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Gene Nichol

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Poverty and Equality

Gene R. Nichol¹

Joel Schwartz, *FIGHTING POVERTY WITH VIRTUE: Moral Reform and America's Urban Poor 1825-2000*, 353 pps. (Indiana University Press, 2000).

Elliott J. Gorn, *MOTHER JONES: The Most Dangerous Woman in America*, 408 pps. (Hill & Wang, 2001).

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

Schwartz book seeks to provide moral, philosophical and historical sustenance for these initiatives. He focuses on four 'largely forgotten figures'⁵: Joseph Tuckerman, a Unitarian minister who served the poor in Boston in the 1820s and 1830s; Robert Hartley, founder of New York's Association for the Improvement of the Poor; Charles Loring Brace, a Methodist minister who directed the New York City Children's Aid Society in the mid-19th century; and Josephine Shaw Lowell, a civil war widow who helped found New York's Charity Organization Society in 1882. Examining their individual careers, Schwartz documents their collective belief that 'the poor can best help themselves by practicing humble virtues like diligence, sobriety and thrift.'⁶ We can

¹ Dean and Burton Craige Professor of Law, University of North Carolina

² "The End of Welfare As We Know It?", Jan. 3, 1996, U.S. News & World Report, p. 32; New York Times, Nov. 13, 1995, Sec. A, p. 1.

³ See, Vol. 111, No. 6 COMMENTARY, p. 19, Leslie Lenkowsky. See, also, Joel Schwartz, Bracing Lessons for Bush, *The Weekly Standard*, Sept. 11, 2000, p. 16. discussing President Bush's 'compassionate conservatism': "Governor Bush particularly supports faith-based charities, which 'have shown the ability to save and change lives'. The jacket to Schwartz' book advertises it as exploring "the effects of a 'compassionate conservatism' in the past." [Inside front leaf].

⁴ The jacket also advertises that "the author discusses the renewed commitment to a self-help strategy for fighting poverty evident in the widespread interest in the work of faith-based charities and recent shifts in public policy. [Inside front leaf.] Mr. Schwartz has also lauded the role of faith-based initiatives in "doing much to encourage the poor to fight poverty with virtue." Joel Schwartz, "What the Poor Need Most", Vol. 12 *The American Enterprise*, No. 2, p. 52-54, March 1, 2001.

⁵ Moral Reform, at p. xvi.

⁶ Moral Reform at xvii.

make the poor “less poor”, they claimed, “by making them more virtuous.”⁷ Poverty policy is moral, not economic. Changing behavior is more vital, and more beneficial, than transferring cash.

If this sounds newly familiar, it should. After “a long historical detour,” Schwartz writes, happily “we are returning to an anti-poverty approach reminiscent of [these] moral reformers.”⁸

And no one, it seems, could be more out of step, less concordant, with the dominant trends of modern American poverty policy than Mary Jones, the colorful, courageous labor organizer who U.S. Attorney Reese Blizzard once labeled “the most dangerous woman in America.”⁹ Elliott Gorn’s first-rate biography of “Mother” Jones, the “mother of the commonwealers”,¹⁰ effectively chronicles the life of a rabble-rouser unlike any on the political landscape today—even at the fringes. Amidst violence, massacres, boisterous organizing tours, surprisingly powerful electoral campaigns, and countless strikes, successful and unsuccessful, Mother Jones fought for decades to lift the fortunes of the economically powerless.

For Jones, the “lived experience of class” gave “insight into the suffering of working families”—a suffering that boldly contradicted the vacuous homilies of American equality.¹¹ Accordingly, she sought to turn our much-applauded civic religion to radical social change.¹² Reaching across barriers of race, gender, ethnicity and citizenship, Jones worked to offer the excluded hope for redemption¹³-- making real the promises of the American democracy.

She had no use for charity, only justice.¹⁴ She did not seek to improve the poor, but to empower them. She had few doubts about the causes of poverty. “I know what Lincoln would say to the crew on Wall Street,” she spat, “the nation first, and you last.” Introducing a group of mill children to a university audience at Princeton, she cried, “there’s your treatise on economics—they get three dollars a day.” Rough and tumble to the end, she dreamed that working people would organize to create a just society. For Jones, rank, systematic, unyielding poverty was not a “teachable moment.” It was, instead, a rejection of the undergirding premises of democratic government. Citizens were sensible, therefore, to struggle to defeat it, to govern themselves, to secure their dignity. Equality was not a gift, but a demand of justice. And Mary Jones was willing to demand it.

⁷ Moral Reform at xv.

⁸ Moral Reform at xvii-xviii.

