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# Poverty & Welfare: Does Compassionate Conservatism Have a Heart?

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2001 Edward C. Sobota Memorial Lecture, Albany Law School, Albany, NY

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# GEORGETOWN LAW

## Faculty Lectures



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Albany Law School, Albany, NY

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# LECTURE

## POVERTY & WELFARE: DOES COMPASSIONATE CONSERVATISM HAVE A HEART?

2001 EDWARD C. SOBOTA MEMORIAL LECTURE\*

*Peter Edelman\*\**

*Introduction by Martha Davis\*\*\**

It is a great privilege to introduce Peter Edelman as the Sobota lecturer today. I have known Peter personally for a number of years through our work on economic justice and I've certainly known him by reputation for much longer than that. I don't want to go into detail about the impressive particulars of his career—they're set out in your program—but I do want to point out that Peter is unusual in that he has worked in all three branches of the federal government, as well as in state government. Here in Albany, he was the Director of the New York State Division for Youth in the late 1970s, so he has a connection to this town. Since 1982, he has been a professor at Georgetown University Law Center in Washington, D.C., with the exception of a stint in the federal

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\* Edward Sobota received his bachelor of arts degree in economics and government in 1974 from St. Lawrence University. After graduation from Albany Law School, he served as clerk for a bankruptcy judge in the Eastern District of New York. He joined Weil, Gotshal & Manges LLP as an associate in October of 1981. Firm colleagues respected his character and excellent work on large reorganization matters, such as the Tacoma Boat Building Company Chapter 11 case and the financial restructuring of the Crompton and Elsinore Chapter 11 cases.

The Edward C. Sobota '79 Memorial Lecture Series was established in 1988 in memory of Edward C. Sobota '79 by his brother Henry Sobota '77, the Sobota family, and by Weil, Gotshal & Manges.

\*\* Professor of Law, Georgetown University Law Center and founder of the Law Center's family poverty clinic.

\*\*\* Albany Law School's Kate Stoneman Visiting Professor of Law & Democracy, Fall Semester 2000; Vice-President and Legal Director, NOW Legal Defense and Education Fund.

government, when he worked for the U.S. Department of Health and Human Services during the Clinton administration.

As you read Peter's bio in the program, it's striking how many times he has been in interesting places when things of significance are happening. I used to think, "What a lucky guy, he's always at the right place at the right time." And then a light bulb went off and I realized that that doesn't just happen. Nobody is just lucky like that. In fact, Peter is somebody who's making things happen. He's in these places when things are happening because he's the catalyst for thing the rest of us read about in the papers.

The entire nation had a chance to learn more about Peter's character when in 1996, he resigned from his position at the U.S. Department of Health and Human Services, rather than work on implementation of a welfare reform law signed by President Clinton, which Peter believed would deprive poor children and families of a safety net. Professor Edelman has received deserved recognition for taking this brave stand, along with his colleagues, Mary Jo Bane and Wendell Primus, who also resigned at that time. What is perhaps more important is what he has done since then. The public interest in his resignation gave him a chance to really speak out about this issue. He has taken that opportunity in a very energetic and committed way, that is extremely impressive to those of us in the activist community. Yes, Peter is back at Georgetown, but he is using his own bully pulpit to put forward a more humane vision of government's role in promoting economic justice. He is writing and speaking, and interacting with students, activists, and poor families themselves. His latest contribution is the book which is mentioned in the program, *Searching for America's Heart: RFK and the Renewal of Hope*. I had the chance to look at it and it is an excellent account of the issues in economic justice, how they span the decades, and what we as a society should be thinking about as we try to formulate our goals for economic justice. This is incredibly important work that Peter is engaged in. It is a privilege to have him here and so please help me welcome him.

### *Peter Edelman*

Thank you so much, Martha. I'm glad to be here. I am honored to deliver a lecture in memory of Edward Sobota, especially because such distinguished speakers have preceded me.

