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An Interdisciplinary Discussion of Poverty, Class & Economic Justice

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A DISCUSSION OF POVERTY, CLASS, AND ECONOMIC JUSTICE BETWEEN FRANCES FOX PIVEN¹ AND STEPHEN LOFFREDO²

Moderated by Ruthann Robson³

On November 2, 2007, Frances Fox Piven, Distinguished Professor of Sociology and Political Science at the City University of New York Graduate Center and Stephen Loffredo, Professor of Law at the City University of New York School of Law participated in a discussion of poverty and class. The event was planned and moderated by Professor Ruthann Robson, University Distinguished Professor and Professor of Law at the City University of New York School of Law as part of a series of panel discussions designed to provide an interdisciplinary perspective

¹ Distinguished Professor Frances Fox Piven received her Ph.D. from the University of Chicago. Before coming to the CUNY Graduate Center, she taught at Boston University, Columbia University, New York University Law School, the Institute of Advanced Studies in Vienna, the University of Amsterdam, and the University of Bologna. She is past Vice-President of the American Political Science Association, has served as program co-chair of the annual political science meetings, and is a past President of the Society for the Study of Social Problems. She is currently President of the American Sociological Association. She is the recipient of numerous awards, including the President's Award of the American Public Health Association, and the American Sociological Association's Career Award for the Practice of Sociology, as well as their award for the Public Understanding of Sociology. Her books deal with the development of the welfare state, political movements, and urban and electoral politics. CUNY Graduate Center, http://web.gc.cuny.edu/politicalscience/pages/faculty/m_z.htm#piven (last visited Mar. 31, 2008).

² STEPHEN LOFFREDO is a Professor at the City University of New York School of Law. He earned his undergraduate degree from Yale, his J.D. from Harvard Law School, and clerked for the New Jersey Supreme Court before entering practice at the Legal Aid Society in the South Bronx, where he provided neighborhood legal services and conducted test-case litigation. He has litigated many path-breaking law reform cases, including actions that secured the right of homeless families in New York to safe and adequate shelter, established the right of single homeless shelter residents to public assistance and Medicaid, and vindicated the statutory entitlement of disabled New Yorkers to federal benefits worth over \$100 million annually. He has continued to represent poor people through the Law School's clinical program and as pro bono counsel to the Urban Justice Center. He has written and spoken widely on the constitutional dimensions of economic rights and the role of wealth in a constitutional democracy. CUNY School of Law, <http://www.law.cuny.edu/faculty-staff/sloffredo.html> (last visited Mar. 31, 2008).

³ Professor of Law and University Distinguished Professor at the City University of New York School of Law, Ruthann Robson teaches in the areas of constitutional law, family law, feminist legal theory, and sexuality and the law, and is faculty advisor to the New York City Law Review. For more information about Ruthann Robson, <http://www.law.cuny.edu/faculty-staff/Robson.html>.

to challenges facing the legal community. Framed by several questions posed by Professor Robson and suggested by the class of first year students in the required constitutional law class, Liberty, Equality and Due Process, it was a casual and unrehearsed discussion between two brilliant scholars about the challenges of alleviating poverty in the 21st century.

PROFESSOR RUTHANN ROBSON: We are very pleased and proud to welcome Frances Fox Piven, Distinguished Professor of Sociology and Political Science at the City University of New York. She has long been active as a researcher, scholar, and activist in anti-poverty movements. Her groundbreaking books, *Regulating the Poor*⁴ and *Poor People's Movements*⁵ helped define activism and legal strategies for many years. Her most recent book, *Challenging Authority: How Ordinary People Change America*,⁶ provides a much welcome inspiration and direction for activism.

Stephen Loffredo, is a Professor of Law here at the City University of New York School of Law. He teaches Constitutional Structures and is the Director of the Economic Justice Project. He is also the coauthor of *The Rights of the Poor*.⁷ He has worked as an attorney and written numerous articles, including one making an argument that poverty is a suspect or quasi-suspect classification under the Equal Protection doctrine.⁸

We have recently discussed, as a class, *San Antonio Independent School District v. Rodriguez*.⁹ There, the Supreme Court held that poverty is not a suspect classification.¹⁰ In essence, the Court held that poor people do not really need the courts to intervene on their behalf.¹¹ At one time, I considered this opinion one of the top five worst Supreme Court opinions—now there are many more. I have always thought that if the case had been decided differently, law and social change could have proceeded in a very different way. However, lately, I have been thinking that is perhaps

⁴ FRANCES FOX PIVEN & RICHARD CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* (Vintage 1993).

⁵ FRANCES FOX PIVEN & RICHARD CLOWARD, *POOR PEOPLE'S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL* (Vintage 1978).

⁶ FRANCES FOX PIVEN, *CHALLENGING AUTHORITY: HOW ORDINARY PEOPLE CHANGE AMERICA* (Rowman & Littlefield Publishers, Inc. 2006).

⁷ HELEN HERSHKOFF & STEPHEN LOFFREDO, *THE RIGHTS OF THE POOR: THE AUTHORITATIVE ACLU GUIDE TO POOR PEOPLE'S RIGHTS* (Southern Illinois University 1997).

⁸ See generally Stephen Loffredo, *Poverty, Democracy and Constitutional Law*, 141 U. PA. L. REV. 1277 (1993).

