

CHANGING CONCEPTS OF EQUALITY: FROM EQUALITY BEFORE THE LAW TO THE WELFARE STATE*

RALPH K. WINTER, JR.**

Equality, or at least the rhetoric of equality, has been almost from the start a central issue in our society. The debate, however, has been a fluid one, because the society has shifted from the pursuit of one concept of equality to the pursuit of another. The former concept of equality I shall call equality before the law. The latter I shall call equality of social-political-economic status. These concepts have similarities. The rhetoric deployed on their behalf often seems interchangeable. Both concepts also logically lead, I believe, to regulation of the private sector.

Nevertheless, the differences overwhelm the superficial similarities. In fact, the two concepts are in great conflict. Briefly summarized, equality before the law at its core relies heavily upon a free private sector, but the quest for equality in social-political-economic status denies the relevance of any distinction between public and private acts. This is so because the two concepts view equality as serving very different, even inconsistent, functions. Equality before the law is intended solely to neutralize government's power to use discriminatory legislation to prevent individuals from realizing their potential in the private sector. But, because some competitors will always be less successful—often very much less successful—than others, inequality in social-political-economic status is the inevitable result of equality before the law. Consequently, the pursuit of the latter concept of equality necessarily conflicts in both means and ends with the older concept. More importantly, experience teaches, I will argue, that the pursuit of equality in the modern sense undermines social stability, threatens the democratic political process, and imposes unacceptable economic costs.

* A lecture delivered at Washington University on March 14, 1979, as the eighth in a series on *The Quest for Equality*.

** Professor of Law, Yale University. B.A., 1957, LL.B., 1960, M.A., 1968, Yale University.

I.

A familiar provision of the Constitution illustrates the concept of equality before the law. The fourteenth amendment provides that no "State" shall "deny to any person within its jurisdiction the equal protection of the laws."¹ This is the most explicit attempt to transform the concept of equality before the law into a constitutional rule. Its prohibitions, however, apply only to actions by "States"—a restriction that has led to the creation of the doctrine known as "state action," which limits the impact of the fourteenth amendments on the private sector. Contemporary commentators regard this limitation with derision because it cannot be reconciled with the modern concept of equality in social-political-economic status. Some argue that government's mere toleration of an activity is as much an act of the state as a prohibition. They would measure the legality of virtually all private sector activities by fourteenth amendment standards.

The position that almost all private activity should be subjected to judicial scrutiny has always seemed rather bizarre to me. It not only would have the gravest possible consequences for individual autonomy, but also would divest the state and federal legislatures of much of their traditional role. It would be a radical change in our form of government.

The framers of the fourteenth amendment had no such result in mind. They were fully aware that they were working a major change in American federalism, but were otherwise convinced that they were acting in the spirit of the era's political philosophy and merely codifying existing conceptions of "natural rights."

The prevailing thinking then was less collectivistic than that which prevails today. Government was not responsible for every perceived problem, not because human suffering or discomfort was prized in the nineteenth century, but because the centralized power that inheres in large government was feared. The power to do good was thought to be matched by the power to do harm, and many believed government to be more efficient at doing harm than at doing good.

A distinction between government and the private sector was thus central to the political philosophy of the time, and a laissez-faire view of government's role prevailed. The separation of economic and political power was no anomaly, but it was consistent with a desire for a

1. U.S. CONST. amend. XIV.

system of checks and balances in which one power offsets another. The private sector was also believed to maximize economic efficiency as well as individual choice. The resulting inequality in social-political-economic status was thought to be a price worth paying for prosperity and individual freedom.