Our question here is: does compassionate conservatism have a heart? Almost five years have passed since the 1996 welfare law

was enacted. So, we might ask, where are we and where are we going, and even more to the point, what are the prospects for better policy and outcomes on poverty generally? One American child in six is still poor, and the number of families in economic difficulty is much larger than that. That is the context in which we have a new president and a new administration.

Let me start with a little history, both about the welfare law and what has happened since it was enacted. We did need to reform this thing that we call welfare—cash assistance for families with children, what used to be called Aid to Families with Dependent Children, and is now Temporary Assistance for Needy Families, or TANF. It was not a satisfactory program. It was not helping families get out of poverty, it wasn't helping parents to find work, and it wasn't protecting children. We needed reform to do all those things, and in my view, we didn't do that. We went in the opposite direction. Nothing that has happened since that time changes my view that this is not real reform and we should not have enacted it into law.

Let me say quickly what this 1996 law did. It used to be the case that if you were a single parent with children and went to a welfare office, anywhere in America, federal law said you had to be afforded cash assistance. It might have been a small amount, depending on where you lived, because it was entirely up to the states how much they would pay, but you had to be helped. The new law changed that. It turned the structure into a block grant, which means each state gets a certain amount of money, and it can basically do whatever it wants, including not having a program at all. And, the new law says that you can only help, with federal money, for a cumulative total of five years during the span of the upbringing of that mother's children. If she has three children over the space of six years, then we're talking about a period of twenty-four years that those three children are growing up to the age of eighteen. They can only be helped for a total of five years out of the twenty-four years, even though the mother may go in and out of jobs, there may be need that has nothing to do with an arbitrary five year period. The states are free to put in their own money, but that is the federal time limit.

The message that went with the new law was that there are too many people on welfare, so we encourage an atmosphere of sanctions and terminations to secure compliance with the law. The message was cut the welfare rolls. The larger politics was, we've had too much welfare, and too much dependency and that is the

reason why people don't take responsibility for themselves, why they go out and have babies when they are not married. This cultural/political perspective brought us this law.

On the other hand, the new law actually brought quite a lot of money with it, \$16.5 billion of federal money annually plus a requirement that the states continue to spend seventy-five percent of what they were spending previously in this area, which adds up to another \$10 to 11 billion. In other words, about \$27 billion of federal and state money are annually available around the country to help poor people, in addition to what is out there for health care and other areas. So, the potential was actually positive, if the states would decide to do good things with the money. And some did, a few. But, because there were no requirements, and because there was this message to cut down on the rolls and push people off, it also could be terrible, and it is in too many places.

What has happened? The welfare rolls had about 14.3 million people in the early 1990s, a few years before the law was enacted. That was the peak. That amounts to about five million women, a ratio of about one woman to two children, so about one third of the rolls at any given time are adults and two thirds are children. We're down to a little over six million people. That's a huge decrease, well over fifty percent. Of course, we hear from the proponents of the law that this in and of itself is the indication that it is very successful. The welfare rolls are reduced and that's the end of the story.

Actually there are three stories: the sixty percent of those no longer on the rolls who have jobs; the forty percent of those no longer on the rolls who have no job and no welfare; and two million-plus women and four million-plus children who are still on the rolls while the five year time limit is ticking and we seem to be moving into a recession.

Story number one. The sixty percent of former recipients who are working is sixty percent of a total that is between two and a half and three million adults. It is good that they're working, and, in fact, there has been a big increase in the percentage of single mothers who are working. But, that in and of itself is not the end of the story because one would want to know how their children are doing and how much money they are making. But, just in the last half of the 90s, we have gone from thirty-nine percent of single mothers working to fifty-nine percent. That's a big increase. If you do that right and put in place all the associated policies that ought to be there, it can be a good thing.

The problem is, what are they earning? The average is about seven dollars an hour, and the average amount of work they have is about thirty hours a week. These are national numbers based on a lot of studies. So a large number are still in poverty. There are many who are working part time and can't find a full time job. They are counted as employed, even though they are only working part time. We need to raise their income, but at least we start with the fact that they have some work. Nonetheless, too many of them are not doing well.

