POVERTY LAW, POLICY, AND PRACTICE

ASPEN CASEBOOK SERIES

POVERTY LAW, POLICY, AND PRACTICE

Second Edition

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To my father, Michael Brodie, who taught me which side we're on.
Yours for the OBU.
—J.B.

To Kurt, Michael, Jessi, Maggie, and Libby.
—C.P.

To Mario Castro Tablas (1950-2013). Buem.
—E.R.

To my parents, Marion and Joel Selbin, who taught me everything
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—J.S.

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PREFACE

Poverty law as a distinct field of study and practice did not exist 50 years ago. By the late 1960s, however, lawyers were active participants in a robust and multifaceted war on poverty. With inspiration, example, and tools from their civil rights forebears—and support from the Ford Foundation—they flooded federal courts with lawsuits designed to establish constitutional protections and substantive rights for the poor. They achieved a string of high-profile victories, perhaps best exemplified by the U.S. Supreme Court's recognition of a due process right to welfare pre-termination hearings in Goldberg v. Kelly (1970). But almost as quickly as it arose, the era of constitutional antipoverty lawyering receded as the Court refused to extend *Goldberg*'s procedural logic to recognize positive rights to social goods like welfare, housing, and education.

Law school curricula and casebooks during the time reflected the new antipoverty activism. As the tumult of the 1960s swirled outside their gates, law students demanded relevant courses and training. The first poverty law casebook was published in 1969, by which time law schools across the country were opening antipoverty clinics and offering more than 200 poverty-related courses. Responding to growing demand in this emerging area of law and practice, four more poverty law casebooks and a hornbook were published by 1976. But like the antipoverty litigation agenda, the poverty law movement in legal education began to wane almost as soon as it had begun. It would be more than 20 years before the next—and last—poverty law casebook was published, this time in the immediate shadow of welfare reform.

We published the first edition of this poverty law textbook in 2014 for reasons that are even more salient today.

First, although the Supreme Court has largely foreclosed affirmative antipoverty remedies in the federal courts—and federal funding for civil legal aid peaked in 1980—lawyers remain actively engaged in a wide range of antipoverty activities and initiatives. As they have for decades, lawyers for the poor continue to enforce and expand statutory rights, fight bureaucratic disentitlement to anti-poverty programs, and challenge unjust laws and policies in courts, legislatures, administrative agencies, and other settings. Meager federal funding for legal aid has helped to drive a more diverse and decentralized delivery system of experimentation and innovation at the state and local levels. Poverty lawyers have responded to the evolving needs of low-income clients and communities by promoting economic development, combatting the criminalization of poverty, and partnering with other professionals in multidisciplinary practices.

Second, even before the economic crisis precipitated by the COVID-19 pandemic—which hit just as this edition was going to print—wealth disparities in the United States were at their highest levels since the 1920s. Living wages, affordable housing, and other basic needs are increasingly out of reach for tens of millions of Americans, including working families, people of color (especially Black and Latinx families), and an eroding middle class. Government

retrenchment and disinvestment from decades-old commitments to poor, elderly, and disabled people coincide with a global movement of labor and capital that has reverberated throughout the domestic landscape. These developments raise important and troubling legal and policy questions, including about the role of law, lawyers, and legal institutions in efforts to address the impact of persistent, racialized, and deepening economic inequality.

Given the proliferation of substantive and methodological approaches in poverty law, this book is designed for a survey course. The first three chapters introduce foundational concepts about poverty, social welfare policy, and constitutional issues. With these tools in hand, the next seven chapters—which can be taught in any order—explore major antipoverty programs and sites of antipoverty activity, including welfare, work, housing, health, education, criminalization, and access to justice. Each substantive chapter brings together a mix of data, doctrine, theory, policy, and practice issues. The final two chapters describe innovations, including market-driven and human rights–based approaches to poverty reduction.

The book includes a mix of case law, social science, and popular press readings from a variety of perspectives. We hope it will provide students with a solid introduction to the evolving field of poverty law. More importantly, we hope it will encourage them to participate in ongoing efforts to combat the causes, conditions, and devastating effects of poverty.

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POVERTY LAW, POLICY, AND PRACTICE

CHAPTER 1

Introduction to Poverty

INTRODUCTION

Poverty as a concept and as a set of experiences—or limitations on experience—is difficult to understand and invites both personal and analytical responses. The same can be said of poverty law, where the task of defining what is and what is not covered by such a label is itself dynamic and subject to debate. We invite you to consider the topic of this textbook, poverty law, intellectually, practically, and emotionally—that is, as a topic that involves your head, hands, and heart. The readings and cases in this book range from discussions of first principles and definitions of poverty to presentations of empirical understandings of the determinants of poverty to interview-based accounts of how the poor encounter the legal system.

The first three chapters of this textbook focus on the big questions: How is poverty defined and measured? Who measures it and why? What antipoverty policies have been tried? How has our society's approach to poverty changed over time? What constitutional protections have been extended to the poor? The middle of the book, Chapters 4-10, tackles poverty law on an issue-by-issue basis, covering Income and Food, Work, Housing, Health Care, Education, Criminalization, and Access to Justice. This structure reflects both the issue-specific nature of many of the policy responses to poverty and the expansive scope of poverty law, but it is important to look for and keep in mind the themes that are introduced in the first three chapters. Some recurring themes include: Who qualifies for public assistance? What is the role of race in our thinking about poverty and in our responses to poverty? How is assistance structured or limited? What are the impacts of poverty and program limits on particular subgroups of the poor (racial minorities, women, children)? Should the law favor flexibility and administrative discretion or formal rights? Often these themes relate to whether the people receiving assistance are considered deserving or undeserving of such assistance and we will revisit this theme of who is among the "worthy poor" throughout the book. The final two chapters, Markets and International Human Rights, address more broadly ways that an antipoverty agenda can be advanced, moving from a chapter on market responses to the concluding chapter on the lessons and possibilities offered by international human rights law.