⁹ MOTHER JONES: The Most Dangerous Woman in America (2000), p. 96.

¹⁰ Mother Jones at 63.

¹¹ Mother Jones at 303.

¹² Mother Jones at 184.

¹³ Mother Jones 270.

¹⁴ Mother Jones at 99.

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

I. Reforming the Poor

For 19th century reformers like Tuckerman, Hartley, Brace and Lowell, assisting the poor was a moral rather than economic endeavor. Despite their individual differences, they shared a belief that society could best help the impoverished by enabling them to help themselves through the inculcation of virtue. All four openly sought to manage the behavior of the poor. They consistently opposed “the dole” and other welfare plans which would only work “to pauperize” recipients.¹⁵ Instead, they sought, through personal contact—typically by wealthier volunteers offering guidance and counseling—to teach diligence, sobriety and thrift to those trapped at the lowest rungs of American society. By learning to practice certain character traits, even the poorest among us would become self-reliant. Since destitution and misery resulted from “moral causes”, they would “admit only to moral remedies”.¹⁶ People who practiced virtue, generally speaking, would escape poverty. No mere economic program would manage that.

Of course, the hard edge of such poverty policies eventually fell from favor. Critics like Jane Addams and Walter Rauschenbusch, as Schwartz explains, derided the focus on “industrial” virtues, and emphasized structural causes of poverty.¹⁷ The ravages of the Great Depression made it difficult to maintain that a third of Americans merely lacked requisite character. And modern poverty analysts like William Ryan and Frances Fox Piven convinced us, at least by the 1970s, that blaming the victims of poverty for its pervasiveness was neither accurate nor effective.¹⁸

Still, Schwartz finds the “moral reformers” enlightening. At the least, they remind us that largesse alone can hardly end the specter of poverty. We practiced moral reform for generations, even if success was less than complete. Then, with the advent of the depression and the 1960s, we stopped asking the poor to help, and to correct, themselves. Now, thankfully, Schwartz finds, we’re returning to higher ground. And we return to it at a time in which the prospects for success are powerfully improved.¹⁹ The reformers may have been wrong to think that poverty could be cured by focusing on people’s habits alone. But modern welfare policies have also demonstrated, convincingly, that unconditioned dollars lead to dependency. So the welfare reformers are on the right track. Both logic and history, in short, are on their side.

¹⁵ Moral Reform, at xvi.

¹⁶ Id at xvii.

¹⁷ Id at 109-130.

¹⁸ Id at 133 et seq. William Ryan, *BLAMING THE VICTIM* (1971); and Frances Fox Piven & Richard A. Cloward, *REGULATING THE POOR: The Functions of Public Welfare* (1975).

¹⁹ Id at 212; 211-237.

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

But Schwartz' book is not history, or not history alone. It ventures back and forth from nineteenth century practice, to occasionally inserted philosophical meanderings,²⁰ to twenty-first century policy disputes.²¹ This may lend freedom to form. It also, though, gives the historical investigations a strongly diminished credibility. Like "lawyer's history", it can seem designed merely to sustain previously determined positions. Schwartz goal, therefore, appears to be something different than constructing a history of poverty policy. Steeping ourselves in the lives of Tuckerman, Hartley, Brace and Lowell, may convince us, he thinks, of the power and desirability of modern welfare reform measures designed to force more constructive habits on recipients. That may be Schwartz' purpose. He does not, however, present a very appealing case.

There are, first, the obvious reasons this is so. The 19th century moral reformers were not notably successful, and they eventually grew quite pessimistic about their own prospects for changing people's behavior. Character reform, one of them wrote, is "devoutly to be wished, seldom achieved."²² Lowell eventually moaned that "it produces but small results", while Brace claimed it is "like pouring water through a sieve."²³ Nor are the reformers efforts helpful in dealing with the modern era's largest welfare "character" issue—the decomposition of the family.²⁴ The complexities and challenges of single-parent families, so integral to welfare challenges today, were far less severe a century ago.²⁵ As a result, they constitute no significant part of the reformers' agenda. Schwartz' studies also frequently show a powerful ability to ignore the structural causes of poverty. His aficionados accepted poverty's existence as given, essentially "unalterable".²⁶ They not only opposed relief,²⁷ but also spoke out against housing subsidies,²⁸ more humane working hours,²⁹ and stimulus efforts to create urban jobs.³⁰ They showed no interest in

²⁰ See the amateurish use of Plato's concept of self-knowledge at p. 68.

²¹ Id at 9, 41, 49.

²² Moral Reform at 76; 74.

