Editorial

Options in Disability Determination. Lessons That Pertain to the Regional Musculoskeletal Disorders

There are individuals among us who lack the wherewithal to provide for themselves and their families. Some are burdened by accidents of birth, others by disease, some from injury, and still others by circumstance beyond their control. Judeo-Christian-Islamic tenets hold that these unfortunates are not to be denigrated, and further that charity without stigmatization is a high calling. The most direct response to such a calling would be to offer charity simply in response to the pronouncement of need. That option has historical precedent in circumstances where neediness is obvious to all. Otherwise, some affirmation of need has been prerequisite. One option for affirmation is an assessment of the financial wherewithal of any suppliant, a means test. However, there is an entrenched notion that only those afflicted with work incapacity deserve assistance while those who suffer merely the symptom of work incapacity are to be denied. The former would work if only they could. The latter cannot countenance working even if they can. A means test is no match for this distinction. A test of worthiness is required.

The experiment of the century just past was in implementation of the dichotomy. Powerful, sizable establishments dependent on the perpetuation of the worthiness test won out. This essay examines the virtues and pitfalls of disability schemes based either on worthiness or on means testing. Neither is adequate. There is promise in vocational habilitation to obviate dependence on either by rendering society more enlightened.

CITIZENS' DIVIDENDS

There have been experiments in income distribution that have no "worthiness test," yet fall far short of socialism. One played out in England in the early 18th century. On May 6, 1795, several justices of Berkshire met in the Pelican Inn in Speenhamland (now part of Newbury) to consider solutions to a pressing social problem. Rural poor, both infirm and able bodied, were forced to pilfer to survive, and when caught were to be the "criminals" that populated British penal colonies. The "Speenhamland system" became law across the agricultural south of England until its demise in 1834[1]. If a laborer's earnings were insufficient to meet minimum subsistence requirements, the difference between wages and needs would be paid from the general tax base. Minimum needs were based on the current price of the number of "gallon-loaf" breads deemed necessary to feed a man and his family. Thus was born the principle of a guaranteed income. Worthiness was not the issue, just income maintenance adjusted for the cost of bread.

The Speenhamland system generated 39 years of controversy and debate. It was argued that employers had no incentive to pay a living wage since the burden of falling short was distributed among all the "ratepayers" including those who employed no laborers. It was also argued that the system perverted the character and resourcefulness of the English working class who could draw their gallon loafs without toil. The concept of a "guaranteed income" carries with it the taint of the Speenhamland experiment forever more.

Nonetheless, the concept has never died. It found advocacy in the US in the guise of "negative income tax" in "The War on Poverty," the cornerstone of the Johnson administration's "Great Society," and the Nixon administration's plan for welfare reform[2]. In spite of rhetoric advocating reducing welfare and increasing "workfare," Nixon tried to marshal a "Family Assistance Plan" through Congress. The Plan entitled intact families with working adults to a guaranteed income supplement if their earnings were too low. The Plan died in the birthing[3]. However, the political process left behind 2 highly informative documents: "The President's Commission on Income Maintenance Programs"[4] concluded that an income maintenance program similar to that in the Family Assistance Plan was overdue. Nonetheless, the moderates and conservatives were relentlessly opposed on the grounds that such a program would compromise "work ethic." In response to this debate, the Office of Economic Opportunity undertook one of the most ambitious social-science scientific experiments in history. The "Negative Income Tax" (NIT) experiment began in 1968, lasted for a decade and recruited almost 9000 subjects in sites in New Jersey, Pennsylvania, Iowa, North Carolina, Indiana, Washington, and Colorado. At each site, a sample of low income individuals was randomly allocated to an experimental group that received income maintenance. Income maintenance proved counterproductive. It reduced

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the work effort of the poor, particularly that of young males who were not yet heads of families. In the Seattle and Denver experiment even marriage dissolution rates escalated[5]. The outcome measures were short on assessing happiness. Maybe guaranteed income facilitated a life with more satisfactions than awaited those that spent their time shifting between poverty, working poor, and the pursuit of the dole. Even if that were the case, negative income tax is no more than the lesser of two evils.

There still are advocates for an income maintenance program, often termed a "citizen's dividend" or a "social wage"[6] to avoid any negative connotation of a "negative income tax." They are not as convincing as the results of the NIT.

STRATIFICATION OF WORTHINESS

Prussia designed the welfare state so familiar across the industrialized West. At its foundation are tests of worthiness. This approach to disability determination is explored at length elsewhere[7]. An overview follows.

There was a human price for industrialization. The working man and child risked longevity, if not life and limb, for meager reward and no security. No wonder the end of the 19th century witnessed the birthing of the labor movement, the plaintiffs' bar, and organized social activism. Enter Bismarck.