⁹ 411 U.S. 1 (1973).

¹⁰ *Id.* at 28-29.

¹¹ *Id.*

too optimistic. So I guess I would like to open it up and ask for your thoughts.

PROFESSOR FRANCES FOX PIVEN: Well, it is much too optimistic. The optimism flows from a certain way of thinking about social progress that begins with principles. If we all accept the principle that extreme need should be eliminated in this world; if we can get that principle out there, then extreme need will be eliminated. Or if we can somehow make it a law that extreme need should be eliminated, then some kind of action will follow. Principles sometimes do affect social life; but they affect social life when they become the inspiration of social forces, of movements, of real political formations that exert pressure.

I will give you an example: One of those passionate beliefs in the complex of beliefs that constitute global culture has to do with democracy—the right of ordinary people to determine who their rulers will be by elections and by exercising the vote.

Well, that belief really did inspire the mobs and the militias of the American Revolution. But that does not mean that that belief was realized in the Post-Revolutionary period. It was really a very great struggle. And there were a lot of setbacks, between then and today. And it has not yet been realized although in principle in the United States today, all citizens—and that is a big proviso in itself, why do you have to be a citizen? What does that mean? If you have lived here all your life, shouldn't that be good enough? When you plan to live here the rest of your life, shouldn't that be good enough? Shouldn't you also have a right to participate in the election of your rulers?—who are eighteen or older have the right to vote. But only about half of those citizens eighteen or older exercise that right. And why is that?

Well, if you look very closely at the process of voting, you can see that there are a lot of obstacles that have been constructed through the apparatus of election and administration, through the strategies of the political parties that go very far toward ensuring segments of the eligible citizenry do not vote.

So here is a right, I think it is not too bold to say the most fundamental right in American political culture, which actually is ensconced in the Constitution¹² and it is not realized in practice. It is not realized in practice because the politics surrounding the right to vote work to disenfranchise people even while working to enfranchise them.

¹² U.S. CONST. amend. XXVI, § 1.

PROFESSOR STEPHEN LOFFREDO: I will start by saying that the *San Antonio* decision was enormously disappointing; it was one of the worst cases not only because the court endorses unequal treatment of poor people in an area that is sort of one of the core concerns of government, which is education, but because we know, in our society, education is really the motor of mobility. So, to the extent that education is the motor of economic mobility, it is the pathway out of poverty.

I do not think the Court was correct in *San Antonio*; but agree to the extent that it was saying poor people are too indistinct and fluid a group to warrant constitutional attention;¹³ however, that is in large measure because of lack of access to education.

Or to put it the other way, it may be that what the Court did in *San Antonio* was so detrimental to public education that we are now in a position where mobility rates have really dropped.¹⁴ Now it is much more difficult to escape the lower strata largely because of what has gone on with public education.¹⁵ We have now got a more ossified class structure so that now there is actually, in my opinion, a stronger argument for heightened scrutiny for poor people. It is much more about the established class.

I agree with Professor Piven that if your goal is to alter capitalism, to make it more humane, all indications are that the tool for such change is not the American judiciary. The American judiciary has been very, very good to capitalism. And I am not just talking about the *Lochner*¹⁶ period but really throughout our history.

Embedded in your question is part of the other answer you gave, which is whether principle or principle in the judicial context can precipitate substantial movement forward—progressive change through judicial decree? The answer is no. As Professor Piven said, you need active social movements. That is really the only way that substantial, progressive social change has happened.

This is not to say that there would have been no value to having the Court agree that poverty is a suspect or quasi-suspect classification. In a way, New York State is kind of a laboratory for this. New York State has a constitutional provision.¹⁷ Article 17 of the New York State Constitution states that the aid, care and support of the needy are public concerns and that they shall be provided for

¹³ *Rodriguez*, 411 U.S. at 104–06.

¹⁴ See, e.g., *Ever Higher Society, Ever Harder to Ascend*, *ECONOMIST*, Jan. 1, 2005, at 22–24.

¹⁵ See *id.*

¹⁶ *Lochner v. U.S.*, 461 U.S. 931 (1983).

¹⁷ N.Y. CONST. art. 17, § 1.

by the state in such matter as the legislature shall determine.¹⁸ It sets up a legal regime that is not exactly the same as what more highly scrutinized equal protection for poor people would provide but it has made some material difference to some people.

So, for example, after federal welfare reform in '96, the federal government says that large categories of lawful immigrants cannot receive assistance.¹⁹ And in many parts of the country, these people are simply kicked off subsistence programs.²⁰ In New York State, that could not happen. The State tried that, but lawsuits were brought successfully.²¹ Since immigration status is not relevant to the issue of need under the New York State Constitution, the State could not refuse to provide assistance.²²

After federal welfare reform, time limits have been set for the receipt of assistance.²³ One can only receive assistance for five years.²⁴ Again, that does not operate in New York State because of the State constitution. It is not that the politicians did not want to try to do that—we have these constitutional protections.

So, there are ways in which, had the Supreme Court decided differently in *San Antonio*, there would have been some material differences. Under heightened scrutiny, the State needs to justify its actions. The government need be informed. So, saving money, as a justification for denying assistance to the poor, is not usually going to be good enough when they need that means and ends to fit. It is a higher standard than rational basis review.

