desirable in view of the shortage of trained personnel. Only since 1962 has the Federal Department insisted

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on state effort along developmental lines. Without major attention in these areas, future enforcement will continue to emphasize technical observance of merit system procedures rather than solid performance.

9. Fair Hearings

The appeal, or fair hearing, process has not been extensively used in many jurisdictions and in others may be seriously compromised by the imposition of "pre-hearing processes." It has, when used, provided an opportunity for individuals to secure modification of actions of local officials and provided a base for examining the policies and standards underlying those decisions.

Generally, the fair hearing process has had extensive use in those jurisdictions where individuals were supported through organizations or outside sources operating in the interest of special groups. For example, in California fair hearings have been a major tool of the California League of Senior Citizens. In the state of Washington, the Washington Pension Union effectively used fair hearings to influence policy during 1940-50.

The main shortcomings of the fair hearing process appear to be two. First, the prosecution of an appeal demands a degree of security, awareness, tenacity, and ability which few dependent people have. The same factors which compel the dependent person to avoid controversy in settling grievances make him avoid this avenue. He may create more immediate problems than he would face by accepting the initial decision. Second, there is an administrative tendency to use the existing policy to justify the action rather than to use the situation to question the policy. In most states the authority responsible for the decision on appeal is the same authority responsible for the basic policy.

10. Enforcement of Conformity

Both the federal government and the state may withhold funds when there is failure to conform to standards and requirements. There is, of course, great reluctance to employ this device because of the widespread impact on the lives of individuals, particularly in those states where federal funds provide up to three-fourths of the total expenditure. That fact also has made it reasonably effective where it has been threatened or employed. More often, reliance is placed upon negotiation and other forms of enforcement, such as exceptions to certain cases or expenditures. Amendments in 1965 giving states the right to judicial review\(^6\) may encourage use of the stronger measure but they may also prolong the nonconformity.

Under state-administered systems, the actions to enforce conformity by local units are usually not distinct from the ordinary administrative sanctions—dismissal or discipline, for example. State-supervised systems, such as California's, have problems comparable to the Federal Department; thus compliance is usually achieved through negotiation without resort to the ultimate sanctions. Such states commonly employ the system of exceptions, and some, by law, may withdraw state support. This withdrawal of support from a local jurisdiction includes withdrawal of federal funds, creating a dangerous situation for the state as a whole, since one of the basic federal requirements—that of statewide effectiveness of programs—is not then met. California, which has withdrawn funds upon occasion, has successfully limited the withdrawal to administrative funds.

Resort to the courts to compel compliance through injunctions, mandamus, or certiorari has been commonly available to state supervisory agencies. In addition, provisions sometimes exist by which the state authority can assume or "take over" local authority and responsibility for as long as is necessary.

III

WELFARE PRINCIPLES

The Social Security Administration in 1950 described social welfare in the United States "as encompassing the development and administration of (1) social insurance, (2) social assistance, and (3) other social services designed to strengthen family life and to provide care and protection for special groups such as children, the aged, and mentally, socially, or physically handicapped persons."

This definition, useful for certain purposes, is narrow and misleading. Its emphasis on methodology and its use of the term, "social services," tends to raise more questions than it answers. It reflects more the standpoint of the administrator than of the citizen user. It appears to exclude those functions vital to individual welfare that do not come within the scope of whatever is read into the term "social services." Nevertheless it would probably be accepted as accurate by most now engaged in "welfare" practice.

Friedlander's definition goes so far to the other extreme that it is difficult to see either the object persons or the methodology:

Social welfare is the organized system of welfare services and institutions designed to aid individuals and groups to attain satisfying standards of life and health. It aims at personal and social relationships

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which permit individuals the development of their full capacities and
the promotion of their well-being in harmony with the needs of the
community.\textsuperscript{62}

It is difficult to identify any particular public service or element of private
and public social and economic life that would not come within this defi-
nition. It does have more clarity as to purpose and result than the former.
However, it still reflects the concept that welfare services are those things
done by the community in carrying out some obligations toward others
—of doing for. It carries little hint of entitlement.