That equality before the law does not entail other, broader notions of equality is best demonstrated by two politicians who symbolize the many anti-establishment movements in nineteenth-century America. In vetoing the creation of the Bank of the United States, Andrew Jackson wrote:

Distinctions in society will always exist under every just government. Equality of talents, of education, or of wealth cannot be produced by human institutions. In the full enjoyment of the gifts of Heaven and the fruits of superior industry, economy, and virtue, every man is equally entitled to protection by law; but when the laws undertake to add to these natural and just advantages artificial distinctions, to grant titles, gratuities, and exclusive privileges, to make the rich richer and the potent more powerful, the humble members of society—the farmers, mechanics, and laborers—who have neither the time nor the means of securing like favors to themselves, have a right to complain of the injustice of their Government. There are no necessary evils in government. Its evils exist only in its abuses. If it would confine itself to equal protection, and, as Heaven does its rains, shower its favors alike on the high and the low, the rich and the poor, it would be an unqualified blessing.²

And at the end of the century, William Jennings Bryan accepted the nomination of the Democratic Party and asserted:

We cannot insure to the vicious the fruits of a virtuous life; we would not invade the home of the provident in order to supply the wants of the spendthrift; we do not propose to transfer the rewards of industry to the lap of indolence. Property is and will remain the stimulus to endeavor and the compensation for toil. We believe, as asserted in the Declaration of Independence, that all men are created equal; but that does not mean that all men are or can be equal in possessions, in ability, or in merit; it simply means that all shall stand equal before the law.³

The concept of equality before the law was designed to limit governmental power to disadvantaged individuals on invidious grounds. The neutralizing function it performs is as much a part of *laissez faire* as the concept of freedom of contract. This is best illustrated by the so-called

2. Quoted in R. HOFSTADTER, *THE AMERICAN POLITICAL TRADITION* 62 (1948).

3. *Id.* at 193.

Black Codes, the elimination of which was the most immediate purpose underlying the fourteenth amendment. These laws limited the rights of blacks to contract, to own certain kinds of property, and to sue. Their elimination was no more than a limitation on government's power to prevent competition in a free market on racial grounds. Equality before the law is thus not an equalitarian concept in a modern sense, for it is highly individualistic.

The fourteenth amendment was thus intended to regulate the exercise of centralized power—the kind of power that might be consciously employed to foreclose individual competition in a free market. The function of the “state action” doctrine is to establish criteria by which the kinds of acts limited by the fourteenth amendment can be determined.

First, state action cannot mean toleration of all conduct that the state may constitutionally regulate. Second, some formal governmental acts—for example, those which do not create any sort of monopoly or foreclose individuals in any substantial way, but which are associated with private discriminatory acts such as health inspections of a segregated country club—are not covered. Only those acts by which government uses its unique powers—criminal prosecution, conscription—are within its scope. Third, whenever government grants an exclusive franchise to a private business such as an electric utility or bus company, this protection from competition must carry with it fourteenth amendment restrictions. Such a utility, for example, should not be free to refuse to supply blacks with electricity. Fourth, a small number of private activities will be covered by the fourteenth amendment because the power exercised is literally monopolistic and similar to the kind of foreclosure exercised by the state under the fourteenth amendment. The fear of private monopoly is a legitimate part of classical liberalism and finds expression in the history of the amendment. The Civil Rights Act of 1866,⁴ which the fourteenth amendment was intended to validate, was directed at “any law . . . or custom.”⁵ “Custom” suggests something more than formal acts of the state, such as private concerted action that forecloses individual choice in a manner similar to government.

Consider the following hypothetical. The owners of several square

4. Civil Rights Act of 1866, ch. 31, 14 Stat. 27 (1866).

5. *Id.*

miles of unincorporated land enter into a series of contracts providing for a governing association, acting by majority rule, to purchase fire and police protection and to make zoning regulations and the like. These contracts are embodied in the relevant deed so that they "run with the land" and bind all subsequent purchasers unless every owner agrees to a change. The only state involvement is in judicial enforcement of the contract.

If the association ruled that parcels could be conveyed only to Caucasians, the fourteenth amendment should strike it down. The vice is not that the judiciary is called upon to enforce the contract, but that foreclosure is so similar to a racial zoning ordinance (and so available as an evasive alternative) that the underlying policy of the state action requirement calls for application of the fourteenth amendment. *Shelley v. Kraemer*⁶ and *Marsh v. Alabama*⁷ may be explained by this analysis as well as the purpose of the words "any law . . . or custom" in the Civil Rights Act of 1866. Moreover, all democratic governments, and particularly those which find their powers in written constitutions or charters, embody elements of contract and the contractual method of establishing town government, which was, I understand, not uncommon in the nineteenth century.