It seems that at the very least if such a regime were in place, the quality of the public discourse and the political deliberations concerning welfare would have been different than what we saw in the nineties and through the debates on federal welfare reform, which if you look into them are just disgraceful, vindictive vilification of poor women and children, much of it racially tinged, comparing welfare citizens to animals.²⁵ I think it was unbelievable

¹⁸ *Id.*

¹⁹ Personal Responsibility and Work Opportunity Reconciliation Act, 8 U.S.C. §§ 1601–1646 (1996).

²⁰ Susan Sachs, *The Nation: Second Thoughts; Cracking the Door for Immigrants*, N.Y. TIMES, July 1, 2001, at 43.

²¹ See, e.g., *Aliessa ex rel. Fayad v. Novello*, 96 N.Y.2d 418 (1996); see also *Khrapunskiy v. Doar*, No. 404175/04 (N.Y. App. Div.1 Dept., Jan. 17, 2008).

²² See *Aliessa*, 96 N.Y. 2d at 429–30.

²³ 8 U.S.C. §§ 1601–1646 (1996).

²⁴ *Id.*

²⁵ LISA M. GRING-PEMBLE, GRIM FAIRY TALES: THE RHETORICAL CONSTRUCTION OF AMERICAN WELFARE POLICY 213 N.5 (2003).

what went on, the lack of actual predicate for what the government was doing.

So I think that there would be a chance at the very least that that kind of debate would have been avoided and that the quality of the discourse been higher and that, perhaps, would have had some positive effect.

PROFESSOR FRANCES FOX PIVEN: Well, I think constitutions can be important; but was it the New York State Constitution or was it the existence of the New York State Constitution, a vigorous legal advocacy community, and a lot of liberal support in New York State? It's a combination of principle and politics that makes the principle effective—that gives it legs, that gives it muscle.

PROFESSOR STEPHEN LOFFREDO: I absolutely agree with that. Article 17 was adopted at the height of the Great Depression around the same time the Social Security Act was adopted.²⁶ Could it have been interpreted into a dead letter had the political courts been very conservative in New York? Yes, of course.

I do not have a great deal of faith in the integrity of the judicial processes. That is a funny thing for a law professor to say, but judging from the recent work of the Supreme Court, respect for precedent is something taken very casually. Even supposing *San Antonio* was decided differently, I think the courts would have interpreted that decision so as to diminish its value. Political resistance and activism provides protection against that kind of arbitrary decision making on the part of the courts.

PROFESSOR FRANCES FOX PIVEN: So can I ask you both for advice? Well, you know in 1983 or '84, there was a movement in the country that we were part of to liberalize voter registration.²⁷ Now the inspiration for that movement was twofold. First, Ronald Reagan had been elected.²⁸ That was a big inspiration. And second, in the 1982 midterm elections, there had been an uptick in voting by African-Americans and by blue-collar workers, which had sent a lot of new Democrats to the House of Representatives.²⁹ This indi-

²⁶ N.Y. CONST. art. 17, § 1 (adopted Nov. 8, 1938, eff. Jan. 1, 1939; amended Nov. 6, 2001, eff. Jan. 1, 2002); see David Stout, *Federal Welfare Shift Spotlights Unusual Amendment to State Constitution*, N.Y. TIMES, Sept. 8, 1996, at 41.

²⁷ See Frances Fox Piven & Richard A. Cloward, *Prospects for Voter Registration Reform: A Report on the Experiences of the Human SERVE Campaign*, PS, vol. 18, No. 3, 582-93 (1985).

²⁸ *Id.*

²⁹ See Robin Toner, *Separated by a Quarter-Century of Change, but Linked by Race*, N.Y. TIMES, Jan. 25, 2008, at A23; see generally Steven G. Calabresi and James Lindgren, *The President: Lightning Rod or King?*, 115 YALE L.J. 2611, 2614-15 (2006) (discussing shift from republican to democratic power).

cated that Reagan was indeed the inspiration for apathetic voters to get out there and vote.

We thought if we could manage to get social service agencies—especially health agencies, which are largely voluntary and nongovernmental—to register their clients to vote when they applied for services or when they renewed their applications, we would open the doors to a much bigger upsurge in voting in 1984 by the have-nots. It was really very hard. We worked on this. The social agencies would say they would do it, would do so for three or four applicants, but would then forget about it. We tried to get black mayors to do it in city agencies. We tried to get governors to do it, especially those who had benefited from the upsurge in voting in 1982, like Mario Cuomo in New York. And we got three governors to announce that they were doing it.³⁰ But then they did not do it because you had to get state agencies to actually do it. You had to make it a part of the application process.

So we started working on federal legislation, and it was hard. It was such a long process—I could have written three books in the time it took me. George H.W. Bush vetoed the first legislation we moved through both Houses of Congress.³¹ Finally, when Clinton was elected, we got the National Voter Registration Act passed through the Congress in 1993,³² and Clinton signed it. It was due to be implemented by 1995,³³ and it required that all public agencies that provided services to poor people—Medicaid, public assistance, food stamps,³⁴ all disability agencies that got government funding³⁵—provide new applicants, whether they were accepted or rejected, with an opportunity to register to vote.³⁶ They also had to offer registration in the motor agencies and driver's license agencies.³⁷

The politics of getting it through Congress were sticky.³⁸ We did not succeed in requiring a combined application form in the social agencies.³⁹ Only in the driver's license agencies did we get one form. The application to register to vote comes right after the

³⁰ See Piven & Cloward, *supra* note 28, at 585.