Current trends underscore the need for redefinition along the following
lines: The welfare system comprises those specialized benefits, personal
services, or applications of general public services which disadvantaged
persons may use to resolve problems that restrict their enjoyment of
opportunities for maintenance or participation in society to a level sub-
stantially below that realized by the average citizen.

Such a definition avoids associating the system with one specific
discipline, provides a purpose related to the user, and avoids begging the
question of right to use. Many would argue that such a definition ignores
those needs that all persons have in common or may face at some time.
The fact remains that it is relatively easier for a group of people to
organize those things which they need in common. Individuals, if not
able to solve their problems with their own resources, would fall within
the definition. Major difficulty usually occurs when the available methods
and resources are either unusable by or unavailable to the disadvantaged
individual, and some special effort or program is required. The special
arrangement commonly becomes suspect in the eyes of the public.

Whatever the specific program content at different times, “welfare”
in America has dealt primarily with those who were regarded to be mis-
fits or relics of the common social and economic system. It has repre-
sented a form of legal obligation to provide in some manner for at least
those who “through no fault of their own” had no other recourse but
complete destitution.

\textbf{A. Congressional Purpose—The Social Security Act}

The inclusion of federally aided categories in the Social Security Act
is generally regarded as a turning point in the American welfare system
—a marked departure from the practices under poor relief. Most social
workers and many others attribute this turn to the legislative endorse-
ment of new principles for administration and to the statutory adoption
of new standards and methods. A case is made that public assistance and

poor relief are completely distinct. Vasey, for example, claims that unlike
poor relief, "public assistance places much more emphasis on the dignity
and rights of the individual recipients . . . and attaches more importance
to how people are treated and assisted."63

Cohen, on the other hand, commenting upon some aspects of Aid to
Dependent Children, points out that many important details which we
regard as "fundamental, underlying, basic principles" of the program
were matters of compromise or resulted from congressional desire to have
standards and definitions consistent with those established for Old Age
Assistance.64

The framers of the Social Security Act were concerned primarily with
the unemployed and the aged. The main elements of the act dealt with
unemployment compensation and the compulsory retirement system. Old-
Age Assistance was an almost mandatory interim arrangement due to the
phasing arrangements of the retirement system. Having formulated the
concepts for operating the retirement benefit program, it was natural that
there be some carry-over to the categorical assistance programs. The
treatment given the categories, both in the preparatory recommendations
and in the congressional consideration, seems to have been at a com-
paratively low key. So similarities in statutory detail were probably not
matters of basic design. It appears likely that Congress desired to rock
the boat no more than was necessary to justify the use of federal funds
and to encourage the states to extend coverage to people who were then
being cared for at federal expense.65 The Senate report, for example,
clearly indicates that there would be no major disturbance of state prac-
tice with regard to "worthiness": "The limitations of subsection (b) [of
Section 2, Old Age Assistance] do not prevent the state from imposing
other eligibility requirements (as to means, moral character, etc.) if
they wish to do so."66 Almost identical wording was repeated with respect
to Aid to Dependent Children. Similar language was used in the House
report.67

The extent to which practice under the Federal Emergency Relief
Administration varied from the poor law practice was evidently intended.
The report of the Committee on Economic Security indicates, however,
that thinking was geared more to ideas of "humane treatment" than to
conscious concepts of rights. It was apparently thought that families under

(1954).
state programs could best be assisted through the tried procedures of social case work, with its individualized treatment. Further, the Committee stated, "While the standards of relief administration have been so greatly improved in these last years of stress and strain, the old poor laws remain on the statute books of nearly all states. . . . The Federal Government should insist as a condition of any grants-in-aid that standard relief practice shall be used . . . to preserve the gains that have been made."68

Aid to Dependent Children was then, as it has remained since, the step-child of the welfare system. So little importance was attached to it by the congressional framers that Edwin Witte, the Chairman of the Committee on Economic Security, is quoted as saying, "Nothing would have been done on this subject if it had not been included in the report of the Committee."69

In other respects, the Social Security Act indicated that Congress had little intent of providing the same basic assurances to families as were given to other categories of recipients. A less favorable federal sharing formula was provided (one-third70 as compared to one-half71), and increases in federal contributions for Aid to Dependent Children have consistently been less than for the aged, blind, and disabled.