The crucial elements in applying fourteenth amendment standards to private acts are (1) the extent of foreclosure and (2) the means by which that foreclosure is achieved. Individual decisions not to sell to non-Caucasians foreclose sellers as much as buyers. The consequent loss to sellers assures that the quest for profit will lead some individuals to sell to all comers. For that reason, the exclusion of blacks from particular areas almost invariably entails collective action. What is required is a foreclosure similar in nature to legal foreclosure achieved by means that provide immunity from erosion by competitive forces.

Shelley v. Kraemer involved land, a physical resource, and a legal device that effectively suppressed competition. A monopoly over physical resources has rightly been distinguished from other forms of economic concentration because of the relative lack of substitutable alternatives. Furthermore, mutually restrictive covenants running with the land are not ordinary contracts. For non-Caucasians to "compete" for land subject to such covenants, they would have to buy a waiver

6. 334 U.S. 1 (1948).

7. 326 U.S. 501 (1946).

from every owner in the subdivision. Because even one owner out of 500 could prevent the other 499 from selling to a non-Caucasian, the effect would be worse than racial zoning, which can be overcome by majority rule.

II.

The concept of equality before the law does not, of course, satisfy those who would pursue full-blown equality in social-political-economic status. The removal of legal barriers that impede the pursuit of one's goals in the private sector does not guarantee that one will not fail; it absolutely guarantees that some will succeed more than others. Instead of reducing social-political-economic inequality, it insures that inequality will result and, as a consequence, compels us to address in direct fashion the merits of equality in the modern sense.

There are two very important caveats about the discussion that follows. First, there is a great deal of legislation affecting the private sector that cannot fairly be said to involve the pursuit of equality in the modern sense. An example is legislation carefully designed to facilitate the workings of private markets or to remedy true market failure. A proper antitrust law or a sensible regulation of pollution supports rather than supplants free markets. Although I have been a vigorous critic of much recent safety regulation, the ground of that criticism has not been a defense of *laissez faire*, but rather a call for utilizing the most efficient means of reducing the costs of accidents.

Second, private markets have great merits, but that does not mean that no other goal can override them, including the reduction of certain inequalities in social-political-economic status. To the contrary, measures directed at specific causes of such inequality that do not entail unacceptable costs may be desirable. The Civil Rights Acts of the 1960's are examples of carefully tailored legislation designed to attack a particular source of inequality that civilized people regard as abhorrent. The cost of such legislation was containable—unless one puts a high value on racism—particularly because it had an educational impact that vastly reduced the need for coercion. Moreover, a series of economic arguments that the Civil Rights Acts are market-supporting might be made. Additionally, I am sympathetic to measures designed to aid individuals, such as the blind, who are tangibly disadvantaged or to give temporary aid to those who face sudden and catastrophic misfortune. Indeed, a fully justified criticism of the modern welfare state is

that it makes no distinctions between those in genuine and unavoidable need and those who simply vote themselves governmental benefits. We live in a society that opens special unemployment offices in Florida during the winter season to handle a vast influx of nonresident claimants, but makes only modest efforts to offset tangible disabilities such as blindness.

Measures designed to offset catastrophic misfortune or specific disabilities that prevent individuals from entering the private sector (perhaps to fail) can be distinguished, I believe, if the costs they impose are low, from measures designed to bring about general equality of social-political-economic status. The former seeks either to protect against total destruction of a way of life and the desperation that engenders or to help specifically disabled individuals enter the private market, but the latter seeks to negate the results of competition in that sector. A prohibition on racial discrimination is designed to permit minorities to compete without being disadvantaged by racism. Quotas, on the other hand, are designed to obviate the need to compete.