³¹ SENATE LIBRARY, PRESIDENTIAL VETOES, 1989–2000, S.-PUB. NO. 107–10, at 9 (2001), available at <http://www.senate.gov/reference/resources/pdf/presvetoes.pdf>.

³² National Voter Registration Act, 42 U.S.C. § 1973gg (1993).

³³ *Id.*

³⁴ 42 U.S.C. § 1973gg-5(a)(2)(A) (1993).

³⁵ *Id.*

³⁶ 42 U.S.C. § 1973gg-5(6)(A) (2006).

³⁷ 42 U.S.C. § 1973gg-2(a)(1) (2006).

³⁸ Adam Clymer, *Voter Bill Passes in a G.O.P. Defeat*, N.Y. TIMES, May 12, 1993, at A1.

³⁹ 42 U.S.C. § 1973gg-3(a)(1); 42 U.S.C. § 1973gg-5(a)(2) (2006).

application for a driver's license on the form. It's right there as soon as you pick up the form.

But in other agencies, the best we could do was to require the agencies to get people to sign declinations if they did not want to register to vote. And we thought that would be a certain amount of muscle because we knew implementation would be a problem. However, we did not understand it well enough. There was a little bit of implementation as long as the Clinton Administration was in office. It was not vigorous, but there was some.

Janet Reno, Clinton's Attorney General, actually went to court against states that refused to implement.⁴⁰ She won every single one of those lawsuits. But once Clinton was out of office in 2000, implementation stopped. Although it is the law, they no longer collect those declinations. They are supposed to.

The law contains provisions—concessions to the opposition—which require the establishment of statewide voter lists and the use of those lists to purge people who have died or moved away.⁴¹ The lists are being used to purge alright. But they're not being replenished. Nothing else is being implemented.

PROFESSOR STEPHEN LOFFREDO: Well, the point you make demonstrates the difference between paper rights and actual rights and of what has to happen in order to make paper rights effective. The strategy you spoke of was used by Republicans in the Senate who filibustered a piece of the statute, which would have extended registration with the Department of Motor vehicles to undocumented residents. The Republicans understood the strategy. They really did not want poor people voting. Now if we look around the country we can see photo ID laws being enacted, especially in red states, which require a governmental photo ID in order to register to vote.

PROFESSOR FRANCES FOX PIVEN: And those statutes will be implemented, too.

PROFESSOR STEPHEN LOFFREDO: That is right; however, there is a case before the Supreme Court challenging such statutes as unconstitutional in terms of a fundamental right to vote.

PROFESSOR FRANCES FOX PIVEN: Good luck with that.

PROFESSOR STEPHEN LOFFREDO: Exactly. Exactly what court will do that? I was not being completely facetious about social

⁴⁰ *U.S. Sues 3 States to Force Them to Obey Voter Registration Law*, N.Y. TIMES, Jan. 24, 1995, at A12.

⁴¹ 42 U.S.C. § 1973gg-6(a)(4) (2006).

movement. People who are the intended beneficiaries of a law must cause embarrassment at the non-implementation of the law.

Five or six years ago, I filed a request under the Freedom of Information Law with the Human Resources Administration, the welfare agency in New York City, to see what they were doing with voter registration. They were very, very defensive about the numbers. Even in New York City, which one would expect to be sympathetic to such a move, there was a great deal of non-implementation.⁴² Or at least, they were unable to document that they were doing.

PROFESSOR FRANCES FOX PIVEN: No, they are not implementing in New York. They did not from the very beginning. Part of it had to do with the fact that there was no supervisory effort to get workers to do it.

PROFESSOR RUTHANN ROBSON: Well, what about felon disenfranchisement?

PROFESSOR STEPHEN LOFFREDO: I am against it. [Laughter]

PROFESSOR RUTHANN ROBSON: Okay. Well more specifically, as the next question, how do you both think felon disenfranchisement plays into this discussion?

PROFESSOR FRANCES FOX PIVEN: Well, in contemporary theory, it is part of the same pattern. Here is the way it works in my view. Republicans work actively to suppress votes of African-Americans, largely because they know they are going to be Democratic votes. They do it in all sorts of ways. They do it procedurally through felon disenfranchisement, the disenfranchisement of actual felons and make believe felons, as was the case in Florida in 2000 and is often the case. They do it informally, through police and poll workers who tell people they can come back and vote tomorrow if the lines are very long or who threaten people who are in line with the trouble they can get into if they vote that day—saying those people have traffic tickets or something of that sort. All sorts of stories are told at the polls.

Meanwhile, Democrats do not work to facilitate voting among minority groups. That is because minority groups, if they are voters, make a certain amount of trouble for local Democratic coalitions.

So I mean, if you look at the early races, like the race for Mayor of Cleveland in 1967. This was when the cities were burning, literally. There had been an enormous amount of black protest in

⁴² *Albany Seeks Repeal of Law on New Voters*, N.Y. TIMES, Mar. 23, 1995, at B6.

the cities over police brutality on the one hand and the lack of police protection for ghetto communities on the other hand. Protest first over school desegregation and then, when that fails, community control of the schools; protest over access to white neighborhoods and housing and housing inspections—a whole range of protests. “We want our share” is the sort of underlying theme of these protests. And the protest spawned riots, beginning, I believe, in 1963.