There was clear indication that categorical programs were to be controlled and guided primarily by local fiscal commitment rather than by concepts of need and basic entitlements—a characteristic that has persisted throughout the history of the programs. The Senate added to the House-adopted bill an additional statement of purpose—that of providing funds to enable each state to furnish assistance only "as far as practicable under the conditions in such State."72 This statement replaced one relating to the provision of adequate standards of care.

The Congress was in some respects, however, more liberal than its advisors and the drafters of the bill. An open-end appropriation, like that for the aged, was substituted for the proposed closed-end appropriation.73 Framers of the original proposal had assumed that, if necessary, funds would be prorated among the states. They also assumed that there would be waiting lists of eligible persons. The 1950 amendments went further by adding the requirement that state plans furnish aid "with reasonable promptness to all eligible individuals."74 The amendment has been at-

69 Cohen, supra note 64, at 204.
71 E.g., Social Security Act of 1935, ch. 531, § 3(a), 49 Stat. 621 (Old Age Assistance); § 1003(a), 49 Stat. 646 (Aid to the Blind).
73 Cohen, supra note 64, at 205.
tributed “to the strong feeling of ‘equity’” in the mind of lawyer members of Congress and to the belief that waiting lists could give rise to undesirable discrimination and preferences.  

The federal commitment was to a hope for progress within each state based upon the availability of supplemental federal financing rather than to a set of clearly formulated national goals related to quality of services, quality of benefits, and measurable results for individuals.

B. Achievements Under the Act

The achievements of the welfare system, though far from satisfying to many, have afforded a marked contrast in some respects to the poor law and to the administration of General Assistance under extensions of poor law principles. What has accounted for this?

Perhaps the most important contribution to a different aura was the entrance of the federal government into a role of continuing direct responsibility for the care of needy people. The law established the individual’s immediate welfare as a matter of national concern entitled to consideration in the deployment of national resources. Cracking four hundred years of complete relegation of the poor to the largesse of their most immediate neighbors was bound to have psychological consequences as significant as the fiscal.

Another important element was the series of requirements imposed upon states as conditions for receiving federal grants-in-aid.  

The number

76 Cohen, supra note 64, at 209.

76 Aside from the special requirements imposed under 1965 amendments pertaining to medical assistance under a new title, 79 Stat. 344, 42 U.S.C. § 1396(a) (Supp. I, 1965), the requirements include:

1. Statewide operation;
2. State financial participation;
3. Administration by or under a single state agency whose requirements are mandatory upon local agencies;
4. Proper and efficient methods of administration including maintenance of personnel standards on a merit basis;*
5. Protections against release of information about individuals;*
6. Opportunity for anyone to apply and have determination of eligibility made promptly;*
7. Opportunity for hearing and adjudication of grievances;
8. Submission of reports as required by the Federal Department;
9. Consideration of any income and resources (with some exceptions);*
10. Maintenance of standards for institutions;*
11. Notice to law enforcement officers in case of abandoned or deserted children;*
12. Prohibition of concurrent aid under separate programs;*
13. Freedom of choice as to source of eye examination in determining blindness;*
14. Description of services provided;*
15. Development of plan for service to each child;*
16. Limits on imposition of residence restrictions;

* Added since passage of the Social Security Act in 1935.
of requirements, relatively few in the original act, has been almost doubled by amendments. The requirements vary between categories; there are differences as to specificity and ease of interpretation, with most lacking objective criteria. Some are expressed negatively and others positively. But regardless of the rationalizations and interpretations advanced by their legislative authors, they have left much room for achievement through administrative procedures.