The pursuit of equality in the modern sense not only is of a different character, but also imposes heavy costs upon society. These costs are social, political, and economic.

Proponents of the modern view of equality argue that the social benefits equality will bestow on us outweigh any costs. In particular, advocates assert that moving in the direction of equality will give us a more humane and stable society, because it will increase the sum of human satisfaction and decrease the omnipresent and cancerous belief that our society is unfair.

I think it is becoming clearer that no such benefits have resulted. Actually, equality has become a catchword that has lost much of its value except as a political slogan. Once we say that the material benefits of society are to be distributed according to the judgment of government, we have no standards whatsoever—except raw political power—to guide us in determining the “fairness” of the ultimate distribution. Each group is almost certain to believe that it is receiving less than its fair share. Thus, welfare states in the Western world have experienced unrest among virtually every segment of society, because every disappointed aspiration becomes a source of discontent for no other reason than it appears to be within government’s power to satisfy it and the benefits received by “other” groups inevitably appear to be bloated.

Consider the special admission programs in state universities. Pro-

ponents of these programs invoke equality; those who oppose them point out that the children of millionaires who have been educated in expensive private schools may be favored over the children of poor laborers on the basis of ethnic credentials alone. The decision of which groups should be so favored, moreover, is highly discretionary in many cases. I am not arguing the merits of such programs. My point is that those who are disadvantaged by such programs view them as arbitrary, and those who are favored by them have not ceased charges of "discrimination." Social unrest, in short, may well have increased. Academic merit may not seem a wholly satisfactory solution, but surely it is less subject to the criticism of being invidious or wholly arbitrary.

The lack of standards to determine the fairness of government's distribution of material benefits is nowhere better demonstrated than in the sprawling morass of programs, subsidies, and regulations at best only remotely related to the stated goals of the welfare state. The increase in social welfare expenditures by federal, state, and local governments since 1960 alone, if given directly to the poorest twenty-five million people, would make each family of four well-to-do. Notwithstanding the political rhetoric that accompanied the increase, however, precious little appears to have gone to the truly poor.

Older programs such as aid to veterans or farmers involve enormous funds, but no one claims they are designed to help the poor. Aid to education has had a direct impact on middle-class teachers, but little, if any, discernible effect on inner city education. The school lunch program is fighting poverty at the fanciest private schools. Medicare distributes benefits without regard to need and the present debate over national health insurance seems to be over whether it should be limited to cases of demonstrated need. Even expenditures for the truly poor fall to a disturbing degree into the hands of middle-class professionals and administrators. The welfare state's stated philosophy of protecting individuals or families against catastrophic illness or genuine deprivation has been displaced by the notion that no material desire of any group is necessarily outside government's responsibility and that no economic hardship—no matter how minor or how related to changes in consumer tastes—needs to be tolerated, even if the price is a government-supported monopoly. A regulatory apparatus designed to protect particular groups from market competition has grown steadily. Interstate ground transportation is a federally protected cartel. Other industries benefit from import quotas or analogous restrictions on foreign

competition. Many businesses receive direct or indirect subsidies from government; government contracts are usually performed at inflated wage scales. Large businesses with politically powerful unions stand a good chance of a government "bail out" as an alternative to bankruptcy. None of these programs directly helps the genuinely poor, but all penalize consumers or taxpayers; we accept them as routine exercises of government's legitimate responsibility. In reality, the modern welfare state is little more than a mechanism by which politically powerful groups vote themselves subsidies. That social discontent rather than satisfaction has resulted should come as no surprise.

The pursuit of equality in the modern sense also has imposed heavy costs by weakening confidence in the democratic political process and by partially paralyzing our domestic politics. Most citizens would experience a net gain in the reduction of taxes and monopolistic prices by a general deduction in the size of government. The present system of candidate versus candidate politics, however, does not offer that option as a realistic alternative. No significant portion of the taxes an individual pays is allocable to one particular program, just as no significant portion of a product's price is visibly caused by the Interstate Commerce Commission. As a result, most voters correctly perceive that the particular programs which benefit them are not a significant cause of high tax rates, inflation, or government size, and that elimination of those programs would not significantly reduce their taxes.