The fuel for this kind of politics is, in a way, the black migration to the cities and, in New York, the Puerto Rican migration to the cities and the concentration of the people in the ghettos of the cities. Concentration does create a certain kind of group pattern. It also creates the prospect—a dizzying prospect—of black municipal power.

So with all of this turmoil in the background, African-American political leaders began to talk about black power in the cities. In 1967, Gary, Indiana, which is a middle-sized city, actually elected a black mayor, Richard G. Hatcher.

And also in 1967, a Cleveland politician named Carl Stokes runs for mayor. Cleveland is a big city. It has about 1 million people in the central city, 2 million in the metropolitan area. And the whole country was watching this race.

Well, in Cleveland, Carl Stokes was running on the Democratic history of Cleveland because he had won the Democratic nomination. However, he was also running as an independent, because really, throughout this whole process, he was running against local Democrats because Cleveland is definitely a Democratic city. It is a Democratic city where politics has had a lot to do with working class ethnic identification.

And Stokes wins. But he wins by, you know, I think a couple of thousand votes. And he wins against the local Democratic machine. And this pattern is repeating again and again.

What it shows is that while—at least on the municipal level, on the local level, and often on the state level—Democrats are reluctant hosts of minority voters because they make trouble for the established coalitions.

PROFESSOR RUTHANN ROBSON: So if there is some kind of cynicism about the legal process, what do you think about the cynicism about elected officials? So Carl Stokes was elected or other people are elected. And then what happens? Do they or don't they become part of that machine? This morning there were reports that people are not going to vote in the New Jersey election. They are

not going to vote because they do not really see a connection between what they think their problems are and anyone who can do anything about their problems.

PROFESSOR FRANCES FOX PIVEN: Well, one of the reasons they do not see a connection is because politicians are not campaigning by naming their issues, by naming the issues of poor people, by naming the issues of minority people. And politicians are reluctant to campaign by naming those issues because of the other blocs, voter blocs, in their coalitions and because of their sources of financial support.

Do elections matter? Well, yeah, actually they do matter. Does it matter who is elected to office? Yes, it does matter who is elected to office, but it only matters over time if there also is power simultaneously being exerted from the disenfranchised in the form of social movements.

Now I do not think that corporations have been as powerful as they have been in the United States over the last thirty-five years because they have a social movement. They do not need social movements. They have other forms of power that are very familiar to us. They have money and social connection. And, you know, they have the conventional power resources that are listed in the theoretical articles about power. But working people and poor people do not have that kind of power. They have the kind of power that is sometimes unleashed when they become defiant, when they join together and refuse to cooperate, refuse to foster social cooperation by refusing to make contributions to institutions unless their demands are met or at least until their demands are attended to. Requiring that demands be met is, unfortunately, too extreme.

In my view, this occurs much more when a regime is in power that needs these protesting people or needs the allies they are able to muster when they raise their banners and chant their slogans, and needs their sympathizers.

It has been very hard for protest to be protest movements reinforced in American politics while a regime has been in power that in a certain sense mobilizes its constituents by marginalizing the protestors, by stigmatizing the protestors.

That is why we were glad that the Democrats were elected and took over Congress in 2006. I was, at least. But they are shameful. They are so timid. They are so limp. They are so lame. That is the way politicians are—never going to take chances unless forced to do so because people are making them trouble.

But having said that they are so timid, so hapless, I want more of them elected in 2008. [Laughter] I want more of them to be elected in 2008 because then we can really make trouble for them. Or you know, in a way, you can capture this idea by saying you can only make trouble for the politicians that are your friends because they are the only ones that need you. The others need to paint you as the enemy, the scapegoat and there is danger with that.

I support politics. I worked on voter registration because I thought it was important to have Democrats in office and then to make as much trouble for them as possible.

PROFESSOR STEPHEN LOFFREDO: We are not in a moment where there is a social movement for that kind of economic justice. Poverty, as a political issue, is not a winning issue for politicians at this point; so, I am not sure of your thoughts, but I was kind of taken by one of the Presidential candidate's decision to highlight poverty as an issue in his campaign. So Edwards takes this on. It does not necessarily seem like political suicide, but it is also not calculated to succeed by traditional measures—to move forward. I do not know what you think about that.

PROFESSOR FRANCES FOX PIVEN: I think you might suspect he is testing the waters. He has raised a lot of worker issues—minimum wage, unions, work safety issues, the whole range of New Deal/Great Society issues. That is what Edwards is doing. He thinks that, at least in the primaries, there may be a constituency for those issues. And he is finding out. And you know, he could win some of those primaries. I think he could win some of them.

PROFESSOR STEPHEN LOFFREDO: So, you think it is the central calculation—move to the left during the primaries and then?

PROFESSOR FRANCES FOX PIVEN: Politicians are opportunistic. This does not distress me. I want to change the opportunities to which they respond. You know, my problem with Hillary [Clinton] is not that she is opportunistic; it is that she sees her opportunities in different parts of the society than I do. And what I like about Edwards is that he has based many calculations on the possibility that you can build a majority out of the American working class and the poor, who are also part of the working class. I do not know why, but that is a calculation that I like.