Four of these standards warrant comment as affording the sharpest contrast with poor law practice and tending to have the greatest impact on individuals and how they fare under the program.

First, the requirement that the program be in effect in all political subdivisions and be administered by or under a single state agency whose rules, regulations, and standards are mandatory on local administrative authorities was probably designed as little more than assurance that there be programs available everywhere. Geographic coverage rather than quality of care appears to have been the primary goal. Although the framers disliked imposing federal standards, they did desire a strong state standard-setting role.

The limited objectives of the framers and their reluctant delegation of authority to the Federal Department has not prevented steady progress toward standardization of practice under requirements imposed by the Federal Department. Raup, for example, in describing the evolution which has occurred quotes former Commissioner Arthur Altmeyer as testifying repeatedly in 1949 in hearings before the United States House Ways and Means Committee that, "We require the states, of course, . . . to establish statewide standards for determining needs.' The legal grounds for the requirements, according to Commissioner Altmeyer, are implied in three requirements of the Social Security Act—those for 'statewide' operation of the plan, for financial participation by the state, and for fair hearings: 'The law calls for a state plan, and not a county-by-county series of plans. The law calls for state financial participation. The law calls for the giving to any applicant who feels aggrieved what the law calls a fair hearing. We believe that it is implicit in all of these provisions . . . that the Social Security Act contemplated that people equally in need under a State plan should be treated consistently.'

The federal interpretation of these requirements has been to increas-

17. Limits on imposition of age restrictions;
18. Limits on imposition of citizenship requirements;
19. Limitations on payment of benefits except in money (see text at pages 349-50 infra).
77 See Raup, op. cit. supra note 52, at 49-54.
78 Id. at 50.
ingly assure "that assistance and other services provided by law and by the state plan will be available to the same extent and under similar circumstances to all eligible persons regardless of the locality in which they live."\(^7\) Achievement leaves much to be desired, but substantial standardization has occurred, more within states than among them.

Second, the requirement that the state plan must provide opportunity for anyone wishing to do so to apply for assistance or service and to have the application acted upon with reasonable promptness was not added until 1950.\(^8\) Its deferred addition is eloquent testimony to the persistence of poor law practices. The intervening period saw considerable conflict over whether the right to file and receive prompt attention was essential in developing proper and efficient administration. The issue has not been resolved. There continue to be those who believe efficient and proper administration is measurable only in immediate dollar outlays and those who see it in terms of equal access to benefits and services. Much remains to be done along this line.

Third, the requirement that benefits must be provided in the form of money payments, unrestricted as to the particular way in which the individual chooses to apply them towards his needs, is stated only obliquely in the act. It is not directly mentioned as a condition for state plan approval. During the early years it was rigidly followed. The only deviation until very recently was with respect to medical care, for which vendor payments were permitted. This principle was in sharp contrast to usual practice under the poor laws, which had already been substantially modified under the Emergency Relief programs. "The poor law was administered in accordance with the belief that the recipient must not be considered competent to manage his own affairs."\(^1\)

Federal authorities never contended that money payments were appropriate for every individual. It was maintained that federal aid was intended for those who were competent to manage their own affairs properly or who, under appropriate state law, had guardians or other persons entitled to act in their behalf. The care of incompetent individuals, such as those in custodial institutions, remained a residual responsibility of the state without federal aid. This approach, however, has become less tenable as states have indicated their reluctance to continue accepting the cost of residual responsibility, and have become committed to the idea that the cost of caring for the poor is properly a responsibility to be


\(^1\) VASEY, op. cit. supra note 63, at 143.
shared by the federal government. Thus the issue has shifted from one of whether "incompetents" should be included to one of how they can be included without violating the basic principle of money payments.