Voters *may* instinctively understand that the elimination of programs which specifically benefit them will reduce taxes and government *only* when combined with the elimination of a number of others which do not. But candidate versus candidate politics does not offer voters a way to ensure in advance that enough other programs actually will be terminated to leave them with a net gain. Enactment of such a reform depends upon the acts of several hundred legislators and a President as well as upon public opinion on other issues that are competing for attention. No candidate for any office can guarantee the outcome. Voters, therefore, understandably fear that acts of self-abnegation will not be reciprocated and that they will lose their benefits while continuing to bear the burden of heavy taxes. When it comes to reducing government, therefore, the voters' quite reasonable response is, "After you." Indeed, one of the reasons a constitutional amendment limiting spending is attractive to many is that it would permit an "all together now" approach to reducing government.

This phenomenon profoundly affects electoral campaigns and legislative behavior. Many candidates adopt the rhetoric of diminished government (not including programs that benefit strategically located constituents), promise greater specific benefits than ever to the constituents, and deliver on this promise by acquiescing in legislative logrolling, which continues to increase government expenditures. Welfare state politics teaches voters that if a group does not grab "its" share from the government, another group will. This competition may lead to an array of claims for governmental support that is impossible to satisfy fiscally, yet impossible to deny politically. In such circumstances, political campaigns may become surrealistic rituals. Thus, the last Democratic mayoral primary in New York City found the candidates obsessed (and gratefully so) with the death penalty issue over which the mayor has neither power nor responsibility.

There is a tipping point at which the breadth of welfare state benefits impairs the capacity of government to reverse the trend toward more taxes, rising inflation, and greater size, even though a large majority of the citizenry may actually desire such reversal. At this point, governmental paralysis may result.

Persistent inflation is evidence of a paralysis over the choice between the conflicting political pressures to lower taxes and to raise expenditures. Inflation is chronic in the omnipresent welfare state partly because printing money is politically less visible than a direct reduction in government expenditures or a direct increase in taxes. Inflation, of course, is a compromise because it reduces the value of expenditures and increases the taxes paid, particularly if taxpayers are moved into higher tax brackets. But chronic inflation is a painful compromise, and it is not surprising that it may cause a loss of confidence in the political process.

Yet another feature of our welfare state contributes to the feeling that electoral politics are irrelevant. A welfare state that extends its bounty beyond the genuinely poor and dispenses services as well as money requires a large and complex bureaucracy to administer it. Many social and economic programs entail a delegation of power to nonelected officials, who are then able to make law. This bureaucracy reduces the relative power of the elected branches of government.

Although the welfare state bureaucracy is not democratically responsive, each component of that bureaucracy tends to view itself as representative of a particular interest group. Thus, the Department of

Agriculture acts as a representative of farmers, those who administer the Davis-Bacon Act regard their constituents to be the construction unions, and the Equal Employment Opportunity Commission views minority groups as its principal constituency. All concerned, whether they benefit or suffer from acts of the bureaucracy, tend to regard it, rather than Congress and the electoral process, as the focus of the political struggle over a number of critical issues. This accounts in part for the paradox that the more the government is involved in our lives, the less relevant elections seem—a mood that is clearly antidemocratic. The quota issue, for example, is a fundamental question, going to the very heart of the kind of society we want to be. We have, however, without legislative act or significant public debate, begun to impose racial and sexual quotas on employers and educational institutions through the acts of the welfare state bureaucracy. Those who favor such measures seek them through administrative decision. Those who oppose such measures look for a remedy in the courts, which are also outside the electoral process. The elected branches are regarded by all as so irrelevant that the issue of quotas was hardly mentioned in the 1976 presidential campaign. Indeed, the first formal statement by President Carter on the matter was the Department of Justice's amicus brief in the *Bakke* case. That even few regard this situation to be odd underscores how accustomed we are growing to antidemocratic government.