PROFESSOR RUTHANN ROBSON: But what about the middle class? Before today, we did some research as to what is being discussed in popular media with respect to class. There seems to be a great anxiety about the middle class. Who is the middle class? Are we really middle class? Are you really upper class? Certainly, we

are not poor. The notion of trying to bridge the gap into the middle class—many of whose members seem to think they are the upper class and that poor people are so-called working class.

PROFESSOR FRANCES FOX PIVEN: Well it is a longstanding pattern in the United States that people do not use the terminology of working class. In Europe, people call themselves working class who earn much more than the so-called American middle class and have guaranteed healthcare and lots of other things, five weeks vacation, a healthcare system that sends them to the hot springs for recovery. The German healthcare system does that. They have all sorts of things that American middle class people do not.

I do not know if we can make a stand on terminology. I think we may have to do what politicians tend to do, which is to adopt the terminology that people use and say that we are for the American middle class although now, it is true that you can stretch that category to the point where it becomes absurd.

The argument against the SCHIP program is that in some places, in New Jersey for example, families earning up to \$62,000 are eligible for SCHIP. A family with kids, earning \$62,000, is not well-off. So of course, the middle class, or the working class, whichever, includes those families. But do you want to stretch the term to encompass the people who earn \$500,000 and are clearly the upper class in American society today? I think not.

So maybe we should say the middle-middle class and the upper-middle class. I do not know how to work out the terminology for when the movement comes.

PROFESSOR STEPHEN LOFFREDO: Well, I do not know that I would not extend SCHIP to the \$500,000 families. Let me back up a minute and say

PROFESSOR FRANCES FOX PIVEN: Oh, I want universal healthcare if that is where you are going. Sure.

PROFESSOR STEPHEN LOFFREDO: And

PROFESSOR FRANCES FOX PIVEN: And then I want a tax credit for the poor.

PROFESSOR STEPHEN LOFFREDO: Right. One thing that sort of strikes me is, you know, looking around at other western industrialized countries. When there is a threat to a social provision, you get 100,000 people out in the streets of Germany or Paris—middle class and upper class living in tents to protest a homelessness provision.

And you know, you wonder about the degree of social solidarity that exists in these countries across class lines and with respect

to protecting social programs and social provisions. It seems, at least in part, a result of the universality of social provision in those countries whereas the United States very strictly segregates programs for poor people from programs for others and attaches stigma to the programs for the poor so that they become targets in ways that are not true in other countries.

So when you see what is going on with SCHIP; good, let us move in the direction of universalization of social provision across the board. The Republicans could not nail Social Security. They were able to dismantle the AFDC; but they could not do it to Social Security.

PROFESSOR FRANCES FOX PIVEN: Although they have done damage to Social Security. Damage has not been done just by Republicans but also by the Moynihan Commission.

PROFESSOR STEPHEN LOFFREDO: Sure, in the way that it is funded. But they were unable to privatize it. They were unable to dismantle it. They were unable to eliminate an entitlement and replace it with a discretionary system. Those who attempted it were politically burned. That is a function, I think, of the universality of the program whereas programs for poor people are highly fragmented.

PROFESSOR FRANCES FOX PIVEN: I am going to push that a little bit, okay? I do not disagree with what you say but what do we mean by universality? Actually, in Europe, unemployment insurance programs reach large portions of the working class when they become unemployed; but a lot of people never go on unemployment insurance, so they are not exactly universal.

The point we are really searching for when we talk about universality is the structuring programs so that they build support among significant categories of the population rather than structuring them in ways that create groups that are easily marginalized and stigmatized.

In that regard, the United States structures its programs badly, not only because it has programs for just poor people, but because those poor people programs are paid for in significant measure by state and local government.

Now when they are paid for by state and local government, state and local governments are even more vulnerable to business pressure and the pressure of the well-off taxpayers than is the federal government for the same reasons that make us think that globalization is kind of bad because the multinational corporations have governments under their heel. They can threaten that if they

do not get what they want in the way of favorable taxes and other legal regimes, they will go to Bangladesh.

That kind of process has existed for 150 years in the United States. Corporations that play on the national playing field can muscle state and local governments to give them whatever they want. And they always demand and receive favorable tax rates. Therefore, state and local taxes are always very regressive. And therefore, when significant portions of program costs are funded by local revenues, there is a structural reason for working class antagonism. The teamsters, who were always so hostile to welfare when we were doing welfare rights in the 1960s, had a reason for being so. It is not only that they did not like poor people—they did not like poor people, especially if they were women, especially if they were Puerto Rican or African-American. All that was true. But they were paying. A disproportionate part of the costs of these programs came out of their paychecks. And so we have to look at features of what we call universalism that have to do with the structures of the programs so that large portions of the working class, middle class, and the poor are brought together by the programs. That is a more complicated analysis than simply whether the programs are universal or not.

PROFESSOR STEPHEN LOFFREDO: Yes, I agree. I think that that way of structuring the financing has prevented a natural alliance between labor and working class poor. I think working class and organized labor have to see social welfare programs not as a tax, not as money coming out of their pockets, but as a hedge that increases their marketing position—as a way for change.

