

Lost in the Debt Ceiling Debate: The Legal Duty to Create Jobs

By [Jeanne Mirer](#) and [Prof. Marjorie Cohn](#)

Global Research, August 11, 2011

11 August 2011

Region: [USA](#)

Theme: [Law and Justice](#), [Poverty & Social Inequality](#)

The debate about the debt ceiling should have been a conversation about how to create jobs. It is time for progressives to remind the government that it has a legal duty to create jobs, and must act immediately – if not through Congress, then through the Federal Reserve.

With official unemployment reaching over 9%, the unofficial rate in double digits, and the unemployment rate for people of color more than double that of whites, it is nerve wracking to hear right wing political pundits say the government cannot create jobs. Do people really believe this canard? On “Real Time with Bill Maher” a few weeks ago, Chris Hayes of The Nation stated that the government should create and has in the past created jobs, but he was put down by that intellectual giant Ann Coulter who said, “but they (WPA jobs) were only temporary jobs.” No one challenged her.

Most of the jobs created under the Works Progress Administration (WPA) – and there were millions of them – lasted for many years, or until those employed found other gainful employment. They provided a high enough income to allow the worker’s family to meet basic needs, and they created demand for goods in an economy that was suffering, like today’s economy, from lack of demand. The WPA program succeeded in sustaining and creating many more jobs in the private sector due to the demand for goods that more people with incomes generated.

The most galling thing about pundits stating with such certainty that the government cannot create jobs is the implication that the government has no business employing people. In actuality, however, the law requires the government, in particular the President and the Federal Reserve, to create jobs. This legal duty comes from three sources: (1) full employment legislation including the Humphrey Hawkins Full Employment Act of 1978, (2) the 1977 Federal Reserve Act, and (3) the global consensus based on customary international law that all people have a right to a job with favorable remuneration to provide an adequate standard of living. .

1. Full Employment Legislation

The first full employment law in the United States was passed in 1946. It required the country to make its goal one of full employment. It was motivated in part by the fear that after World War II, returning veterans would not find work, and this would provoke further economic dislocation. With the Keynesian consensus that government spending was necessary to stimulate the economy and the depression still fresh in the nation’s mind, this legislation contained a firm statement that full employment was the policy of the country. As originally written, the bill required the federal government do everything in its authority to

achieve full employment, which was established as a right guaranteed to the American people. Pushback by conservative business interests, however, watered down the bill. While it created the Council of Economic Advisors to the President and the Joint Economic Committee as a Congressional standing committee to advise the government on economic policy, the guarantee of full employment was removed from the bill.

In the aftermath of the rise in unemployment which followed the “oil crisis” of 1975, Congress addressed the weaknesses of the 1946 act through the passage of the Humphrey-Hawkins Full Employment Act of 1978. The purpose of this bill as described in its title is:

“An Act to translate into practical reality the right of all Americans who are able, willing, and seeking to work to full opportunity for useful paid employment at fair rates of compensation; to assert the responsibility of the Federal Government to use all practicable programs and policies to promote full employment, production, and real income, balanced growth, adequate productivity growth, proper attention to national priorities.”

The Act sets goals for the President. By 1983, unemployment rates should be not more than 3% for persons age 20 or over and not more than 4% for persons age 16 or over, and inflation rates should not be over 4%. By 1988, inflation rates should be 0%. The Act allows Congress to revise these goals over time.

If private enterprise appears not to be meeting these goals, the Act expressly calls for the government to create a “reservoir of public employment.” These jobs are required to be in the lower ranges of skill and pay to minimize competition with the private sector.

The Act directly prohibits discrimination on account of gender, religion, race, age or national origin in any program created under the Act. Humphrey-Hawkins has not been repealed. Both the language and the spirit of this law require the government to bring unemployment down to 3% from over 9%. The time for action is now.

2. Federal Reserve

The Federal Reserve has among its mandates to “promote maximum employment.” The origin of this mandate is the Full Employment Act of 1946, which committed the federal government to pursue the goals of “maximum employment, production and purchasing power.” This mandate was reinforced in the 1977 reforms which called on the Fed to conduct monetary policy so as to “promote effectively the goals of maximum employment, stable prices and moderate long term interest rates.” These goals are substantially equivalent to the long-standing goals contained in the 1946 Full Employment Act. The goals of the 1977 act were further affirmed in the Humphrey-Hawkins Act the following year.

3. The global consensus based on customary international law that all people have a right to a job with favorable remuneration and an adequate standard of living

In the aftermath of World War II, and for the short time between the end of the war and the beginning of the Cold War, there was an international consensus that one of the causes of the Second World War was the failure of governments to address the major unemployment crisis in the late 20’s and early 30’s, and that massive worldwide unemployment led to the rise of Nazism/facism. The United Nations Charter was created specifically to “save succeeding generations from the scourge of war.” To do so the drafters stated that

promoting social progress and better standards of life were the necessary conditions “under which justice and respect for obligations arising under treaties and respect for international law can be maintained.”