The Prussian legislature assuaged resentment with a series of statutes that established a national disability insurance scheme. In addition to universal health insurance, it offered financial awards based on a stratification of worthiness. For anyone who can work, there is to be no income substitution. For those who have seldom, if ever, worked because of some pervasive incapacity, the award is income substitution at a subsistence level. For those who have worked but find themselves globally incapacitated by some catastrophic disease, the income substitution is a bit more generous. There is a third category to denote those whom the Prussian worldview and the labor movement deem most worthy, the worker whose incapacity is a consequence of an accident that arose out of and in the course of employment. That person is guaranteed income replacement so that earnings are not compromised. Thus was born the distinction between various levels of invalid pension and workers' compensation insurance. The paradigm, with minor variations, is held as axiomatic throughout the West to this day.

The United States has adopted it piecemeal. National health insurance is still in waiting. Throughout the first half of the 20th century, the US Congress was unwilling to adopt any element of the schema. Workers' compensation insurance schemes were relegated to the states. Initially, their administration seemed straightforward. After all, either you were injured at work or not. And compensating for lost wages similarly seemed straightforward. A monetary value was "scheduled" for any damaged body part, so many weeks' salary for loss of a finger, more for loss of a thumb, still more for loss of an eye, etc.

Congress was left to debate disability determination to serve a Social Security scheme that did not demand work-relatedness or accidental cause for eligibility. How does one determine whether there is any "work left in the man," to borrow the phrase ingrained in workers' compensation lore? There is a syllogism that served the Prussian precedent. Given that there is a pathoanatomic or pathophysiologic determinant of organ-based illness, some such should underlie even the illness of work incapacity. If someone is claiming work incapacity in the absence of a demonstrable pathoanatomic explicator, the plaint should be questioned and the claim denied. If this is your belief, the corollary follows: One need only quantify the pathoanatomy to determine how much work is left in the man. This is "impairment based disability determination."

This precept rested easily in Prussia and in most of the industrializing world — but not in the United States. Well after World War II, spokesmen for leading American medical organizations were still arguing before Congress that scientific reductionism did not apply to disability determination and, furthermore, disability determination was not a proper medical role. Asking the physician to determine disability was to ask the physician to sit in judgment, thereby violating trust and perturbing the therapeutic relationship. By the 1950s, Congress had heard enough of such arguments; Social Security Disability Insurance was legislated with disability determination to be impairment based. Today, organized medicine supports impairment based disability determination and American physicians seem all too ready to rally to its calling.

Part of the capitulation related to the evolution of medicine's role in workers' compensation insurance. "Scheduling" proved inadequate early on; separate laws were necessary to cover toxic exposures, for example. Then, in the 1930s, regional back "injury" was invented, a new semiotic that resonated with all who were parties to workers' compensation schemes. This is another social construction that renders incapacitating regional backache compensable[8]. The spine surgeon assumed responsibility for certifying the "injury," often resorting to violating vertebral lamina as the gold standard for certainty. Short full recovery, the spine surgeon rose to the challenge of imputing residual disability from quantification of impairment. Neither American workers nor their lumbar spines are demonstrably better off for this exercise or for the "injury" construction of backache[9]. Nonetheless, the dialectic relating to the "injured back" and the European reliance on impairment based disability determination holds sway. For the past 50 years, sufficient impairment is the generally accepted *sine qua non* for all disability awards, including those administered by the Social Security Administration.

The disabled worker has paid a price for this sophism.

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That price surmounts the Kafkaesque exercise of having to prove illness to people paid to quantify impairment as a measure of veracity. That price relates to fact that their plaint is not even heard. The object lesson derives from the science that has dissected the associations with disabling regional musculoskeletal disorders indemnified by workers' compensation schemes. The "injury" construct presupposes that the cause of the injury lurks in the physical content of tasks, and predicts that remedy will follow from modification of that exposure. These delusory presuppositions have set back worker health and safety some 50 years. In the past decade, scientific analysis of the multifaceted dynamics of compensability for incapacitating regional back and arm pain is elucidating why the workforce has been so poorly served by the "injury" construct[10]. The incidence of regional back "injuries" is a reflection of disaffection in the workplace. Ergonomic "stressors" have little, if anything, to do with the initiation of disability and impairment, little, if anything, to do with its perpetuation. Rather, it is the psychosocial context in which one labors that thwarts coping with the regional musculoskeletal disorders that are intermittent and remittent predicaments of normal life. The complaint of work incapacity for a regional musculoskeletal disorder is more likely to be surrogate for the plaints of job dissatisfaction and the absence of job alternatives. Impairment based disability determination is providing recourse that is missing the mark in more ways than one; it offers a gantlet rife with disappointment, disillusionment, and iatrogenesis.