Poverty is an ever-present yet often-neglected aspect of the study of law. Law school courses frequently discuss the problems of poor people—in criminal law, but also in torts, constitutional law, contracts, and even property. Yet the fact of their poverty is treated as secondary or not treated at all. Looking at the law from a poverty-centric perspective involves drawing out the concerns, struggles, and lives of poor people; the nature of the programs that serve poor communities; and the legal, economic, and political structures that contribute to and define poverty. One of the fundamental precepts of American law, inscribed over the entrance to the Supreme Court, is "Equal Justice Under Law." Poverty is a challenge to this commitment and forces us to consider whether substantive and procedural rights extend to the poor and the extent to which we as a society are *not* committed to meeting the needs of the poor. Another challenge for those who study poverty law is sorting out the many reasons given for limiting the assistance provided the poor or for not accepting a broad understanding of their rights. The seemingly intractable nature of poverty, the question of whether people are responsible for their own poverty, and the limited institutional role of the judiciary are just a few of the explanations given for the partial nature of America's legal and societal responses to poverty. Considering these and other explanations with an open mind while not losing sight of the hardships felt by those living in poverty is crucial to the study and understanding of poverty law, regardless of one's political inclination.

We hope you leave this book with a better understanding of the legal structures aiding and confronting poor people and with the determination to keep asking the questions, about the law and about society, raised by the study of poverty law. Our goal in writing this book is to help develop in a new generation of students the cognitive, practical, and analytical tools needed to advocate for the poor. And our real hope is that after studying this material, you will be better equipped and inspired to think, feel, *and* do something about poverty.

* * *

This is a *poverty law* textbook, but before we turn to the history of poverty law and the programs that serve poor people, we must first explore how poverty is defined and measured. Subsequent chapters are largely dedicated to how the law regarding poor people has changed over time and to some of the important federal and state antipoverty programs. But the focus of this chapter is understanding *poverty*. Mollie Orshansky, the creator of the U.S. poverty line, observed:

> Poverty, like beauty, lies in the eye of the beholder. Poverty is a value judgment; it is not something one can verify or demonstrate, except by inference and suggestion, even with a measure of error. To say who is poor is to use all sorts of value judgements. The concept has to be limited by the purpose which is to be served by the definition. There is no particular reason to count the poor unless you are going to do something about them. . . . [W]hen it comes to defining poverty you can only be more subjective or less so. You cannot be nonsubjective.

Mollie Orshansky, *How Poverty Is Measured*, 92 Monthly Lab. Rev. 37 (1969).

The excerpts in this chapter tackle the question of what poverty is from different perspectives and make different value judgments regarding what makes someone poor. Although some of the discussion is couched in technical terms, the differing value judgments are never far from the surface.

A. WHAT IS POVERTY?

Some of the challenges when considering poverty and poverty law are definitional. What is poverty? What makes someone poor? The answers to these questions will help frame how poverty is understood and the extent to which government policy should focus on poverty. If, for example, poverty is given a very restrictive definition that only a very small percentage of the population meets, then the problem of poverty will appear minor. On the other hand, an extremely broad definition of poverty threatens to be overinclusive, diluting the significance of poverty and the connection between the definition employed and the underlying concerns that animate antipoverty efforts.

1. Competing Ways to Measure Poverty

Poverty is generally understood in either absolute or relative terms. Absolute understandings of poverty rely upon a basic needs framework: how much food does it take to survive or work, how much is needed to obtain minimally adequate shelter, and so on. Changing what is considered essential can, of course, change how many people are defined as being poor, but the underlying rationale is one of individual need, not the individual's place in his or her society, or the individual's resources compared to those of anyone else. Relative understandings of poverty, in contrast, emphasize a person's position in his or her society. Defining a person making 50 percent of a country's median income as poor is an example of a relative understanding of poverty in that it does not matter what can or cannot be purchased with such an income.

A recurring challenge for those seeking to understand and measure poverty is whether to adopt an absolute or a relative measure of poverty. A World Bank article explains:

> An important distinction is between absolute and relative [poverty] lines. Absolute lines aim to measure the cost of certain "basic needs," which are often interpreted as physiological minima for human survival; nutritional requirements for good health and normal activity levels are widely used to anchor absolute lines. The monetary lines are intended to have constant "real value" (after deflating by a price index). By contrast, relative lines do not claim to represent physiological minima and are instead (typically) set at a constant proportion of current mean income or consumption. Absolute lines are common in developing countries while relative lines tend to dominate in developed countries.
>
> The strengths and weaknesses of the absolute versus relative approaches to setting poverty lines have been much debated. The position one takes in that debate carries weight for how one thinks about economic development. Absolute poverty can probably be eliminated with sufficient economic growth, which is a key element of the World Bank's strategy for attaining its "dream of a world free of poverty." Outcomes for relative poverty depend more on how income distribution changes; indeed, it is sometimes argued that relative poverty will always be with us. . . .

Martin Ravallion, *Poverty Lines Across the World* (World Bank, Working Paper No. 5284, 2010). The differences between absolute and relative poverty mirror in some respects the differences between poverty and inequality. Relative poverty

measures are quite explicitly designed to take into account the relative wealth of others in the community of interest and set the poverty line at some level below the average income in that community. Absolute poverty measures, at least in theory, are based instead on the bare minimum required for a person or family to meet basic needs, independent of the relative wealth of the surrounding community. But a certain degree of category blending is built into nearly any measure that claims to be defined in solely relative or solely absolute terms. After all, the choice regarding where to set the relative income cut-off below which people are considered poor is often based on what level of consumption is available at that cut-off point. Similarly, societal understandings of what constitute basic needs change as societies develop over time. What follows is a selection written by an early, influential, proponent of a relative definition of poverty.

PETER TOWNSEND, *POVERTY IN THE UNITED KINGDOM* (1979)

Conceptions of Relativity

The idea of "the relativity" of poverty requires some explanation. The frame of reference in adopting this approach can be regional, national or international, although until formal ties between nation states are stronger, or global corporations even more strongly entrenched, the international perspective is unlikely to be given enough emphasis. The question is how far peoples are bound by the same economic, trading, institutional and cultural systems, how far they have similar activities and customs and therefore have similar needs. Needs arise by virtue of the kind of society to which individuals belong. Society imposes expectations, through its occupational, educational, economic and other systems, and it also creates wants, through its organization and customs.