A fair number of those who are working get the earned income tax credit, which is a policy that was greatly expanded in 1993 under President Clinton. If you have a minimum wage job and have two children, the EITC gets you up to the poverty line, which is about \$14,000 now for a family of three. The problem arises if your minimum wage job is part time, or if you have three or more children.

Why are there so many more people working? Is it because of the so called welfare reform? The research suggests that it is mostly because we have had a very hot economy. Employers are desperate to find workers, and they find that these previously vilified mothers on welfare (a) want to work and (b) are good workers. We have discovered that there is a good labor force there. Now we have to see that they achieve an income they can live on.

Story number two. Forty percent of the people who have gone off welfare, that's over one million women and over two million children, neither have a job nor have cash assistance. I call them America's disappeared, over three million people not accounted for. Most have been able to move in with extended family, probably under circumstances that are not ideal, but other people in the family are working, so they put a little more water in the soup. We need to worry about when a recession comes and the income of that extended family goes down. The fact is right now that the homeless shelters for mothers and children in every city in America are overflowing. How could that be in the middle of this incredible prosperity? One reason is because we also happen to have a crisis in affordable housing. People are having a terrible time paying the escalating rents. But another reason is the women who were pushed off the welfare rolls. I talked to many of them when I wrote my book. A typical story was that they had lost their welfare check because the authorities said that they hadn't shown up for an appointment, when the reason they couldn't get to the appointment was that they didn't have child care or perhaps didn't even know

they had been summoned. They were then not able to pay the rent and ended up in a homeless shelter. New York City's homeless shelters are averaging over twenty-five thousand people a day, two thirds of whom are mothers and children. About one third are single adults. They are overflowing.

You almost never read about that forty percent who have disappeared. You read about what a great success this law is. If you look at the official numbers on income, you find that the bottom ten percent of single mothers have actually lost income over the last four years. Look at the numbers on what we call extreme poverty, the people below half of the poverty line. Forty percent of the thirty-two million people who are classified as poor have incomes that are below half of the poverty line. In other words, thirteen million people have incomes that for a family of three would be below \$7,000. That number has not gotten better, and the median income of that group has actually fallen. Why hasn't that gotten better in the middle of all of this prosperity? Because there is this group of mothers with children who have lost more in benefits than they have gained in income from work. That is very troubling.

Third story. The ones remaining, the six million or so who are still on the rolls. Who are they? They are people who disproportionately have less education, less work experience, more personal problems, live in the inner city, and are African-American or Latino. Time limits are coming. If they are people who have been continuously on the welfare rolls since the law was enacted, they are going to come up against the time limits. Plus, there is a recession coming, and we ought to be very worried about that.

Those are the three basic stories. The performance of the states is uneven. This is a block grant. So there are states that I call the outlier states, like Idaho which has a two year lifetime time limit, instead of the five that is the federal law. The states are permitted to have no help at all if they want. They could have a one day time limit. So Idaho has a two year time limit, with very few exceptions, and they have what I call three strikes and you're out. In Idaho if you don't cooperate with the authorities and their various rules about having to go to work, come in for appointments, what have you, three times, the entire family, mother and children both, is off welfare for life. That is perfectly legal under this law. There are also issues about privatization and how that has worked. There are serious issues about the number of people who illegally lost food stamps and Medicaid. Overall there has been in immiserisation, if that is a real word, of a substantial segment of people at the bottom



over the last four or five years. And I think this is just not acceptable.

Now we have a new president, a new administration, and a slightly improved Congress, especially in the Senate. What now? Does compassionate conservatism have a heart? What is going to happen?