²³ Id at 85, 87.

²⁴ Schwartz concedes those drawbacks repeatedly. *Fighting Poverty* at xxii, 58, 220.

²⁵ Id. Family decomposition, of course, has a tremendous impact on poverty. And the trends are alarming. In 1958, five percent of children were born to unmarried women. By 1969, it rose to 10. In 1980, eighteen percent of kids were born to single women. In 1999, the figure was 33%. In 1999, 48.4% of children born to women between the ages of 20-24 were born to unmarried mothers. See, Raleigh News & Observer p. 23A, Col. 1 "Lessons Unlearned in School Bill", January 6, 2002.

²⁶ Id at 7-8.

²⁷ Id at 19-21.

²⁸ Id at 90.

²⁹ Id at 28.

³⁰ Id at 19.

social security, workers' compensation or unemployment insurance.³¹ They translated appalling conditions into questions of character, and largely left them at that.

But Schwartz' fuller examination of the moral reformers work also reveals stronger shortcomings. The role of religion in their campaigns, for example, could prove immensely troubling. Despite Schwartz focus on seemingly civil virtues like thrift and sobriety, Tuckerman regarded "religious instruction...without doubt as the most important" component of moral reform. And, quite clearly, in 19th century America, this meant Protestant Christian education. Brace and Hartley were stunningly anti-Catholic. Brace decried the "chilling formalism of the ignorant roman catholic";³² and the "opposition of the bigoted poor under the influence of the prejudiced priests."³³ [Though he claimed he "certainly had no prejudice against the Romanists."³⁴ Hartley complained of the "rude", "uninstructed" Irish³⁵ and the unfortunate influence of the "Romish church."³⁶ Perhaps it is only because I am a Catholic that I find it hard to warm to the gems Schwartz apparently finds among these somewhat coarser stones. But it should remind us that "faith-based initiatives" usually assume that it's my faith that provides the common ground.

The appealing work of social gospel advocate Walter Rauschenbusch, which Schwartz also highlights, shows religious complication from another direction. Rauschenbusch criticized the moral reformers for being, in effect, un-Christian.³⁷ For the likes of Hartley and Brace, he claimed, "the morality of the church is not much more than what prudence, respectability and good breeding demand."³⁸ This, simply put, represents "the dulling of Christ's teaching."³⁹ The moral reformers would make "the indiscriminate charity of which Christ speaks a great evil." And while Tuckerman and others may have been obsessed with thrift, "Christ forbids us to heap up wealth."⁴⁰ Rauschenbusch, in other words, took the Sermon on the Mount seriously as social policy. The moral reformers apparently pushed a more capitalist-friendly Protestantism. In the realm of private conscience, of course, this is untroubling--to each his own. But in the new age of faith-based initiatives, religious and governmental partnerships present unavoidable conflicts between more and less desirable beliefs, organizations and practices. And mixing government and religious, as we've been told, threatens both.

Nor, to be candid, do Schwartz' moral reformers exude egalitarianism generally. One of the reasons Tuckerman, Brace and others were less successful than they might have been otherwise, Schwartz concedes, was "the upper class pretentiousness" of the volunteers

³¹ Id at 150.

³² Id at 83.

³³ Id at 83.

³⁴ Id at 83.

³⁵ Id at 164.

³⁶ Id at 82.

³⁷ Id at 100-126.

³⁸ Id at 125.

³⁹ Id at 123.

⁴⁰ Id at 126.

who sought to cure the habits of impoverished people they didn't know or understand.⁴¹ The "teachers" were "undeniably products of an American social elite."⁴² The students were not. And if Robert Hartley felt compelled to improve the habits of poor people, he apparently wasn't forced to like or respect them. "Because of [his advisees'] disgustingly filthy and ragged appearance," he explained, "reputable people will not employ [them]."⁴³ Other poor candidates had "vile habits," "no decency."⁴⁴ A colleague explained that the impoverished are "thriftless, mean and self-indulgent."⁴⁵ William Ellery Channing complained to Tuckerman that his clients "bring misery upon themselves by evil-doing."⁴⁶ Josephine Lowell reasoned "the rich man does not feel the effect of his extravagance as does the poor man, because his purse yields him a margin for imprudent spending."⁴⁷ Schwartz' book leaves no hint that his highlighted moral reformers saw their impoverished clients as peers or equal members of a democratic community. They appear only as inferiors in need of correction by their betters.⁴⁸