This is easy enough to demonstrate for certain commodities. Tea is nutritionally worthless, but in some countries is generally accepted as a "necessity of life." For many people in these countries drinking tea has been a life-long custom and is psychologically essential. And the fact that friends and neighbours expect to be offered a cup of tea (or the equivalent) when they visit helps to make it socially necessary as well: a small contribution is made towards maintaining the threads of social relationships. Other goods that are consumed are also psychologically and socially "necessary" in the same sense, though to varying degrees. The degree of necessity is not uniform for all members of society, because certain goods and services are necessary for some communities or families and other goods and services for others. Repeated advertising and imitation by friends and neighbours can gradually establish a new product or a new version of an old product as essential in a community. Minority wants are converted into majority needs. People may buy first of all out of curiosity or a sense of display, but later make purchases in a routine way. The customs which these purchases and their consumption develop become socially and psychologically ingrained.

Clothing is another good example. Climate may determine whether or not any soft forms of protection are placed over the body, and how thick they are, but social convention, itself partly dependent on resources available, determines the type and style. Who would lay down a scale of necessities for the

1970s for young women in Britain consisting of one pair of boots, two aprons, one second-hand dress, one skirt made from an old dress, a third of the cost of a new hat, a third of the cost of a shawl and a jacket, two pairs of stockings, a few unspecified underclothes, one pair of stays and one pair of old boots worn as slippers, as Rowntree did in 1899?

But convention is much more than ephemeral fashion. It is a style of living also governed by state laws and regulations. Industry conditions the population not only to want certain products and services, but to put up with certain disservices. . . .

Definition of Poverty

Perceptions of poverty are one source of underestimation of its extent and severity. Individuals in any population hold different specific or general ideas of its nature. . . . some people think of poverty as a condition in which families go hungry or starve, and others as a condition relative to standards enjoyed on average or by most people in society. But the majority take the view that poverty is a condition under which people are unable to obtain subsistence, or the basic necessities of life, or is a condition which applies to particular low-income minorities, such as pensioners or the unemployed.

. . . Nevertheless, one country's definition is certainly not the only, and is unlikely to be an objective, definition of poverty. There are variations between societies which have to be accounted for. There are also variations within any single society in history. . . .

The state's (and the public's) conception of subsistence poverty is different from, and more generous than, starvation poverty. Yet it is none the less a severely limited conception of need, fostered by motives of condescension and self-interest as well as duty by the rich. Ideas of "need" are socially conditioned, and scientific substantiation of such ideas may be non-existent or insufficient. This is independent of the fact that objective needs are socially determined. . . . the traditional conceptions of "subsistence" poverty restrict people's understanding of modern social conditions as well as their willingness to act generously. On the one hand, they are encouraged to believe that "subsistence" represents the limit of basic human needs, and this tends to restrict their assessment of what individual rights or entitlements could be introduced and guaranteed. A limited definition of need leads to a limited appreciation of rights. On the other hand, needs other than those included in the conception of "subsistence" are denied full acknowledgement. There are goods, amenities and services which men and women are impelled to seek and do seek, and which by the tests of both subjective choice and behaviour are therefore social necessities, that have traditionally been excluded from consideration in devising poverty standards. People do not live by bread alone, and sometimes they are prepared to forego bread to meet a more pressing social need.

I have suggested that an alternative, and more objective, conception might be founded on "relative deprivation"—by which I mean the absence or inadequacy of those diets, amenities, standards, services and activities which are common or customary in society. People are deprived of the conditions of life which ordinarily define membership of society. If they lack or are denied resources to

obtain access to these conditions of life and so fulfil membership of society, they are in poverty. Deprivation can arise in any or all of the major spheres of life—at work, where the means largely determining one's position in other spheres are earned; at home, in neighbourhood and family; in travel; and in a range of social and individual activities outside work and home or neighbourhood. In principle, there could be extreme divergencies in the experience of different kinds of deprivation. In practice, there is a systematic relationship between deprivation and level of resources. The "subsistence" approach ignores major spheres of life in which deprivation can arise. A physically efficient diet is regarded as the basis of subsistence or a national minimum, which then provides the rationale for Britain's income maintenance system. It could be argued that this preoccupation with nutritional deprivation as the centrally evident problem of meeting need in society has, first, to be extended logically to dietary deprivation, thereby putting stress on the kind of food and drink which people actually consume (and the distribution of the budgets from which they purchase it), as well as the amount and quality of nutrients which they absorb, so acknowledging the social definition of dietary need. Secondly, membership of society involves the satisfaction of a range line of other needs which are socially defined. The necessities of life are not fixed. They are continuously being adapted and augmented as changes take place in a society and its products. Increasing stratification and a developing division of labour, as well as the growth of powerful new organizations, create, as well as reconstitute, "need." In particular, the rich set fashions of consumption which gradually become diffused.

NOTES AND QUESTIONS

1. Just how relative a concept is poverty? Is a law student who does not own a laptop computer poor in any meaningful way? What about someone who makes $5 per day in a community where most people make $2 per day? A relative understanding of poverty might suggest that a person is poor in a wealthy community if he or she cannot afford luxuries, or is not poor in a materially deprived society even if he or she cannot afford items we consider essentials (such as running water).
2. What do you think should be included in the social "need" category referred to by Townsend in the United States today? Is cable television a need? What about a computer and/or Internet access? How about a cell phone? What items of clothing are "needed"? Do people "need" a car not to be poor?
3. Should poverty be defined in income terms, wealth terms, or some combination of income and wealth? Suppose someone who had made well above the poverty line and owned her house suddenly lost her job. Assuming she was unable to find another job, at what point should she be considered poor? When she can no longer go to the movies, when she can no longer afford gas for her car, when she has to sell her house, or when she cannot buy groceries?

2. U.S. Poverty Line

In the United States, defining poverty is laden with politics. Whether the definition of who is considered poor should be adjusted to take into account changing

circumstances, such as the relative increase in the cost of housing as a share of income over the last few decades, is not merely of academic interest but can lead to political battles. Even though there is general agreement that the poverty measure being used is out-of-date and a recalibration is necessary, the design of any such measure requires making assumptions and drawing lines that are likely to be debatable and inherently imperfect, both overinclusive and underinclusive. Labeling someone as poor does not provide an automatic entitlement to support, nevertheless, changing the poverty line, which would increase or decrease the number of people counted as poor, is a politically fraught exercise. If anything—given American beliefs regarding the culpability of the poor for their poverty and the political toll associated with changing poverty measures such that more people are labeled "poor"—the poverty line is likely to be underinclusive and fail to account for the hardships faced by the near poor. This section begins with the poverty guidelines used by the Department of Health and Human Services. It then turns to a history of the U.S. poverty line with arguments for and against changing the current method of defining what poverty means in the United States.