The growing lack of confidence in the democratic political process is nowhere better demonstrated than in the calls for the judiciary to address virtually every perceived social or economic problem. Again and again we hear it said that courts must take action because the other branches of government either have ignored a problem or have not acted responsibly. There are even those who have called for the courts to undertake a massive redistribution of income no matter what the wishes of the electorate or their legislative representatives. That these calls come from those who have consistently supported the development of our present welfare state demonstrates its utter failure to achieve its stated goals.

Other measures turned to in the pursuit of equality in the modern sense threaten the political process directly. The tradition of the first amendment has been against governmental restrictions on the quantity of political communication. The basic principle has been a free marketplace of ideas, with the right to hear being a principal justification for the right to speak. This tradition is, of course, inconsistent with

notions of political equality, and one hears cries from both the Right and the Left that particular measures are necessary to "open up" political communication. The Nixon Administration's quarrels with the media invoked the rhetoric of equality in charging that centralized control permitted the deliberate slanting of news and commentary in favor of the forces of the Left,⁸ and even today Kevin Phillips calls for greater government regulation of the media in the name of equalizing influence.⁹ Liberals, on the other hand, want to control campaign financing and lobbying in the name of equalizing political communication.

All these measures seriously threaten the tradition of the first amendment. Political communication can be equalized only by moving in the direction of silence. Limiting campaign spending inflates the relative importance of discretionary media coverage. Limiting the media increases the relative power of persons with free time to devote to political activity. Because most persons engage in only infrequent political communication, each step toward equality is a step toward less speech. The movement toward equality expresses a basic mistrust of the right to hear—a desire to prevent the people from hearing political argument. Moreover, it is naive to believe that such regulation can ever be evenhanded. Nothing is more natural to the politically active person than believing that one's most feared opponents have better access to the resources of communication. Businessmen regard the national media as dominated by Ralph Nader, while populists regard Congress as hopelessly entangled in the grasping tentacles of big business lobbyists. Congress, moreover, which must enact whatever legislation is chosen, is hardly a neutral body, and whatever bill emerges can only increase the power of incumbency. The Congress that attempted to impose expenditure limits on House and Senate candidates appropriated more for franked mail (used principally before elections) than challengers spent on all campaign activities. Equality in political communication, therefore, is an idea with the gravest possible implications for our free political system.

The economic costs of the pursuit of equality are also destructive. Those who would seek to reduce the inequalities in the distribution of income customarily advocate the expansion of the public sector, and that has been a deliberate government policy, if not always government

8. See Cox, *The Effect of the Search for Equality Upon Judicial Institutions*, 1979 WASH. U.L.Q. 795.

9. See generally K. PHILLIPS, *MEDIACCURACY* (1975).

rhetoric, for the last half-century. By every statistic government's share has increased and at a fairly steady pace. It is time that we paused to look at this movement in both theory and effect.

Redistribution of income surely deters private investment and reduces the supply of capital. Private economic activity thus becomes more costly. To the extent that investment is engaged in by those who are financially better off in the hope of increasing their wealth, a deliberate policy of redistribution must induce them to search out other uses for their money. The productivity of the private sector must surely suffer as a consequence.

Productivity suffers in yet another way. An important doubt about the wisdom of substantial income redistributions stems from the question of how prices or wages in labor markets perform if these systems are modified to produce more equality. In labor markets the wage system allocates labor to productive kinds of employment and productive geographic areas as well as governs the trade-off between leisure time and work.

Productivity depends on a mechanism to determine the amount of effort expended by individuals, the kind of work they do, and the areas in which they do it. If, for example, society decides that housing is more important than hula hoops, there must be a way to attract people from the hula hoop industry to the construction industry. Similarly, if a particular area exhausts its natural resources, it is essential to have a mechanism to give people an incentive to move to areas where their effort would be more productive. The performance of these functions is critical to any economy because, unless they are performed in a relatively efficient fashion, the elimination of poverty is simply impossible.