Schwartz even slips into similar tones in casting his own arguments. He concludes that "for the most part the very poor are not, finally, all that different from you and me in their assessment [as opposed to their practice] of the virtues."⁴⁹ One doubts that impoverished clients would swoon over his approval. He also has little apparent doubt that the poorest among us should seek, mightily, to be like "you and me." He seems unable to resist the temptation to regard the disadvantaged as alien. Schwartz also mildly urges the privileged to more effectively meet the demands of noblesse oblige: "to the extent that the decline in savings by the affluent reflects a disdain for prudence, it does not send a salutary message to the poor."⁵⁰ Neither Schwartz nor his reformers radiate a muscular sense of equality—though poverty policy is intrinsically self-defeating without one. It is likely only because curing other people's habits is regarded as more important than egalitarianism that Schwartz can claim, breathtakingly, "the problem of poverty is no longer insoluble, because it has been largely solved."⁵¹ If the impoverished were in control of their own lives, he adds, "they would seldom be poor for long in the first place."⁵² I will return to such sentiments in the conclusion of this brief essay. But if one seeks an ennobling sense of the American aspiration to equality, it won't be found in Tuckerman, Hartley, Brace, Lowell or Schwartz. There is more hope in Mary Jones.

⁴¹ Id at 36.

⁴² Id at 212.

⁴³ Id at 22.

⁴⁴ Id at 79.

⁴⁵ Id at 44, 36, quoting Mary Richmond.

⁴⁶ Id at 9.

⁴⁷ Id at 45.

⁴⁸ Schwartz concludes that the reformers were not uniformly antagonistic towards urban blacks because they were said to be, unlike the Irish, 'generally an honest, humble, hard-working people.' Id at 165. The compliment likely says more about their anti-Catholicism than their acceptance of racial equality. And even here, it assumes that blacks should be appropriately humble.

⁴⁹ Id at 198.

⁵⁰ Id at 202.

⁵¹ Id at 155.

⁵² Id at 220.

II. Mother Jones

In 1902, Mary Harris “Mother” Jones, whom Clarence Darrow called “the most forceful and picturesque figure”⁵³ in the history of the American labor movement, was arrested for violating a federal injunction banning union organizing demonstrations.⁵⁴ Federal judge John J. Jackson had issued the order at the request of the Fairmont Coal Company in West Virginia. He determined that any demonstration conducted within the sight of miners, even on property leased by the union, threatened the property rights of out-of-state investors. Jones spoke in defiance of the order in Clarksburg—excoriating the mine owners and Judge Jackson and calling the miners who didn’t join the fight cowards.⁵⁵ “Thirty-nine years ago the black slaves were freed,” she thundered a few days later, “today we are white slaves to a corrupt judiciary.”

During her subsequent trial before Judge Jackson, U.S. Attorney Reese Blizzard deemed Jones depicted her as a danger to the nation⁵⁶ because, on her words alone, thousands of working men laid down their tools and challenged the established order. Judge Jackson seemingly agreed, explaining that Jones would not be allowed to hide behind the Declaration of Independence and the First Amendment.⁵⁷ Finding her guilty of contempt, he added the following counsel:

“I cannot forbear to express my great surprise that a woman of the apparent intelligence of Mrs. Jones should permit herself to be used as an instrument by designing and reckless agitators, who seem to have no regard for the rights of others, in accomplishing an object which is entirely unworthy of a good woman. It seems to me that it would be better far for her to follow the lines and paths which the Allwise Being intended her sex should pursue. There are many charities . . . that she could engage in of a lawful character that would be more in keeping with what we have been taught and what experience has shown to be the true sphere of womanhood.”⁵⁸

Mother Jones thanked him for the advice. She explained she had no martyr complex. But she did have a duty to carry out. She indicated that she was not surprised the judge had sided with the coal companies because, in her experience, “robbers tend to like each other”. As always, she would “pray for the dead and fight like hell for the living.”⁵⁹ Referring to Judge Jackson’s lecture, she later wrote that she wanted “to tear down every charitable institution in the country and build on its ruins a temple of justice.”⁶⁰

⁵³ Mother Jones at 300.

⁵⁴ Id at 95.

⁵⁵ Id at 95-96.

⁵⁶ Id at 97.

⁵⁷ Id.

⁵⁸ Id at 97.

⁵⁹ Id at 282.

⁶⁰ Id at 99 (letter to Henry Demerest Lloyd). See, generally, Deborah Weissman, Law and Charity, (draft on file, manuscript in publication.).