2020 Poverty Guidelines

Persons in family/ household	*Poverty guideline for 48 contiguous states and the District of Columbia*	*Poverty guideline for Alaska*	*Poverty guideline for Hawaii*
1	$12,760	$15,950	$14,680
2	17,240	21,550	19,830
3	21,720	27,150	24,980
4	26,200	32,750	30,130
5	30,680	38,350	35,280
6	35,160	43,950	40,430
7	39,640	49,550	45,580
8	43,430	55,150	50,730
More than 8 persons per household	For families/households with more than 8 persons, add $4,480 for each additional person.	For families/households with more than 8 persons, add $5,600 for each additional person.	For families/households with more than 8 persons, add $5,150 for each additional person.

Source: U.S. Dep't of Health & Human Servs., *2020 Poverty Guidelines,* available at https://aspe.hhs.gov/poverty-guidelines.

The U.S. Department of Health and Human Services (HHS) issues annual poverty guidelines that are used to determine eligibility for numerous federal and state programs, although as noted above, poverty alone is not enough to entitle a person to any existing benefit. Based on family or household size, those whose pretax income falls below these figures are considered poor according to the 2020 poverty guidelines.

The HHS poverty guidelines are based on, but not identical to, the U.S. Census Bureau's annual poverty thresholds. In part this difference can be traced to the different purposes they serve. The census bureau's poverty thresholds,

which include 48 different classifications, are used for statistical purposes and are retrospective. That is, poverty thresholds for each year are finalized *after* the year for which they are associated, and they are used to *determine* how many people were poor at a given time. Poverty guidelines, in contrast, are prospective; the guidelines to be used for each year are issued in January of that year. The HHS poverty guidelines are a simplified version of the census bureau's poverty thresholds from the previous year, updated to account for inflation. The poverty guidelines "standardize the differences between family sizes" and, unlike the poverty thresholds, include a limited acknowledgment of geographical difference. For more on the differences between these measures, see HHS's *Frequently Asked Questions Related to the Poverty Guidelines and Poverty*, at http://aspe.hhs.gov/poverty/faq.shtml#differences.

The poverty guidelines are used to determine eligibility for programs administered by HHS as well as programs in the Departments of Agriculture, Energy, Labor, Housing and Urban Development, and Treasury. Such programs include everything from Head Start and Medicaid to weatherization assistance, housing subsidies, and taxpayer clinics. Arguably in recognition of the needs felt by those above the poverty line, eligibility is often based on some multiple of the poverty guidelines. For example, the Supplemental Nutrition Assistance Program (SNAP), formerly called food stamps, sets income eligibility based on 130 percent of the poverty guideline amounts for gross income and 100 percent for net income. *See* U.S. Dep't of Agric., *SNAP Eligibility*, https://www.fns.usda.gov/snap/recipient/eligibility. Additionally, many state programs piggyback on the federal poverty guidelines and use the guidelines or multiples of guideline amounts to determine eligibility for state programs. Even eligibility to receive legal aid through offices supported by the Legal Services Corporation is limited to people with incomes below 125 percent of the poverty guideline amounts.

NOTES AND QUESTIONS

1. The poverty thresholds for the current and past years can be found on the census bureau's website at https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html.
2. Are the poverty guidelines higher or lower than you expected? Do you think they are too high? Too low? To better understand the poverty guideline amounts, it may help to think about these figures on a per month basis. For example, a household of four in the continental United States is not poor under the guidelines if its monthly income exceeds $2,145.83 in 2019. What would be the advantages and disadvantages of setting the poverty guidelines higher? What about setting them lower?
3. The poverty guidelines promulgated by HHS seem to recognize a higher cost of living in Hawaii and Alaska, but lump all other states and the District of Columbia into a single average. Doing so fails to take into account how purchasing power—such as for housing and food—can vary dramatically by location. Should the federal government promulgate different poverty guidelines for every state? What about high- and low-cost regions within states?

4. Advocacy groups have created a number of alternative measures of poverty or adequacy. For example, the Center for Women's Welfare promotes use of its Self-Sufficiency Standard, which is defined as the amount necessary to meet basic needs without public assistance or informal aid. *See* Ctr. for Women's Welfare, *The Self-Sufficiency Standard*, http://www.selfsufficiency-standard.org. The National Low Income Housing Coalition's annual "Out of Reach" report shows the amount of income, based on geographic location, a person must earn to spend at most only 30 percent of her income on housing in that location. *See* Nat'l Low Income Hous. Coal., *Out of Reach Report*, https://reports.nlihc.org/oor. Another similar tool is the Economic Policy Institute's Family Budget Calculator, which "measures the income a family needs in order to attain a secure yet modest living standard" for given locations and family types. *See* Econ. Policy Inst., *Family Budget Calculator*, http://www.epi.org/resources/budget/. Recognizing the limits of the current poverty line, even the Census Bureau, as discussed later, provides alternative poverty counts based on a proposal by the National Academy of Science.

* * *

The excerpt that follows presents the history of the U.S. poverty line. Although originally created by government economist Mollie Orshansky for a much more narrow purpose, Orshansky's poverty line became the official U.S. poverty line as part of the Johnson Administration's War on Poverty.

GORDON M. FISHER, *THE DEVELOPMENT AND HISTORY OF THE POVERTY THRESHOLDS*

Social Security Bulletin, Vol. 55, No. 4 (1992)

The poverty thresholds are the primary version of the Federal poverty measure — the other version being the poverty guidelines. The thresholds are currently issued by the Bureau of the Census and are generally used for statistical purposes for example, estimating the number of persons in poverty and tabulating them by type of residence, race, and other social, economic, and demographic characteristics. The poverty guidelines, on the other hand, are issued by the Department of Health and Human Services and are used for administrative purposes for instance, for determining whether a person or family is financially eligible for assistance or services under certain Federal programs.