The alternative to labor is a very well developed system of social provision, social welfare provision that should strengthen labor ethic. That connection is seen in Europe. It is not seen so much in the United States. And now even to the extent that it is seen, labor is so weak in the United States, in part because of labor laws passed over a number of years and in part because of other economic factors; that it is no longer a major player.

PROFESSOR FRANCES FOX PIVEN: Just a little addendum to that. It is true that in Germany and especially in France there has been tremendous popular support for labor demonstrations in defense of, for example, the right to retire at 55 or whatever it is. And this occurs despite the fact that union membership levels in France are now higher than they are in the United States. But it also has something to do with the fact that the demonstrating workers are

not Muslims. The Muslims who rioted in the suburbs of Paris did not get that kind of support.

PROFESSOR RUTHANN ROBSON: Well, since we are discussing other countries in terms of globalization, I was really interested in what you both think about the argument that there is no poverty in the United States—that it is only relative poverty; that real poverty is somewhere else, usually in Africa, and that that is what everyone should be interested in working for. That there really is no such thing as a poor person in the United States. Well, that is what Jeffrey Sachs says.

PROFESSOR STEPHEN LOFFREDO: Well, if the claim is that there is no absolute poverty in the United States, it is just factually incorrect. There are some X number of millions of people unable to afford housing each year. The government lists 30-something million households as living below the poverty level in the United States. It does not necessarily mean people are starving to death; but they are malnourished. We all know the numbers about lack of access to medical care.

So the fact is people do actually die of poverty in the United States. People die who would not if they had access to resources. So I disagree with the premise.

However, the other issue is that there is a problem with relative poverty as well. In a democratic society, there is problem if the lower class is disconnected from the broader community and politically marginalized because of their circumstances. In our case, this is disproportionately people of color. This undermines the functioning of the political system and is constitutionally troubling as well.

PROFESSOR FRANCES FOX PIVEN: Well, large proportions of the population in many African countries are poor—in all African countries—are poor. And I am really glad that Jeffrey Sachs is passing out mosquito nets because I think that malaria and other diseases have something to do with widespread poverty in Africa. Also, the flooding of the African economy with subsidized agricultural goods from other countries is a cause as well. But good that Jeffrey is doing the mosquito nets to seek, I think, prevention from his work as the shock therapist for Eastern Europe.

However, it is reasonable that we should be concerned about poverty in the United States even if we thought that it did not have physical consequences. It probably does have physical consequences. We have mortality rates. Our lifespan in the United States is very low compared to other rich countries.

When we talk about those who are poor, we use an absolute poverty line. It is based on the cost of a minimal market basket of food necessary to sustain life in a family of three or four. It was a measure devised by a woman named Molly Orshansky in the 1960s. I do not know what foods are used to measure now, but I remember they were doing a lot of cabbage and pork liver in the 1960s. The measurement is minimal. It is subsistence. And they apply a multiplier of three to that monthly basket. This was pioneering when it was done—to actually try to calculate with what one could survive. The multiplier of three is supposed to cover costs of transportation and fuel and housing and healthcare.

Well, there are a number of problems with this poverty line. But we still use it. We are still using a market basket of food, applying a multiplier of three.

One of the problems is that housing costs have inflated. Transportation costs, fuel costs, healthcare costs have inflated much more rapidly than cabbage costs. That is poverty.

So the poverty line or a poverty level income provided a more reasonable income in the 1960s, when the line was devised, than it does today.

Moreover, 40% of the people who fall below the absolute poverty line live at half that level. They are in what we sometimes call extreme poverty or dire poverty.

Now I do not think we know enough about how those people are living or how they are surviving and whether they are surviving. And in any case, what is striking is that the United States is really a rich country, one of the richest countries in the world. And yet we come in either dead last or next to last when compared to other affluent countries with regard to absolute poverty measures.

Now as Steve said, absolute poverty is not the only thing we have to think about. How people live should be—and whether it is right that they should live that way—evaluated not only in terms of whether they have enough cabbage but also in terms of whether they can be part of the society given that level of subsistence, whether their children can feel that they are part of the society.

Now it is out of that kind of insight that relative poverty measures have been developed and are relied upon in all other OECD countries. And I brought some numbers. Five percent of the people in Finland are poor by relative poverty measures. That is to say they earn less than half the minimum income. In the United States, it is 17%. We are 24th in rank among OECD countries.

In Sweden, it's 6.5% of the population that are in relative pov-

erty. And you should know, by the way, that countries like Sweden and Norway and Finland are also becoming diverse because they have been much more generous in admitting refugees from other countries. So 20% of the population in Oslo is now foreign born. That was never true before. And when it was not true, social welfare analysts always said, "Oh, those countries can do it because they are homogeneous and therefore there is no antagonism toward the poor." But they are not homogeneous anymore—and they are still doing it.

The relative poverty rate in the United States is twice as high for families with children. It includes about fifteen million families—fifteen million people who are in families with workers.

So this frankly has to do with a lot of the capitalism questions that we asked. Does capitalism make poverty? Can we do anything? Is the elimination of poverty in the United States possible so long as we are a capitalist society is, I think, the essence of those questions. And my answer is, of course, we can.