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

A. Crusading for Economic Justice

As Gorn's book demonstrates with care and art, Mary Jones life story is a remarkable one. Details of much of her life are sketchy, or controverted. At the beginning of her career as a labor organizer, she was an amazingly unlikely candidate for greatness. Poor, elderly, female, Irish and widowed-- she had survived, already, the potato famine, the death of her husband and children from yellow fever, and the great Chicago fire. Rather than continuing the brutal life of a seamstress growing old alone, at 60 she re-invented herself as Mother Jones. With fiery speeches, a flair for the theatrical, a near complete freedom from fear, and a willingness to repeatedly go to jail, in relatively short order she became one of the most famous women in America. To Eugene V. Debs she was the "modern Joan of Arc."⁶¹

The times, no doubt, were different as well. Jones faced tremendous violence—particularly at Ludlow in Colorado and Blair Mountain in West Virginia. She did not urge passive resistance. "Tie up every industry—for every working man they kill, you kill one of them."⁶² Her labor protest demonstrations would draw tens of thousands of enthusiasts. Her traveling companion, Eugene Debs, received over 6% of the nation's presidential vote in 1912. The socialist party burgeoned. At the height of her influence, Jones had private meetings with presidents Theodore Roosevelt and William Howard Taft.⁶³ In every corner of the nation she cried, "I know of no East or West, North or South when it comes to my class fighting the battle for justice."⁶⁴ Her political philosophy was forged in "the lived experience of class"—gleaned directly from the humiliations of working families. Gorn concludes that "it was her insistence on speaking for the poor, not as an outsider but as one of them" that provided the key to her success.⁶⁵ The "poor were her people whom she knew as no one else—no one save Jesus or Mary."⁶⁶

Of course Mother Jones' dramatic pursuit of economic justice seems foreign today. Politically, neither major party makes the concerns of the impoverished a significant aspect of its agenda. In the academy, we rightly explore claims of racial, sexual, and

⁶¹ Id at 64.

⁶² Id at 230-33.

⁶³ Id at 159, 164.

⁶⁴ Id at

⁶⁵ Id at 303.

⁶⁶ Id at 122.

sexual orientation inequality with fervor. Cultural discrimination has become a central focus of our attentions. The philosophical underpinnings of legal norms are debated with rigor. But economic justice has fallen from view. It is, somehow, less compelling than other explorations of difference.⁶⁷

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

“You are told that every American-born male citizen has a chance of being president. I tell you that the hungry man with a bed in the park would sell his chance for a good square meal. And these little toilers, dwarfed in body, soul, and morality with nothing but toil before them ... don't have the dream that they might someday have a chance at the presidential chair.”⁶⁸

While organizing striking workers across the country, Jones fought against the invigorated racism of the 1920s and 1930s.⁶⁹ In a speech to immigrants and blacks, she urged:

You are all miners, fighting a common cause, a common master.
The iron heel feels the same to all flesh. Hunger and suffering and
the cause of your children bind more closely than a common tongue.⁷⁰

She held massive free speech rallies to contest raids and deportations under the Espionage Act of 1917.⁷¹ She challenged government decisions to shut down leftist newspapers and foreign language publications.⁷² She campaigned for revolutionaries in Mexico.⁷³ She needed constant recourse to habeas corpus.⁷⁴ She registered unionists at the polls: “a scab at the ballot box is more despised than one at the factory.”⁷⁵ In context, she even made powerful pleas for the second amendment. After strikers had been massacred by hired detectives, she spat: “buy guns? Yes. I would borrow money or steal it to buy guns for my boys.”⁷⁶

⁶⁷ See, Gene R. Nichol, *Law's Disengaged Left*, 50 *J. Legal Ed.* 547 (2000) (work of legal academic left largely ignores issues of economic justice); Richard Rorty, *ACHIEVING OUR COUNTRY: Leftist Thought in Twentieth Century America* (Cambridge, Mass, 1998) and Anne Phillips, *WHICH EQUALITIES MATTER?* (1999) (“Politicians who once placed themselves on opposite ends of the political spectrum now seem united in their defense of wide-ranging income differentials and their condemnation of ‘simple’ or ‘leveling’ equality.” *Id.* at 13; *Is Class a Difference that Makes a Difference?* 77 *Radical Philosophy* 19 (1996); and Gene Nichol, *Taking Economic Equality off the Table*, 63 *Law & Contemporary Problems*, 353 (2000) (issues of poverty removed from mainstream political discourse).

⁶⁸ *Id.* at 122.

⁶⁹ *Id.* at 270.

⁷⁰ *Id.* at 238-240.

⁷¹ *Id.* at 211.

⁷² *Id.* at 251.

⁷³ *Id.* at 150-155, 211.

⁷⁴ *Id.* at 211.

⁷⁵ *Id.* at 143.