The principle has always been under attack, mainly in connection with Aid to Dependent Children, where it is inextricably involved with efforts to control family use of inadequate benefits and with public distrust of welfare recipients. While it was probably a carry-over from the concept as applied to the aged in the initial provisions of the act, Congress has been amazingly constant in resisting substantial change. Cohen, for example, quotes Senator Milliken as saying in 1950 to persons advocating modification, "We want to make the acceptance of assistance as consistent with human dignity as possible. . . . Now, when you commence to set up a detailed category of what he must spend his money for—[it] . . . can be carried to a point where most people would say that it is not American."82

There have been important modifications in recent amending legislation.83 Most people, at least nominally, acknowledge the overall principle of money payment and personal management as sound. Yet it is questionable that the recent modifications will satisfy those who have persistently sought modification. The fact that alternative payment methods consume more personnel and administrative time, particularly if coupled with standards for utilization and accompanying service, provides little assurance that erosion of this principle will not continue.

Fourth, the opportunity for a fair hearing before the state agency for any claimant whose claim is denied or is not acted upon with reasonable promptness is of major importance. This requirement is discussed above as a method of supervision.84

At least two requirements added since the original act generate problems inconsistent with recent rehabilitative objectives and lend themselves to discriminatory practices.

First, state plans must provide that in determining need all income and resources of a person or family must be taken into consideration. Superficially this seems closely related to the matter of uniform treatment. In actual practice, it has tended to negate motivation of recipients toward independence, to provide many of the most frustrating administrative

82 Cohen, supra note 64, at 210-11.
84 See page 342 supra.
and supervisory problems in defining criteria for eligibility, and to keep open many avenues of procrastination and restrictive and discriminatory practice. It has tended to sacrifice the sound planning and providing of minimum security and welfare for recipients to those considerations relating to the smallest immediate cash outlay possible. Further, the present accuracy of measurements of needs is dubious at best—few states are able to provide any measure approaching a standard of adequacy.

Second, the plan for aid to dependent children must provide for prompt notice to law enforcement officials when aid is granted to a child deserted or abandoned by his parent. Though enacted as an aid to enforce the absent parent’s responsibility to support, the lack of uniform practice among prosecuting attorneys, the persistent confusion of the function with that of fraud prosecutions, and the general inability of dependent persons to defend themselves in the face of investigations by law enforcement officers have created a multitude of opportunities for discriminatory and abusive treatment.85

Though offering many sharp contrasts to poor law practice, the principles enunciated in the federal law are obviously not, nor were they apparently intended to be, comprehensive assurances of either a certain level of benefits and services or a particular manner in which recipients are to be regarded. Vast areas of discretion are left to the states. State statutory provisions in sharp or direct conflict with federal requirements have almost universally been modified, but short of this the extent to which principles have been given effective expression has been largely a matter of degree, varying state by state, and frequently from time to time, depending upon local issues and attitudes. In almost every state there are variations between local jurisdictions which in some instances are almost as great as the variations between states.86 Such differences, even measured only in monetary terms without regard to the more subtle aspects of relationships to recipients, may be greater in those states in which county rather than state authorities administer the program—the so-called “state-supervised” programs.

Thus while the expanded potential for financing and the conditions attached to receipt of federal funds are important influences, as Vasey has pointed out, “how they are enforced or promoted and the pattern and quality of administrative relations among the participating levels of government may be equally or more important . . . ”87

85 For a full discussion of this subject, see tenBroek, California’s Dual System of Family Law, 17 Stan. L. Rev. 659-71 (1965).
86 See text accompanying note 89 infra.
87 Vasey, op. cit. supra note 63, at 321.
C. Implications for the Future

There can be little question that the welfare system has alleviated to a very marked degree the most onerous conditions and methods by which needs of the poor were earlier met. That it has produced any definitive solutions for providing economic security to either the communities or the recipients is being severely challenged, at least partly on the basis that the arrangement is not sufficiently systematized because: (1) It lacks specific objectives and fails to focus on the risk population; (2) it fails to take into account the conditions that create welfare problems; and (3) it does not command the necessary means for appropriate action.