There is a lot about capitalism I do not like. But I have to say, I do not know what the alternative is exactly. Other capitalist countries do not have the kind of stratification that we have. They do not have the levels of economic polarization. They do not have the insecurity.

By the way, we have measures for absolute poverty, relative poverty. We even have measures of economic polarization, the Gini Index. And we know that we are extreme on all those measures. But we do not have any measures that I know of for insecurity. And I think that attention to conditions in the United States, to levels of unemployment, contingent employment, part-time employment, bankruptcy, the problems of healthcare access, argue that, in a way, the most serious problem for Americans is this insecurity, this fear of economic unpredictability.

This kind of insecurity does not exist in other capitalist countries. There are not the same kinds of problems of homelessness. There are not the problems of bankruptcy. They can get healthcare. In the United States, if you become unemployed, if you are covered with unemployment insurance, and lots of the unemployed are not, you get twenty-three weeks. And you get about a fourth of your earnings while you were working. In most European countries, first you get about two years. And when they roll it back, they roll it back to a year. You get 90% of your earnings. And when you use that up, you go on another program, where you get 50 or 60% of your earnings. So that reduces insecurity.

One of the great achievements in the West—in Europe and the United States and in Canada, too, of course—one of the great achievements of the twentieth century was the development of government programs that reduced insecurity. This was good for everybody. And it was also very good for workers because insecurity is one of the conditions that weakens labor power, the power of workers in relation to employers.

PROFESSOR STEPHEN LOFFREDO: I will add to what Professor Piven was saying concerning the federal poverty income guidelines. The index is calculated across the board.⁴³ So the guideline is the same in Mississippi as it is in New York. It understates poverty by about a factor of three in a place like New York. You need about three times the poverty level to manage a basic, decent situation for a family in New York. Somewhere around 38% of welfare systems nationally understate the poverty level by a factor of two or three.

PROFESSOR FRANCES FOX PIVEN: So it is a third inaccurate.

PROFESSOR STEPHEN LOFFREDO: Right. Well, New York is a little more generous. In New York, about a sixth receive below what is needed to really survive. With respect to the minimum wage, for a family of three, working full time at the minimum wage does not get you above the poverty line.

A progressive movement from the Clinton era was the expansion of the Earned Income Tax Credit; however, even with that expansion, families who play by the so-called rules are still unable to support themselves. So when we talk about poor folks willingly accepting welfare in place of work, it makes absolutely no sense. You cannot survive on welfare.

The first day I walked into my first legal job, the Legal Aid Society in the South Bronx, I was told one thing you have to know—nobody survives only on welfare. It is just not possible. It is worse now.

People have to have some other means so they can make ends meet. Many people actually work off the books. You cannot support your children with a minimum wage job. You cannot support your children on welfare. And so people have to figure out strategies to survive.

Before passage of the Earned Income Tax Credit, there was sort of an interesting conspiracy of silence about all this. Conservatives did not want to talk about this because it would show the

⁴³ Meaning that it is applied to states using the same formula as opposed to individualized calculations that take into account state-specific differences.

bankruptcy of social policy with respect to minimum wage and welfare and, you know, a sixth of what a family needs to survive.

Liberals did not want to talk about this because it would feed into the old tales about welfare cheats and that whole business. And so this kind of went on for a number of years. It left people left in the crosshairs and poor families, who were left out of our policies, really no way to manage to survive without being in an underground working situation.

PROFESSOR FRANCES FOX PIVEN: There is a book by Kathryn Edin and Laura Lein called *Making Ends Meet*,⁴⁴ which actually, in a very painstaking way (it is hard to get people's confidence when you are asking them about their illicit sources of income), manages to accumulate survey data on the working poor and the welfare poor and figure out how they make ends meet and how they fail to make ends meet. There is a lot of food hardship among both categories of people.

PROFESSOR RUTHANN ROBSON: Well, what are the ways that people are caught in the crosshairs as you said? Are people being prosecuted for fraud? I guess the final question for you both is, what is one to do? What are our students to do? They are interested in issues surrounding the poor and are passionate about those issues, so what kinds of advice would you give?

PROFESSOR STEPHEN LOFFREDO: For people going out into this kind of work? Be ready for the long haul. Think big—but be ready for a lot of small struggles. Try to connect your work to some endeavors that have hope of transformative kinds of change. Take care of yourselves because this is a very frustrating area—a demanding area. People burn out of this kind of work which is obviously not optimal for you and not optimal for the cause you are trying to advance.

PROFESSOR FRANCES FOX PIVEN: It is my experience that people are less likely to burn out working as lawyers or as organizers if they have lots of friends who are doing similar work. So make friends. But I want to add just one point. It is hard to do that kind of legal advocacy, certainly by yourself, when things are not moving and when you do not feel there are bigger changes afoot; however, when there are bigger changes afoot—when people are banding together to try to improve the programs on which they depend or to try to do something about the way slum landlords behave—they will inevitably try to do this by making trouble. And then your job

⁴⁴ KATHRYN EDIN & LAURA LEIN, *MAKING ENDS MEET: HOW SINGLE MOTHERS SURVIVE WELFARE AND LOW-WAGE WORK* (Russell Sage Foundation 1997).

as a lawyer is to defend them when they make trouble, not to tell them not to make trouble.

PROFESSOR RUTHANN ROBSON: I think we are going to end it with those wise words. Thank you both.