The Development of the Poverty Thresholds

The poverty thresholds were developed in 1963-64 by Mollie Orshansky, an economist working for the Social Security Administration. As Orshansky later indicated, her original purpose was not to introduce a new general measure of poverty, but to develop a measure to assess the relative risks of low economic status (or, more broadly, the differentials in opportunity) among different demographic groups of families with children. She actually developed two sets of poverty thresholds one derived from the Agriculture Department's economy food plan and one derived from its somewhat less stringent low cost food plan. . . .

The Johnson Administration announced its War on Poverty in January 1964, not long after the publication of Orshansky's initial poverty article. The 1964 Report of the Council of Economic Advisers (CEA) contained a chapter on poverty in America. The chapter set a poverty line of $3,000 (in 1962 dollars) for families of all sizes; for unrelated individuals, the chapter implicitly set a poverty line of $1,500 (a selection that was shortly made explicit). The $3,000 figure was specified as being on the basis of before tax annual money income. There was a brief discussion of the theoretical desirability of using estimates of "total" incomes including nonmoney elements such as the rental value of owner occupied dwellings and food raised and consumed on farms but it was not possible to obtain such estimates. The CEA chapter pointed out that the total of money plus nonmoney income that would correspond to the cash-income only poverty line of $3,000 would be somewhat higher than $3,000.

The CEA chapter referred to Orshansky's July 1963 article and its $3,165 "economy plan" poverty line for a nonfarm family of four. . . . Orshansky was concerned by the CEA report's failure to adjust its poverty line for family size, which resulted in understating the number of children in poverty relative to aged persons. This prompted her to begin the work that resulted in her January 1965 *Social Security Bulletin* article, extending the two sets of poverty thresholds at the "economy level" and at the "low cost level" to the whole population. This article appeared just as the Office of Economic Opportunity (OEO) was being established. The OEO adopted the lower ("economy level") of Orshansky's two sets of poverty thresholds as a working or quasi official definition of poverty in May 1965. As noted below, the thresholds were designated as the Federal Government's official statistical definition of poverty in August 1969.

Orshansky did not develop the poverty thresholds as a standard budget—that is, a list of goods and services that a family of a specified size and composition would need to live at a designated level of well being, together with their estimated monthly or annual costs. If generally accepted standards of minimum need had been available for all or most of the major essential consumption items of living (for example, housing, medical care, clothing, and transportation), the standard budget approach could have been used by costing out the standards and adding up the costs. However, except for the area of food, no definitive and accepted standards of minimum need for major consumption items existed either then or today.

The "generally accepted" standards of adequacy for food that Orshansky used in developing the thresholds were the food plans prepared by the Department of Agriculture. At the time there were four of these food plans, at the following cost levels: liberal, moderate, low cost, and economy. The first three plans had been introduced in 1933, and the economy food plan was developed and introduced in 1961. Data underlying the latter plan came from the Agriculture Department's 1955 Household Food Consumption Survey. In developing her two sets of poverty thresholds, Orshansky used the low cost and economy food plans.

. . . The three steps Orshansky followed in moving from the cost of food for a family to minimum costs for all family requirements were (1) to define the family size and composition prototypes for which food costs would be computed, (2) to decide on the amount of additional income to allow for items other than

food, and (3) to relate the cash needs of farm families to those of comparable nonfarm families.

Because of a special interest in the economic status of families with children and because income requirements are related to the number of persons in the family, Orshansky estimated food costs separately for nonfarm families varying in size from two members to seven or more. . . .

To get from food plan costs to estimates of minimum necessary expenditures for all items, Orshansky made use of the economic principle known as Engel's Law, which states that the proportion of income allocated to "necessaries," and in particular to food, is an indicator of economic well being. Orshansky made use of this law by assuming that equivalent levels of well-being were reached by families (of three or more persons) only when the proportion of income they required to purchase an adequate diet was the same.

To determine the proportion of total income that should be assumed to be spent for food, Orshansky used the Agriculture Department's Household Food Consumption Survey, a survey conducted at approximately 10 year intervals. The 1955 survey the most recent one then available had found that for families of three or more persons, the average expenditure for all food used both inside and outside of the home during a week accounted for about one third of their average money income after taxes. (Note that this finding relates to families at all income levels, not just those at lower income levels; one of the most common errors made about the thresholds is to claim they are based on a finding that "poor people spend a third of their income on food.")

Besides considering the Agriculture Department's 1955 Household Food Consumption Survey, Orshansky also reviewed the 1960-61 Consumer Expenditure Survey of the Bureau of Labor Statistics (BLS), which also provided an estimate of the proportion of total after tax income going for food. To use the BLS survey to derive a poverty measure would have resulted in a "multiplier" of just over four, rather than three. However, the questions used by BLS to get data on annual food outlays had usually yielded lower average expenditures than the more detailed item by item checklist of foods consumed in a week used in the Agriculture Department survey. Orshansky finally decided to use the Agriculture Department survey, with its one to three ratio of food expenditures to after tax money income, in developing the poverty thresholds.

Orshansky started her food costs-to-total expenditures procedure by considering a hypothetical average (middle income) family, spending one-third of its income on food, which was faced with a need to cut back on its expenditures. She made the assumption that the family would be able to cut back its food expenditures and its nonfood expenditures by the same proportion. This assumption was, of course, a simplifying assumption or first approximation. Under this assumption, one third of the family's expenditures would be for food no matter how far it had cut back on its total expenditures.

When the hypothetical family cut back its food expenditures to the point where they equaled the cost of the economy food plan (or the low cost food plan) for a family of that size, the family would have reached the point at which its food expenditures were minimal but adequate, assuming that "the housewife will be a careful shopper, a skillful cook, and a good manager who will prepare all the family's meals at home." Orshansky made the assumption that, at that

point, the family's nonfood expenditures would also be minimal but adequate, and established that level of total expenditures as the poverty threshold for a family of that size. Since the family's food expenditures would still be one third of its total expenditures, this meant that (for families of three or more persons) the poverty threshold for a family of a particular size and composition was set at three times the cost of the economy food plan (or the low cost food plan) for such a family. The factor of three by which the food plan cost was multiplied became known as the "multiplier."