Recent considerations of this matter by the California State Social Welfare Board clearly indicate that concepts of the "welfare system" must be broadened to include not only the functions of the nominal "welfare agencies," but also many functions performed by other public organizations not particularly identified by the public as such agencies. These functions include education, health, employment, housing and code enforcement, mental health, and correctional or law-enforcement organizations. Thus the above criticisms apply in some degree to all those agencies which in fact form the "welfare family of agencies."

As described for the California State Social Welfare Board in a recent document, a "welfare system" needs:

1. To be directed toward the specific risk population encompassing:
   a. The unemployed and marginally employed—those who, because of recurrent unemployment, seasonal unemployment, or low wages, do not receive a year-round income sufficient to support themselves and their families at a subsistence level;
   b. Families without breadwinners, for whatever reason, with incomes below the subsistence level;
   c. The disabled, whether from age or other reason, with incomes below the subsistence level.

2. To take into account and be geared to specific risk conditions limiting employability, specifically:
   a. Low-grade skills;
   b. Low-grade education;
   c. Limitations on ability to take advantage of resources for improving skills or education (for example, lack of transportation, lack of child care, lack of counseling);

d. Low motivation, particularly pervasive feelings of being excluded, not being cared about, or being cut off.

3. To command the means of creative and pertinent action, including:

   a. Support, including supplemental income up to some common level of subsistence on a consistent basis and related to annual income, and the buttressing of skill-raising, education-raising, and motivation-raising results;

   b. The establishment and articulated use of all employment, training, educational, counseling, casework, and supporting social services;

   c. Administrative and management practices under which the use of personnel, the efficiency of paperwork, the costs and fiscal limits, and the articulation of the public welfare role with those roles of other departments which are in fact part of the total welfare system, are designed, used, and evaluated in terms of people-centered results—that is, their impact and efficiency in modifying the risk factors and enhancing the capabilities and achievement of those within the risk population.

The welfare system has not yet produced a system for like treatment of individuals in like circumstances—in terms of benefits, qualifying conditions, or treatment. In benefits, for example, assistance for the aged ranged from a state-wide average of as low as thirty-nine dollars per month to 122 dollars in September 1965—a variation of over three hundred per cent. In the family program, average benefits ranged from a low of about thirty-seven dollars per family to more than 237 dollars. Recipient rates also vary substantially, indicating varying eligibility criteria. In September 1965, New York and California, with nearly equal populations, had 56,972 old age assistance recipients and 273,316 respectively. Within states, variations, often marked, are found. For example, in California, in which aid standards are set by the state department, average monthly benefits to the disabled during the quarter ended June 30, 1965, varied by county from 71.45 to almost 112.89 dollars. In the family program, the average payment per person varied from about 37.99 dollars

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80 Id. at Table 7.
81 Id. at Table 3.
82 Cal. State Dep't of Social Welfare, Public Welfare in California, Table 2 (Statistical Series PA 3-72, Sept. 1965).
to almost 56.97 dollars. Such differences remain largely unexplained, let alone justified.

With respect to adequacy of benefits there are marked differences throughout the country between categories as well as between states and localities. The adult categories, particularly the aged, tend to fare much better than families. This subject was extensively explored by the Advisory Council on Public Assistance in 1959. Staff reports pointed out that not only did most states provide inadequate benefits according to their own standards of need, but, more importantly, in the AFDC program only one state’s standard met the U.S. Department of Agriculture standards for measuring needs of low income families.

Inequities of this magnitude in the tangible aspects of how people are treated strongly suggest the existence of equally great differences in the way that welfare organizations relate to the needy individuals attempting to utilize the programs. Much remains to be done to systematize and humanize the “system” and to make it the kind of institution that conforms to the American ideal of public service.