ENLIGHTENED EMPLOYMENT

We find ourselves, again *fin de siècle*, with a stratifying society and a sizable population dependent on various income replacement and income substitution schemes. True, we do not think we have 15% of the population destitute and on the streets, as was the case in London a century ago. But we have that number and more that might be were it not for the *pot pourri* of recourse. The past decade has seen the start of a dismantling of the welfare schemes formulated in the 1960s to supplement the Prussian precedent. Now, as in an earlier time, parents, single or not, must work to qualify for supplemental support. This resurgence of "workfare" is driving adults into the lowest rungs of the workforce at a time when such jobs would go begging otherwise. The results of this shift in policy will unfold in the decade ahead. What is gained by forcing people on the public dole to the ranks of the working poor? "Workfare" is just one symptom of the unease with which advanced societies view the complicated matrix of recourse that mires some 15% of the population in the welfare state, many, seemingly, to abandon all hope of higher ground. Well represented among the 15% are those who suffer the illness of work incapacity.

In order to move forward on behalf of those who are mired in the welfare state, we need no new resources. The West has placed more than enough financial and human resource in play to know that more is not the solution. Furthermore, any "fine-tuning" or even "re-designing" that redirects these resources must be incremental or it will run afoul of the enormous interests vested in operating the status quo. The solution is to focus on those whom the status quo serves so poorly on 3 fronts:

Medicine. Medicine needs to revisit the objections its leadership voiced to impairment based disability determination at mid century. They are compelling. Then medicine needs to eschew any role that involves sitting in judgment of the veracity of any patient. I agree that there are instances in a civilized world where such an activity is necessary. If we are to participate, it is not because we are physicians. It is because we are responsible citizens. That is true for service on a jury. Let a jury of "peers" learn the rules, hear the plight, and determine disability. It is simply not a medical exercise; impairment rating is irrelevant.

Education. What do you need to know to be an educated citizen? We'd all agree to the "3 R's." But that's just a start. Education should offer much more. For example, the perspective that allows one to carefully consider life's moral dilemmas should be nurtured in school just as it would be nurtured in a home that is nurturing or by organized religion, if one is so inclined. So many of life's challenges have themes that lend themselves to consideration long before the challenge is a fact of one's life. Doing so is a sign of maturity. Educators are being called upon to raise these issues for discussion and contemplation and to do so earlier and earlier in the educational experience. Youngsters are able to discuss health adverse behaviors, for example, or they are not educated.

This movement toward an expanded purview for enlightenment has started to encompass relationships among peers and between partners. What is missing is discussion about and instruction in the kinds of interpersonal relationships that await all of us in the workplace. No one should just be tossed, unprepared, into an arena where success is so crucial to self-respect and self-actualization. There are precedents for guidance in the transition from adolescence to working adult life, usually on behalf of adolescents with chronic, potentially disabling diseases such as juvenile chronic arthritis, cystic fibrosis, and hemophilia. Vocational habilitation should be mainstream curriculum from pre-adolescence on, for all. There is a pressing need to define what to teach and how to teach it.

Finally, all students need to understand the pervasive malevolence of poverty and of working poor, even for those students where neither is an abstraction. Just as for transition to employment, the education about poverty must test developmental stages for comprehension. The "family of man" must be a reality.

Human resources (HR). HR is an important part of industry,

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all industries. But its purview and priorities are narrow, and seem to narrow further all the time. These are the professionals that manage corporate sickness and injury claims. But they need to do so much more. After all, we know, incontrovertibly, that a workforce is more than the sum of its parts. There is something organic about it, whether its product is software or pistons, whether it's on-site or telecommunicating. There are always human interactions. When they sour — because the worker feels undervalued, or the boss is a fascist, or the company is downsizing, or a co-worker is a curmudgeon, or whatever — there is a price to be paid in terms of the health and longevity of any worker who feels disaffected[11]. We learned this lesson first from an analysis of the plight of a worker who finds no option but to seek redress for a regional back "injury." But the lesson generalizes. HR must be rendered so sophisticated that they can be charged to be pro-active, not just claims managers after the fact.

NORTIN M. HADLER, MD, FACP, FACR, FACOEM,
Attending Rheumatologist,
University of North Carolina Hospitals;
Professor of Medicine and Microbiology/Immunology,
School of Medicine, University of North Carolina at Chapel Hill,
Department of Medicine, University of North Carolina,
3330 Thurston Building, CB #7280,
Chapel Hill, NC 27599-7280, USA.

Address reprint requests to Dr. Hadler.

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