It is important to note that Orshansky's "multiplier" methodology for deriving the thresholds was normative, not empirical that is, it was based on a normative assumption involving consumption patterns of the population as a whole, and not on the empirical consumption behavior of lower income groups. . . .

Because farm families purchased for cash only about 60 percent of the food they consumed, and because of the issue of classifying farm housing expenses as part of the farm business operation, Orshansky decided to set farm poverty thresholds at 60 percent of the corresponding nonfarm thresholds. . . .

It is important to note that Orshansky's farm/nonfarm distinction was *not* the same as a rural/urban (or nonmetropolitan/metropolitan) distinction. . . . The nonfarm poverty thresholds were applied to the rural nonfarm population as well as to the urban population. It should also be noted that the reason for the farm/nonfarm distinction was *not* a generalized "living costs are cheaper in farm or rural areas" argument.

. . . The poverty thresholds were presented as a measure of income inadequacy—"if it is not possible to state unequivocally 'how much is enough,' it should be possible to assert with confidence how much, on an average, is too little."

NOTES AND QUESTIONS

1. For a more general, less technical, introduction to the U.S. poverty line, see John Cassidy, *Relatively Deprived: How Poor Is Poor?*, The New Yorker (Apr. 3, 2006).
2. Orshansky's poverty line not only became the official poverty line for the United States (and has remained so ever since), but also became a tool for determining individual eligibility for programs and services even though it was not originally designed for that purpose. Is the U.S. poverty line developed by Orshansky an absolute or a relative measure of poverty?
3. Orshansky's measure was developed using consumption data from the 1950s. How might consumption patterns be different today? Should this affect how we think about poverty or whether we continue to use Orshansky's measure?

3. Recommendations to Change the U.S. Poverty Line

The official poverty line is controversial, in part because the nature of the measure has remained the same, except for inflation adjustments, even as spending patterns have changed. The poverty line invites political debate because changing how poverty is calculated would change the number of people defined as poor (leading to the assignment of credit or blame) and

could increase or decrease political will to combat poverty. Moreover, many conservatives and progressives argue that the line itself is flawed and outdated. As the next excerpt explains, the most significant new methodology for measuring poverty was proposed in a 1995 report released by the National Academy of Sciences.

JODIE T. ALLEN, *RE-COUNTING POVERTY*, PEW RESEARCH CENTER, WASHINGTON, D.C. (2011)

https://www.pewsocialtrends.org/2011/11/30/re-counting-poverty/

The November 2011 issuance by the U.S. Census Bureau of a new Supplemental Poverty Measure has rekindled interest in questions that have been raised at various times over the nearly half century since the first official measures were published. Are the poverty measures used for so many years really so flawed they need a total overhaul? If so, why weren't they fixed sooner? How and why did the new alternative recently unveiled by Census emerge from the pack? What are the politics? What's the social science? What core values are put in play by the choices we as a society make about how to measure poverty?

The Current Count

Debate over how best to gauge the depth and extent of poverty in the U.S. was well underway when, in 1964, the first government-produced poverty measures were published. The launching of the Kennedy/Johnson War on Poverty had already stoked the interest of academic researchers, government officials and policymakers in the subject, and critics were quick to highlight shortcomings in the methodology employed by Social Security analyst Mollie Orshansky in devising income levels below which families of differing types should be classified as "poor."

To be sure, Orshansky's methodology might now seem rather simplistic, given today's sophisticated computers and the elegant models they deploy. . . .

The Continuing Debate

Orshansky's guidelines—with relatively modest modifications—remain the official word on who is and who isn't poor in America. This is despite recurring criticism from both the left and right and the periodic convening, beginning in 1968, of numerous poverty-measure review committees, interagency task forces and expert bipartisan panels, along with the issuance of extensive technical reports on their findings and differences. And, on the basis of some of these deliberations, the Census Bureau has, in more recent years, published several alternative measures on its website, although these generally draw little attention.

The most straightforward explanation for the durability of the Orshansky measure is that, while it is not difficult to point to its deficiencies, devising widely acceptable remedies is far from simple. The sources of controversy range from

basic philosophical differences to practical difficulties in concept, measurement and data collection. Here are a few of the most prominent:

- *Should poverty be defined as an absolute or a relative state?* The official poverty lines are absolute measures in that, apart from minor methodological modifications over time, they are adjusted annually only for changes in the cost of living. However, . . . even before the thresholds were made official, Orshansky herself had written in a 1963 article that "As the general level of living moves upward and expands beyond necessities, the standards of what constitutes an irreducible minimum also change." What counts as not-poor in, say Mumbai, would not be judged so in Los Angeles or Houston. A review of evidence from Britain, Canada, and Australia, as well as the U.S., finds that in practice presumably absolute poverty standards show a clear tendency to rise in inflation-adjusted terms along with increases in real income among the general population. Still . . . the official thresholds were equal to about half of median income in 1963-1964. Because of income growth, by 1992, half of median income was above the official thresholds—in fact, more than 20% higher. Against the adoption of a relative measure, it is argued that once poverty is made relative, there is practically no hope of ever eradicating or even substantially reducing it. As the Cato Institute's Michael Tanner put it in a recent NPR interview, under a relative measure even "if you doubled everybody's income, the number of poor people wouldn't change because you'd be doubling people at the top of the scale, as well as people at the bottom of the scale and you'd set up, essentially, an equivalence there so that it really wouldn't change."
- *Apart from their absolute nature, don't the current poverty thresholds set too low a standard for determining who is poor?* . . . poverty measures do not take account of variations in work-related expenses such as transportation and child care as well as taxes and medical expenses nor of possibly substantial differences in available income between homeowners (with and without mortgages) and renters. Nor do they adjust for variations in living costs across geographic areas, for changes in family structure such as the increasing number of cohabiting unmarried couples or for child support obligations, all of which can have a possibly important effect on family income and expenses.
- *On the other hand, don't the techniques used to estimate the number of persons below the thresholds exaggerate poverty since they don't take account of non-cash government assistance programs targeted at the poor and near-poor?* As the magnitude of in-kind government benefit programs—such as food stamps/supplemental nutrition assistance, housing aid, child care and medical and energy bill reimbursements—has burgeoned, their omission from the CPS [Current Population Survey] data used in official poverty counts has become more important. The same is true of the Earned Income Tax Credit[—]a refundable federal income tax credit paid by the Internal Revenue Service to earners in families (as well as some individuals) with low and moderate incomes. And while cash welfare payments are enumerated in the CPS, they tend to be underreported. Of course, other possible sources of income, notably illegal income or off-the-books income not reported to the tax authorities, are also likely to be substantially underreported, if reported at all, by household members surveyed. But, since little is known about the magnitude of these

exclusions, or their impact on resources available to households, any imputation would be highly problematic.