The President has made a proposal for a massive tax cut which offers absolutely nothing for the poor or the near-poor. There is nothing for anyone who has no federal personal income tax liability, even if they're working and paying payroll taxes. The wealthiest one percent, who do pay twenty-one percent of the federal income tax take, are going to get forty-three percent of the benefits. This should be the first poverty debate of the new administration, and not just a poverty debate because the people who are in economic trouble are way above the poverty line. It isn't just families of three earning less than \$14,000 or families of four earning less than \$18,000. Think about what it costs to live. There are many studies that show a family of three needs over \$20,000 to make it, and on up if a family is larger. In addition, the surplus is greatly overstated. We hear that we have a \$5 trillion surplus over the next ten years. The Center on Budget and Policy Priorities and the Concord Coalition, and others, have studied the surplus carefully. One piece of the surplus, amounting to \$200 billion is in tax credits that are due to expire, and the accounting assumption is that those tax credits are not going to be renewed. But, these are very popular tax credits. So, the assumption is that those tax credits will no longer be law, when everybody knows that these are going to be reenacted and the revenues will never be collected. There is an assumption, because of the spending caps in the balanced budget law passed in 1997, that a number of discretionary federal programs are going to be deeply cut and that that money will then be there as part of the surplus. We have been operating under that structure for four years and every year Congress declares an "emergency" and funds those discretionary programs because they are popular programs. But that is \$300 billion that will not be there in the surplus. Those are just two examples. The tax cut that President Bush is proposing will use up the non-social security surplus and then some. We are headed back to a period of deficits and a new set of constraints on spending for social needs.

Another area in which the President has already made a proposal in his faith-based initiative. How should we think about that? After all, organizations like Catholic Charities and many other

religiously affiliated non-profit organizations have been delivering social services with public funds for a long time. If that were all that was being proposed here, we should applaud it. But what has been proposed looks like the money is going to go directly to churches, synagogues, and mosques, in other words, directly to religions, as opposed to religiously affiliated organizations. There is the possibility that we are going to see something that will amount to an endorsement of religion, that someone will come in for services and be proselytized, not knowing that that was going to happen, and that there will be serious government entanglement with these religions because of all of the administrative things that are necessary to comply. There is a First Amendment issue here. At the very least, if it is drafted that way, we are going to see a lot of litigation.

Second, which to me is equally important, there is at least an overtone that this is *the* answer. It is not *the* answer. It is part of an answer. I believe very strongly that people across this country have a responsibility to help other people, in many different ways. But we need a lot of other public policy if we are going to make any progress, and I am worried that we are getting part of the answer here sold to us as the entire answer.

If it is only part of the answer, what is the real answer?

First, on welfare, we are going to have a debate because the 1996 law comes up for reauthorization in 2002. I would personally redesign everything, but that is not going to happen. The framework that we have is generally accepted in Congress. There will be attempts to reduce the money. People will say the welfare rolls have been cut in half and we don't need to spend as much money. Those who want to improve the situation will find themselves defending the current framework, at least in terms of the amount of money there. You may see an alliance between the governors and the liberal advocates on that point.

There are a number of poverty-related steps forward that are possible in this Congress, if there is effective advocacy from outside, and depending on the stance of the Bush administration. I am thinking about more supports for working families through improving the minimum wage, improving the earned income tax credit, health coverage for parents as well as children, more money for child care, and paying attention to affordable housing. In incremental form we may be able to get some of these improvements.

As to TANF itself, there are a number of things that we can do to ameliorate the time limits and make TANF more recession proof. I think we particularly have to pay attention to the people who I call the disappeared, to the safety net for children, which was obliterated by the 1996 law. This is only going to be a worse problem when a recession comes and/or the time limits kick in fully.

As to all of this, we need an inside and an outside strategy. There is a lot of debate about whether the Democratic party, whether the people who are on the progressive side, should now kind of position themselves in a centrist way or in a more progressive way. Inside the Beltway, the reality is that what is enactable is going to be centrist; it is going to be incremental. In fact, we may be lucky if all we do is stop some bad things. But, we should remember that this is not 1981, with President Reagan coming in, and the kind of radical conservative position that was associated with that. And it's not 1995, when Speaker Gingrich came in and the Republicans took over the Congress, where again the Republicans came to town with the avowed purpose of dismantling the federal role on domestic social policy.

Now, the Republicans are trying to show compassion. When Governor Bush was campaigning he actually rebuked the Republicans in Congress for trying to cut the earned income tax credit because he said we shouldn't balance the budget on the backs of the poor. So I think we can make modest progress if we work on it. That is the centrist part of what we have to do.