⁷⁶ *Id.* at 238.

Perhaps most fundamentally, Mother Jones' sense of the scourge of poverty amidst plenty was not just that it was sad, or unfortunate, or lacking in nobility, or, even, tragic. For Jones, dramatic economic injustice represented the collapse of America's democratic promise.⁷⁷ She sought, in this sense, to re-imagine our politics--revitalizing foundational notions of equality and liberty. A society in which millions are effectively locked out penalizes us all. It robs us of our highest aspirations, our best selves. It suggests that our constitutive commitments are but platitudes; too thin and phantom to affect the way we govern our lives. For Mary Jones, that wasn't enough. She demanded that we actually believe the things we teach our children; believe them, and make them real.

III. Forgetting Equality

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

But what if we accepted Mother Jones vision of the call of American democracy? What if we took seriously what Bernard Bailyn has called the central theme of American revolutionary ideology: "the belief that through the ages it ha[s] been privilege—artificial, man-made and man-secured privilege—ascribed to some and denied to others ...that [has] crushed men's hopes for fulfillment."⁷⁸ What if we believed, with Lincoln, that core idea of America is that the weak shall gradually be made stronger and ultimately all will have an equal chance? The great promise of our national life, Lincoln wrote, "is that in due time the weights would be lifted from the shoulders of all".⁷⁹

Twenty-first century American life, for all its marvels, cannot be squared with these sentiments.

We are, without doubt, the strongest economic power in human history. Despite that, 11.3% of Americans, (31 million) live in poverty.⁸⁰ The number increases significantly if

⁷⁷ Gorn makes this point. Jones was, in his view, "a prophetic voice...raised in the cause of renewing America's democratic promise. Id at 303.

⁷⁸ Bernard Bailyn, *FACES OF REVOLUTION: Personalities and Themes in the Struggle for American Independence* 220 (New York, 1990).

⁷⁹ Abraham Lincoln, Address at Independence Hall, Philadelphia, Pennsylvania (Feb. 22, 1861) in *SELECTED WRITINGS AND SPEECHES OF ABRAHAM LINCOLN* p. 113 (T.H. Williams ed. 1943); "I had thought the Declaration contemplated the progressive improvement in the condition of all." Angle & Miers, *THE LIVING LINCOLN* p. 205 (1995 Barnes & Noble).

⁸⁰ See, 2000, Poverty in the United States, 2001 U.S. Department of Commerce, available at <http://www.census.gov>.; and Raleigh News & Observer, Sept. 27, 2000 at 1A.

state and federal taxes are included.⁸¹ Given the economic travails of the past twelve months, we can expect even worse showings in the future. A disproportionate share of the poor are kids—as if any theory of justice or virtue could explain the exclusion of innocent children from the American dream.⁸² Over sixteen percent of those under 18 live in poverty.⁸³ The figures are worse still for racial minorities: 22 percent of black and Latino kids are impoverished.⁸⁴ The world’s mightiest economic engine has one of the highest child-poverty rates of the advanced industrial nations.⁸⁵ And the federal poverty designation, it should be remembered, is exceedingly tough medicine. For a family of four, for example, the poverty designation is met only if total income is less than \$17,603.⁸⁶ A single parent with three kids raking in \$20,000 a year is not impoverished. It takes a studied blindness, therefore, to conclude with Joel Schwartz that poverty is a “non-problem”⁸⁷, having “largely been solved.”⁸⁸ The fact that we also set the pace in the industrial world for wealth concentration and income inequality only makes our transgressions worse.⁸⁹

The lack of economic resources, of course, leads to myriad consequential deprivations. After a decade of unrelenting political posturing, 40 million Americans (15%) still have no health care coverage.⁹⁰ Among households making less than \$25,000 a year, over one-quarter are uninsured.⁹¹ Almost 30% of Latino children have no coverage.⁹² Over three-quarters of the uninsured are employed, or are a wage earner’s dependent.⁹³ Often, they are among the hardest working—holding down more than one job but still unable to purchase insurance. Last year, six million Americans failed to participate in employer sponsored health plans because they couldn’t afford to pay the fare.⁹⁴ The comparison

⁸¹ See, U.S. Census Bureau, Historical Poverty Tables, available at <http://www.census.gov/hhes/poverty/poverty00/table5.html>, 18.9% poverty rate after including social security payroll taxes and 17.7 percent poverty rate after including state income taxes.

⁸² Children make up 37% of the poor but only 26% of the total population. Daniel Weinberg, Press Briefing, U.S. Census, September 25, 2001, available at <http://www.census.gov/hhes/income/income00prs01asc.html>.