It is no answer to assert that salary is not the only incentive. In the absence of an omnipotent coercive bureaucracy, tribal custom, or caste assignment, income is the sole signal inducing the production of what society values. Confusion has long surrounded this rather uncomplicated point because defenders of capitalism have exaggerated the efficiency of free markets in producing goods. Actually, given the range of trade-off choice, income is efficient only in the presence of a culture with a strong work or anti-leisure ethic and then only because the bureaucratic approach to work allocation is by comparison enormously inefficient.

Proponents of redistribution rarely discuss what will perform the allocative function in labor markets if the price system is tampered with.

The principal alternative is to empower government to make employment decisions, a method that I prayerfully hope is not attractive to you. Unless this function is performed, however, economic growth will suffer and our poor people along with it. If the goal is to increase the economic status of poor people in an absolute sense, increasing economic growth and productivity is the quickest route to achieve that goal. The American economic system—in the absence of the welfare state—has been enormously successful in aiding people to rise above poverty. This country presently faces an enormous problem of illegal immigration not because welfare is available, but because the economic opportunities in this country are so much greater than elsewhere.

A good case can be made for the proposition that the economic improvement of people in an absolute sense requires inequality of income, and that the goals of equalizing income and reducing poverty are simply inconsistent. I suspect that a historical study of prosperity and times of recession or depression would find that income was far more equal when the level of economic activity was low than when it was high. It may well be that if equalization of income is really the right goal for American society to pursue, we should begin to look upon the Depression as a Golden Era.

That the public sector can replace what is lost in private sector activity is no answer. For this observation we can thank New York Mayor John Lindsay, who raised taxes continuously to support more and more jobs in the public sector. Estimates indicate that perhaps 150,000 new city jobs were created, but taxes so eroded the private sector that further tax increases produced less revenue as business disappeared. Unfortunately for Mayor Lindsay's constituents, the relative inefficiency of government and the shrinkage of the tax base destroyed far more jobs in the private sector than were created in the public. By 1975, New York had lost a half-million jobs as a consequence of these policies.

We can, moreover, observe exactly the same phenomenon at the national level as a result of familiar federal policies. To be sure, the results are slightly camouflaged because it takes longer to destroy a national economy than a municipal one and the ability to print currency allows government to substitute inflation for default on its debts. Nevertheless, the stock market has for ten years demonstrated that capital markets take a very dim view of the health of the American economy.

General Motors is a symbol of monopolistic power to populist speak-

ers, yet the price of its stock declined by over fifty percent in constant dollars from 1967 to 1977. The Dow Jones average is lower now than in 1965, which means that if one adjusts for inflation, the value of American business has declined precipitously. A permanently higher unemployment rate reflects an erosion of the private sector and greater inclination by members of the labor force to live off taxes paid by others. The relative decline of the dollar reflects a decline in relative productivity of the economy. Persistent inflation demonstrates government's inability to pay for its excesses out of explicit taxation (inflation, of course, increases tax revenue by shifting individuals to higher brackets).

And for what? The dramatic increase in the public sector led to no sudden leap from poverty. Indeed, I suspect that poverty has not been eliminated at any greater rate during this period than during, say, the Coolidge Administration.

Nevertheless, the pursuit of equality in the modern welfare state sense has been our government's policy for close to a half-century. And yet it is fact that social discontent is high. It is also fact that confidence in our political process is low. Few would argue that our economy is strong. Indeed, these very facts are routinely invoked by spokesmen for the Left who call for further governmental assaults on the private sector. I believe, however, that it is now time to pause and address with seriousness the question of whether the failure of the welfare state to deliver on its promises cannot be traced to a basic flaw in concept. No longer should critics of the welfare state be regarded as heartless anachronisms who unreasonably resist experiments designed to help the less well-off in our society. The growth of the public sector at the expense of the private has been the established orthodoxy for a half-century. It should be judged not by the promises made on its behalf generations ago, but by where America stands today.