But the progressive side has to have an outside strategy at the same time. It is clear who the opposition is now. One problem over the last eight years was that it was confusing. Clinton was ostensibly a Democrat and progressive, people didn't know whether it was appropriate to criticize him publicly. We should have organized better then. But now it's clearer. So we need a much clearer progressive voice.

I want to tell you about the National Campaign for Jobs and Income Support, over two hundred and fifty grass roots organizations that are coming together to express a strong grass roots voice on these issues in Congress and in the state legislatures.<sup>1</sup> What we want to accomplish is that members of Congress should feel supported if they do the right thing, and will feel the consequences if they don't.

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<sup>1</sup> For more information, see [www.nationalcampaign.org](http://www.nationalcampaign.org).

The outside track is also about putting back on the table many issues that haven't been there. We should be discussing what has happened to the distribution of income. We have gone from the top one percent twenty years ago earning the same as the bottom twenty percent of the people, to the point where now the top one percent, 2.7 million people, have the same total income as the bottom forty percent, 110 million people. We should also be discussing issues of race and gender that we pretend have been fully solved. I do believe that our politics can change now. I think that there was some good news imbedded in this recent election. The black and Hispanic vote was very influential. There is great potential, but we need to energize people on the progressive side between elections, so they will see more clearly at election time the reasons to come out and vote, and we need to have stronger voices between elections that will affect how candidates behave at election time. We need an outside track among public intellectuals as well. There needs to be a clearly stated progressive agenda that is beyond what can be accomplished right now.

Take the safety net as one example. At least the fact that we have destroyed it has the virtue, if you can call it that, that we now see the suffering that it has caused and the need for having a safety net for children that we now don't have. There are a lot of ideas being brought forward now. There is something called a Universal Baseline Income that some people have discussed. Others advocate a refundable caregivers tax credit, and still others call for making the child tax credit that we have now refundable. We need to get all of that into the public discourse. It's a new challenge for policy because it has to relate to work. Work and a living wage have to be the center of how people get out of poverty. Not welfare, not cash, welfare is what we do for the people who are not in a position to work, which should be the smallest number possible, or the people who are hurting when there is an economic downturn or when there is a personal downturn. We have to have both a progressive work policy and a safety net. We have to get that safety net back on the table and we need public intellectuals to take this responsibility.

The agenda of a living wage and a fair share for all is the bigger picture. It includes the here and now of income from work and income as a safety net, and health care, childcare, and housing. But, it's also what we do about the future. It's about children. It's about education, about what happens in the off school hours, about early childhood development. It's about the rebuilding of community in neighborhoods of concentrated poverty and it's about

intensifying the fight against race and gender discrimination and discrimination of all kinds. With roles for public policy and private action of all kinds. That's the list. We've had too much argument over welfare. We need to enlarge our perspective to the full picture. I want to say particularly that there is a role in this for students, and for young lawyers. I know that with the loan debt that you have and the shortage of jobs in public interest work, it's hard. But some of you can do that and others can go into private practice and insist on doing pro bono work within your firm. And insist when you choose firms that you have the possibility of having those choices. It would make such a difference. And be involved, wherever you are. Maybe you will be in a small firm and there isn't the luxury of being able to take in pro bono work, but everybody could be involved in the community. That's a duty, a responsibility that we all have. We need your work and we need your voice. It is especially apt to remember Franklin Roosevelt's second inaugural address as we go into this debate over whether we're going to hand back forty-three percent of the money to the wealthiest one percent of Americans, when we have so many people who have such a small share in national pie. Franklin Roosevelt said in 1937, when he was inaugurated for his second term, that "the test of our progress is not whether we add more to the abundance of those who have too much. It is whether we provide enough for those who have too little."

Does compassionate conservatism have a heart? It will if enough people insist on it.



# **A CONVERSATION ON FEDERALISM AND THE STATES: THE BALANCING ACT OF DEVOLUTION**

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