⁸³ Id.

⁸⁴ Id.

⁸⁵ Robert Borosage; A Nation Split by Its Wage Gap: Campaign for America’s Future, July 10, 1998, available at <<http://www.ourfuture.org>>.

⁸⁶ Id at note 80.

⁸⁷ Joel Schwartz, *The American Enterprise*, March 1, 2000, No. 2, Vol. 12, p. 52 (“the goal of welfare reform is ultimately less economic than moral”; we should not focus on the non-problem of money”).

⁸⁸ see, note 51 supra.

⁸⁹ James Lardner, *The Rich Get Richer: What Happens To American Society When the Gap in Wealth and Income Disparity Grows Larger?*, U.S. News & World Report, Feb. 21, 2000, at 38. Roberto Unger & Cornel West, *THE FUTURE OF AMERICAN PROGRESSIVISM* p. 3 (Boston, 1999). Last year, the top 20% of American households received 49.7% of the aggregate income. *Measures of Household Income Inequality* U.S. Census Bureau, Current Population Survey, March 2002 and 2001. Available at <http://www.census.gov/hhes/www/img.incpov00/fig12.html>.

⁹⁰ Raleigh News & Observer, January 6, 2002, p. 22A.

⁹¹ Jennifer A. Campbell, 1998 Health Insurance Coverage, 1999 U.S. Dept. of Commerce 1-2, U.S. Census Bureau p. 60-208, available at <http://www.census.gov>.

⁹² Id.

⁹³ Uninsured Americans, Hearing H781-3 Before the House Ways and Means Committee, 106th Cong. 1 (1999) (testimony of John Shields, vice-president Lewin Group).

⁹⁴ Raleigh News & Observer, January 6, 2002, p. 22A.

with other industrial nations, on this front, is appalling—since we stand alone in failing to assure universal coverage.⁹⁵ According to the World Health Organization, the United States ranks 37th in the quality of health care among the nations of the world—though we spend more per capita than any other country.⁹⁶

We countenance separate public education systems for the rich and poor as well. In one of its lowest moments, The United States Supreme Court ruled that the constitution is untroubled by dramatic disparities in public school funding.⁹⁷ So if a state education system spends four or five times as much on the children of wealthy parents as it does on the poorest kids, equal protection of the laws is not denied.

In the years since *Rodriguez*, over forty states have faced lawsuits challenging grossly unequal funding schemes.⁹⁸ Children from low wealth districts struggle with inferior resources, facilities, libraries, science labs, advanced placement opportunities and, often, teachers and administrators.⁹⁹ It is past surprising that so stark a violation of the equal opportunity we say we so strongly prize triggers little attention. After all, every other sort of public school reform proposal imaginable works its way into our political discourse—every one except the one we most need. It's not as if children can select where, or to whom, they are born. Jonathan Kozol has explained it this way:

“All religions say that every child is equal in the eyes of God and, in the eyes of God, obviously they are. But they are not equal in the eyes of America. They come into public school with a price tag on their foreheads....It shouldn't be that way in a democracy.”¹⁰⁰

The legal system, as we know, is even worse. Rhetorically we announce, famously, that “any person haled into court who is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him.”¹⁰¹ But in the civil justice system we let such high-flown sentiments recede. Eighty percent of the civil legal need of the poor is unmet¹⁰²-- though the situations in which they are left unrepresented concern the most crushing

⁹⁵ See, Derek Bok, *THE STATE OF THE NATION* pp. 249, 237 (Harvard University Press, (1996)) (“In the other [industrial nations] either everyone is covered, or those who remain outside are a small minority of well-to-do people who prefer to purchase their own health care in the private market.”).

⁹⁶ World Health Report, 2000 World Health Organization, at annex table 1, available at <http://www.who.org>.

⁹⁷ *San Antonio Independent School District v. Rodriguez*, 441 U.S. 1 (1973)(upholding Texas funding scheme heavily dependent upon local property tax revenues creating huge disparities between wealthy and poor school districts; refusing to recognize education as a fundamental constitutional right.)

⁹⁸ *School Finance*, 71 *Spectrum J. St. Government* 20, n. 1 (1998).

⁹⁹ See, for example my own state's decision in *Leandro v. State*, 488 S.E.2d 249 (N.C. Sup. Ct. 1997)(documenting dramatic disparities between high and low wealth school districts in North Carolina, and announcing limited state constitutional right to adequate education funding).

¹⁰⁰ *Milwaukee Journal*, June 4, 2000, at 1.