- *Isn't it difficult, even impossible, to estimate the value of certain kinds of benefits—notably medical benefits?* Over the years, computer simulations by outside researchers as well as by the Census Bureau have shown that imputing a value to government-provided non-cash benefits can produce a significant reduction in poverty counts among children and certain other demographic groups. All of these simulation researchers have struggled with how best, if at all, to take account of the value to families and individuals of the most costly of all government benefits—payments made under the Medicare and Medicaid programs to cover the medical expenses of the elderly, the disabled and low-income families with children. Early simulations experimented with assigning a medical insurance value to the resources of eligible families and individuals. However, that type of imputation was widely criticized on the grounds that medical benefit payments tend to be concentrated among subsets of the eligible population—such as the long-term disabled or terminally ill—and that, except to the extent that reimbursed medical costs would otherwise be paid out-of-pocket, families or individuals do not experience an increase in other disposable income as a result of Medicare and Medicaid eligibility. (Receiving a million dollars' worth of surgery, chemotherapy or kidney dialysis does not make one a millionaire.) Moreover, income tabulations of the general population do not take account of employer-subsidized private medical insurance.

The Proposed Improvement

Conscious of the political as well as theoretical controversy surrounding poverty measurement, the Census Bureau has stressed that the recently unveiled "Supplemental Poverty Measure" is just that—supplemental. It will neither replace the official count nor be used in determining eligibility for government programs. Moreover, the Census Bureau, together with the Bureau of Labor Statistics, plans to continue research into better methods to determine the thresholds that define poverty for families and individuals of varying demographic characteristics, as well as the consistency and accuracy of procedures used to determine how many of these families and persons have resources insufficient to raise them above those thresholds.

The Supplemental Measure, the product of an Interagency Technical Working Group (ITWG), draws heavily upon the recommendations of a 1995 National Academy of Science report as well as further research on poverty measurement conducted over the past 15 years. . . . In summary, the new construct would:

- *Adopt a more sophisticated measure of need.* Rather than being a simple multiple of food expenditures, the new thresholds for differentiating between the poor and non-poor of various types would be defined in terms of the costs of basic expenditures for food, clothing, shelter, utilities plus a small additional allowance for other needs. Data from the Bureau of Labor Statistics Consumer Expenditure Survey [CES] would be averaged over five years to produce estimates for families with two children and then adjusted to reflect differences in family size and composition as well as variations in housing

costs. The thresholds distinguish among three housing status groups: owners without mortgages, owners with mortgages and renters. Data from the Census Bureau's American Community Survey are used to take account of geographic differences in housing costs.

- *Adopt a quasi-relativistic standard of poverty.* The poverty threshold would be set at the 33rd percentile of the expenditure distribution for all U.S. households. In other words, teetering on the threshold of poverty would mean being able to spend less on these basic items than two-thirds of Americans routinely spend. Adjustments would be made to these thresholds periodically to reflect changes in overall expenditure patterns and levels. As a result, if inflation-adjusted consumption levels, as measured by a five-year moving average of the CES, rise relatively evenly across all income levels, the poverty thresholds would rise proportionately. But if consumption gains were confined to higher income levels, and out-of-pocket spending among the lowest third rose little if at all, the thresholds would register only a slight or no increase. Thus under the alternative measure the poverty line might rise in real terms if living standards at the low end of the income distribution actually improve, but they will not necessarily rise if gains are concentrated at higher income levels.
- *Employ a more comprehensive measure of family resources.* Family resources are defined to include not only cash income but the variety of in-kind federal benefits that can be used to meet the food, clothing, shelter costs included in estimating the poverty thresholds, plus tax credit payments. From this total, deductions are made for non-discretionary expenditures not specifically taken into account in the official measure computation, including tax obligations and work-related expenses such as transportation and child care. The difficulty of estimating medical costs and reimbursements is dealt with by excluding medical expenses in computing the poverty thresholds while also excluding government medical benefits from the computation of family resources. However, out-of-pocket medical expenses . . . as well as child support payments to other households are counted as income deductions. . . .
- *Update the definition of family units.* Unlike the current official poverty measures, the supplemental measure employs a broader definition of the family unit, meant to include all those living in a housing unit who can be assumed to share income and other resources. Included in the enlarged family unit are not only all persons living in the household unit who are related by blood, marriage and adoption as counted in the official definition, but also unrelated children, such as foster children, who are being cared for within that residence. Cohabiting adults and their children are also counted as family units.
- *Encourage further research and improvement of data sources.* The report emphasizes the need for continuing improvement both of estimating procedures and, resources permitting, data collection. Items specifically mentioned for attention include estimating medical expenses of the uninsured, including in-kind benefits in estimating thresholds taking account of geographic differences in commuting and other transportation costs and employing other surveys to improve in-kind benefit estimates and produce small area analyses. Some of this research is already underway.

The Bottom Line

In the aggregate, these many alterations have only modest effect on the overall measurement of poverty as applied to data from 2009 and 2010. However, some important differences with the official counts are observed:

- *Poverty Thresholds.* As expected, the new methodology resulted in a higher set of poverty thresholds. For example, the official measure set the 2010 poverty line for a two-adult, two-child family at $22,113 while the supplemental measure sets it at $24,343. The revised measure also showed a somewhat larger increase in the poverty threshold between 2009 and 2010—$489 versus $357 for the official measure. Even though income was defined more broadly, the number of people counted in poverty also increased, from 46.6 million (a 15.1% poverty rate) under the official definition to 49.1 million (16.0%) under the supplemental definition.
- *Demographic Differences.* While the size of the overall poverty population differs only modestly between the official and supplementary counts, some striking differences emerge in the configuration of the poverty population. As shown in . . . the Census Bureau report, . . . 3.2 million fewer children under age 18 are counted as poor in the new measure as compared with the official count. Other groups showing declines include renters, blacks and those covered by only government-provided health insurance. Poverty rates show an especially substantial increase among the elderly (from 9.0% to 15.9%), as [out-of-pocket medical expenses] more than offset non-cash benefit receipts. The new measure also records a significant increase in poverty among Asians (4.6 percentage points) and, to a lesser extent, among Hispanics (1.5 points)—two groups with relatively large proportions of recent immigrants who may not qualify for in-kind benefits. But poverty among non-Hispanic whites rises by nearly as much as among Hispanics, a statistically significant 1.0-point increase. Rates for female-headed family units show no significant difference between the two measures, while rates for married couples rise slightly. Among newly defined units in the supplemental measure (primarily cohabiting couples), poverty declines by 12.2 percentage points.
- *Degrees of Need.* More striking are the impacts on the measured degree of need. The revised measure shows a somewhat smaller percentage of the population with financial resources less than half the poverty line (5.4% vs. 6.8% in the official measure), a result to be expected from the inclusion of non-cash benefits in the count. More striking is the far larger estimate of the "near-poor"—people whose resources place them in the range between the poverty threshold and twice that level. By the official count 18.8% of Americans reside in that borderline territory, whereas the supplemental alternative—which takes account of taxes and other non-discretionary expenses—finds nearly a third (31.8%) so situated.
- *Geographic Differences.* The Supplemental Poverty Measure tabulations as well as the official counts derived from the CPS and American Community Survey provide breakdowns by geographic region and metropolitan statistical areas. However, the use of American Community Survey data to adjust for differences in housing prices among geographic areas permits a finer differentiation among areas. Among regions, the new measure records significant

increases in poverty in the West (19.4% up from 15.4% in the official count) and Northeast (14.5% vs. 12.9%). Lower rates are observed in both the South and Midwest. While somewhat higher rates are computed for metropolitan areas, especially those outside principal cities, poverty rates in non-metro areas decline from 16.6% officially to 12.8% under the alternative measure. Because of sample size limitations, the Census Bureau cautions against using single year CPS-ACS data to compute estimates by state. The bureau recommends, when and if the data become available, using three-year averages for initial estimates and two-year averages to estimate state changes over time. However, the Census Bureau's Trudi Renwick has produced estimates of poverty by state for 2009 under the official and supplemental measures, using a five-year average of ACS data to estimate alternative measures of housing costs. She finds the largest increases in poverty rates in Alabama (up 3.76 percentage points from the official measure), Florida (3.11), Colorado (2.85), Tennessee (2.67), Georgia (2.53) and Nebraska (2.27). States with lower poverty rates under the new measure include Arkansas (-2.01 percentage points), New Mexico (-1.34), the District of Columbia (-1.24), Vermont (-1.09) and Michigan (-.081), West Virginia (-0.77) and New York (-0.33).

The Future

Despite the likely employment of the alternative poverty measure by researchers, any significant impact on government programs in the near future is probably unlikely. Conservative critics, as well as academics generally, will likely welcome the inclusion of a more complete measure of income among the needy. However, many may oppose the inclusion of even a modestly relativistic element in determining poverty thresholds. And across the political spectrum, arguments will continue about whether benefits are properly valued on an annual basis and other factors affecting imputations.

Absent federal action — and congressional reaction — the poverty guidelines, as derived from the official poverty thresholds (see above), will remain the standards used by federal agencies in determining eligibility for various cash and in-kind benefit assistance programs. Eligibility for these programs is generally determined on an individual not geographic basis (though states may set different standards for welfare and Medicaid assistance). However, should agencies propose to adopt the revised measure in computing program guidelines, Congress would no doubt pay attention to the possible impact of any shift in benefit distributions among states. Congress will also have to decide if it will provide the funds needed to continue some of the survey upgrades used in computing the current version of the Supplemental Measure as well as further recommended improvements.

* * *

Though the recommendations of the National Academy of Sciences (NAS) report have not yet been followed, most proposed or experimental poverty measures developed since 1995 rely heavily upon the NAS recommendations. The U.S. Census Bureau, for example, began releasing two sets of poverty data in 1999, one using the official poverty measure and the other using an experimental method based upon the NAS report. In 2009, the census bureau developed a second experimental method, the supplemental poverty measure (SPM), that

again relied upon insights from the NAS report, but differs slightly from the experimental NAS-based measure the Bureau had already been using. *See* Liana Fox, U.S. Census Bureau, *The Research Supplemental Poverty Measure: 2017* (2018). The census bureau is careful to note that the SPM "does not replace the official poverty measure and is not designed to be used for program eligibility or funding distribution." For more on the NAS-based experimental poverty estimates and the SPM measure as it relates to various government assistance programs, see Thesia I. Garner & Marisa Gudrais, U.S. Bureau of Labor Statistics, *Alternative Poverty Measurement for the U.S.: Focus on Supplemental Poverty Measure Thresholds* (2018).

The SPM changes how poverty is measured and, accordingly, would change the percentage of people who are considered poor along a number of different demographic lines. The following table shows differences between the official poverty rate and the SPM measure for 2017 according to select demographic characteristics.

Characteristic	*Official poverty measure*	*SPM*
All people	12.3	14.7
Male	11.0	13.1
Female	13.6	14.7
Type of Unit		
Married couple	5.7	8.7
Cohabitating partners	25.1	13.3
Female reference person	26.2	26.9
Male reference person	11.2	16.3
Age		
Under 18 years	17.5	15.6
18 to 64 years	11.2	13.2
65 years and over	9.2	14.1
Race and Hispanic origin		
White	10.7	12.3
White, not Hispanic	8.7	9.8
Black	21.2	22.1
Asian	10.0	15.1
Hispanic (any race)	18.3	21.4
Educational Attainment		
No high school diploma	24.5	28.7
High school, no college	12.7	16.0
Some college	8.8	10.8
Bachelor's degree or higher	4.8	6.6

Source: Liana Fox, U.S. Census Bureau, *The Research Supplemental Poverty Measure: 2017* (2018).

NOTES AND QUESTIONS

1. As this book goes to press, the Office of Management and Budget is pushing to change the annual inflation adjustment used for updating the poverty line from the Consumer Price Index (CPI) to the chained-Consumer