It is no accident that one of the first actions of the UN was to draft the Universal Declaration of Human Rights. (UDHR or the Declaration). The Declaration was ratified by all then members of the United Nations on December 10, 1948. It is an extremely important document because it not only recognized the connection between the respect for human dignity and rights, and conditions necessary to maintain peace and security. The Declaration is the first international document to recognize the indivisibility between civil and political rights (like those enshrined in the Bill of Rights) on the one hand, and economic, social and cultural rights on the other. The UDHR is the first document to acknowledge that both civil and political rights are necessary to create conditions under which human dignity is respected and through which a person’s full potential may be realized. Stated another way, without political and civil rights, there is no real ability for people to demand full realization of their economic rights. And without economic rights, peoples’ ability to exercise their civil rights and express their political will is replaced by the daily struggle for survival.

The Declaration, although not a treaty, first articulated the norms to which all countries should aspire. It stated that everyone has the right to an adequate standard of living. This includes the rights to: work for favorable remuneration, (including the right to form unions), health, food, clothing, housing, medical care, necessary social services, and social insurances in the event of unemployment, sickness, disability or old age. There has been a conspiracy of silence surrounding these rights. In fact, most people have never heard of the Universal Declaration of Human Rights.

Similarly, most Americans do not know that the UN drafted treaties which put flesh on the broad principles contained in the Declaration. One of the treaties enshrines Civil and Political Rights; the other guarantees Economic, Social and Cultural Rights. These treaties were released for ratification in 1966. The United States ratified the treaty on civil and political rights and has signed but not ratified the economic, social and cultural rights treaty.

The latter treaty requires the countries which have ratified it to take positive steps to “progressively realize” basic economic rights including the right to a job. Almost all countries of the world have either signed or ratified this treaty. When most countries become party a treaty, they do so not because they think they are morally bound to follow it but because they know they are legally bound. Once an overwhelming number of countries agree to be legally bound, outliers cannot hide behind lack of ratification. The global consensus gives that particular norm the status of binding customary law, which requires even countries that have not ratified a treaty to comply with its mandate.

The conspiracy of silence

With the duty to create jobs required by U.S. legislation, monetary policy and customary law, why has the government allowed pundits to reframe the debate and state with certainty the government cannot do what it has a legal obligation to do?

We allow it because of the conspiracy of silence which has prevented most people from knowing that the full employment laws exist, that the Federal Reserve has a job-creating mandate, and that economic human rights law has become binding on the United States as customary international law.

Congressman John Conyers of Michigan knows about the Humphrey-Hawkins Full Employment Act, and he has introduced legislation that would fund the job creation aspects of that Act in the “The Humphrey-Hawkins 21st Century Full Employment and Training Act,” HR 870. It would create specific funds for job training and creation paid for almost exclusively by taxes on financial transactions, with the more speculative transactions paying a higher tax.

If Congress refuses to enact this legislation, the President must demand that the Federal Reserve use all the tools relating to controlling the money supply at its disposal to create the funds called for by HR 870, and to start putting people back to work through direct funding of a reservoir of public jobs as Humphrey-Hawkins mandates.

There is nothing that would prevent the Federal Reserve from creating a fund for job training and a federal jobs program as HR 870 would require, and selling billions of treasury bonds for infrastructure improvement and jobs associated with it. The growth in jobs would stimulate the economy to the point that the interest on these bonds would be raised through increased revenue. There is no reason the Fed on its own could not add a surcharge on inter-bank loans to fund these jobs. These actions could be done without Congressional approval and would represent a major boost to employment and grow the economy. If the Federal Reserve is going to abide by its mandate to promote maximum employment, and comply with the Humphrey Hawkins Act, and the global consensus it must take these steps.

Failure of the Fed and the President to take these affirmative steps is not only illegal, it is also economically unwise. The stock market losses after the debt ceiling deal is in part based on taking almost 2 million more jobs out of the economy and will only further depress demand creating further contraction in the economy. This is not an outcome any of us can afford.

***Jeanne Mirer**, who practices labor and employment law in New York, is president of the International Association of Democratic Lawyers. **Marjorie Cohn** is a professor at Thomas Jefferson School of Law and past president of the National Lawyers Guild.*

The original source of this article is Global Research
Copyright © [Jeanne Mirer](#) and [Prof. Marjorie Cohn](#), Global Research, 2011

[Comment on Global Research Articles on our Facebook page](#)

[Become a Member of Global Research](#)

Articles by: [Jeanne Mirer](#)
and [Prof. Marjorie Cohn](#)

Disclaimer: The contents of this article are of sole responsibility of the author(s). The Centre for Research on Globalization will not be responsible for any inaccurate or incorrect statement in this article. The Centre of Research on Globalization grants permission to cross-post Global Research articles on community internet sites as long the source and copyright are acknowledged together with a hyperlink to the original Global Research article. For publication of Global Research articles in print or other forms including commercial internet sites, contact: publications@globalresearch.ca

www.globalresearch.ca contains copyrighted material the use of which has not always been specifically authorized by the copyright owner. We are making such material available to our readers under the provisions of "fair use" in an effort to advance a better understanding of political, economic and social issues. The material on this site is distributed without profit to those who have expressed a prior interest in receiving it for research and educational purposes. If you wish to use copyrighted material for purposes other than "fair use" you must request permission from the copyright owner.

For media inquiries: publications@globalresearch.ca