¹⁰¹ *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

¹⁰² Deborah Rhode, *Access to Justice*, 69 *Fordham L. Rev.* 1785, 1785 (2001). See also Deborah Rhode, *IN THE INTERESTS OF JUSTICE: Reforming the Legal Profession* (Oxford Press, 2000)(providing powerful critique of legal profession's commitment to equal justice); and Rosalie Young, *The Search for Competent Counsel: Perceptions of Applicants for Subsidized Legal Assistance*, 36 *Fam.L.* 551 (1997).

problems of human life.¹⁰³ Middle income Americans fare little better.¹⁰⁴ In the last two decades, federal money spent on legal services has been cut by a third.¹⁰⁵ Legislative restrictions further limit the effectiveness of representation for the impoverished.¹⁰⁶ We spend far less than the other industrial nations on representing the poor.¹⁰⁷ Most lawyers provide no significant pro bono service to the poor whatsoever.¹⁰⁸ The affluence of the last decade eroded, rather than expanded, support for pro bono programs.¹⁰⁹ The legal system can thus be both inequitable and inefficient—providing over-lawyering for those who can afford it, and complete exclusion for those who can't. We tolerate a system in which “money often matters more than merits and equal protection principles are routinely subverted in practice.”¹¹⁰ Equal access to justice is reserved for carvings on courthouse walls.

And the effects of poverty, of course, hardly stop with these powerfully fundamental interests. Poverty leads to tremendous disparities in housing, crime, transportation, environmental quality, access to higher education, proximity to employment—the list is, perhaps literally, endless. We have embraced a massive regime of economic apartheid. It includes differentials of wealth, access and opportunity that mock our claims of equal citizenship. It submerges formal equality in a torrent of disadvantage. It mocks equal dignity and concern. It opts, instead, for invisibility and remove. It renders hollow the call for one nation, under God. Yet no broad-based movement rises up to crusade against it. National political campaigns come and go without its mention. Even the academy turns in other directions. We have, quite literally, taken economic equality off the national agenda. And we seem satisfied with the result—so long as most of us remain on the more comfortable side of the economic divide. If Lincoln thought that the central idea of America was that the weak would gradually be made stronger and, eventually, all would have an equal chance, we apparently don't.

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

¹⁰³ Victor Marrero, Committee to Improve the Availability of Legal Services: Final Report to the Chief Judge of the State of New York, reprinted in 19 Hofstra L. Review 755, 768 (1991)(“ the unmet need for legal services for the poor is a critical problem that has devastating impact on the lives of vast numbers of poor people who need legal assistance and cannot afford it.”). See also, Gordon Boggs, *Defending the Rights of the Poor*, 37 Cath.L.Rev. 1 (1996).

¹⁰⁴ Deborah Rhode, *Access to Justice*, 69 Fordham L.Rev. 1785, 1785 (2001).

¹⁰⁵ *Id.* at 1786.

¹⁰⁶ *Id.* at 1786.

¹⁰⁷ *Id.* at 1786.

¹⁰⁸ *Id.* at 1809-1815.

¹⁰⁹ *Id.* at 1809-1815.

¹¹⁰ *Id.* at 1786.

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

“We are a nation born in blood, fire and sacrifice. Thus we are judged, questioned, weighed—by the revolutionary ideals and events which marked the founding of our great country. It is these transcendent ideals which interrogate us, judging us, pursuing us, in terms of what we do or do not do. They accuse us ceaselessly and their interrogation is ruthless, scathing, seldom charitable. The demands they make are limitless.”¹¹¹

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

¹¹¹ Ralph Ellison, *JUNETEENTH* p. 14-16 (Vintage International, New York, 2000).

ABSTRACT

This review essay questions whether the recent focus on “moral virtue” in poverty reform is true to the history and values of our democracy. Joel Schwartz’s **FIGHTING POVERTY WITH VIRTUE: MORAL REFORM AND AMERICA’S URBAN POOR** (Indiana University Press, 2000) reminds us that current reform welfare efforts, designed to encourage self-virtue, have strong historical origins. However, while Schwartz describes much of the war on poverty as a “historical detour,” his account forgets the historical and conceptual role that equality plays in our democrat system. For example, the heroic efforts of Mary Jones, as described in Elliott J. Gorn’s **MOTHER JONES: THE MOST DANGEROUS WOMAN IN AMERICA** (Hill & Wang, 2001), was inspired by a commitment to the belief that inequality represents a failure of American democracy. Present focus on questions of poverty may more closely track Schwartz’s account than Mother Jones’, but Mother Jones’ vision of the call of American democracy challenges us to aspire not to forget about equality.