One of the factors most frequently cited by state and local jurisdictions to rationalize the inequities is their inability to finance the needed programs. This article does not elaborate the problems or systems of financing. Suffice it to say that the base provisions for federal sharing, which have steadily increased, have been changed more frequently than any other portion of the act. The principle of equalization, a prime justification for federal financing in many fields, was not an initial requirement of the act. Recent changes have moved in this direction but no firm conditions have yet been attached to federal financing. Thus the inadequacies and inequities known to exist in many of the states in which the Federal Department makes its largest proportionate investment must be attributed to the lack of federal standards. Federal financing in these states has reached the level of eighty per cent.

In those states in which local levies provide the contribution of the local jurisdiction—largely the state-supervised systems—slight progress has been made towards state-wide equalization. The total amount thus financed is often extremely small, but since the level of total expenditure within the state is often determined by the local share, local attitudes—reflecting among other things a reluctance to contribute and local competition with other purposes considered more directly in the interest of

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93 Id. at Table 2A.
95 Id. at 54-68.
local voters—provide powerful incentives for every form of restrictive practice.

The lack of equalization could well be the major factor, whether at the federal-state or the state-county level, behind the failure to achieve equity in the administration of the programs. Failure to correct this deficiency could well contribute to the continuation of the present inadequacy and ineffectiveness of standards and administrative performance.

The implications of the Economic Opportunity Act of 1964 to the conventional welfare system are still unclear. Some titles of the act are direct descendents of work relief and conservation programs of the depression years. Title V of the act applies specifically to persons receiving public assistance and provides one hundred per cent federal financing for programs intended to upgrade employment skills. Many local communities have been unable to constructively use available funds due to the general lack of supportive services in the community. The unavailability of adequate, inexpensive child care facilities, for example, hampers the involvement of significant numbers of mothers in training programs of any kind. The inability to finance needed medical care services for adults in the family program is another hindrance to participation. The slums and ghettos of the inner city where poverty is most impacted have been found to be graveyards when it comes to adequate public services.

Many local communities have very mixed feelings about training programs within the welfare system. Some are reluctant to attempt to train more people for an overcrowded local labor market. Some groups prefer a reservoir of untrained labor to meet peak seasonal demands. Popular attitudes about the "undeserving" poor, who are equated with the family program recipients, tend to dampen local support. In many instances, local training programs have been little more than work relief projects thinly disguised as work conditioning experiences. Such subterfuges have tended to make the training aspects of the program appear punitive rather than helpful. Serious questions, as yet unanswered, have arisen as to the efficacy of training programs within the framework of the welfare system, especially when those programs are under local auspices.

Title II of the Economic Opportunity Act is only indirectly related to the conventional welfare system, yet it represents the most dramatic challenge to traditional attitudes about the poor. This title provides ninety per cent federal funding for programs sponsored by local communities in their efforts to combat poverty. The programs are to be put

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together by representative boards and the act specifies that these boards are to include "maximum feasible participation of the poor"—not "doing for" but "doing with." The statutory interpretation by the Office of Economic Opportunity has led to considerable political turmoil. There is no denying that the law has granted to the poor the right to participate in the decision-making process as it affects them and the communities in which they live. There is also no denying that the poor have had to put up quite a fight to stay on the inside.

This conflict, which has been concentrated in the major urban centers, has had an effect on the welfare system, although judgments about the effect would be premature. The people on welfare live within the target areas of the act because they are maintained in poverty. Many have grievances against the welfare system as well as other parts of the community structure. The neighborhood councils and boards provide forums for the coalescing of opinion and the breeding of remedial action. In many instances, representatives of the welfare system participate on these councils and gain added insights into how they are perceived by the people they think they are helping. Even more important, the poor, including those on public assistance, are becoming organized and articulate. To the extent that they are successful, programs, including public assistance, will be modified to meet their more insistent demands. Perhaps then the professional managers of many of the public systems will know what they are to do and how they are to do it.

\[07\] See generally Comment, 75 Yale L.J. 599 (1966).