

SERVING MARKET NEEDS, NOT PEOPLE'S NEEDS:

THE INDIGNITY OF WELFARE REFORM

MUNEER AHMAD^{*}

I am so happy to join all of you in celebrating and honoring Peter's life and work. Even for those of us who knew Peter only a little – from a few phone conversations and faxes, conferences or chance meetings – or who knew him only through his work and reputation, he has had a profound impact.

News of Peter's death spread through the public interest community with such intensity, an electric charge of terrible sorrow transmitted by e-mail and phone calls. Listservs filled up with remembrances of him from advocates and students and activists all over the country. We knew that we had lost not merely a superb intellect, but an unrelentingly warm heart and an invincible spirit, all captured in this person who inspired us to go on with our work, and gave us succor when the difficulties of our work gave us pause.

So it is with Peter, or more specifically with Peter's words, that I want to start my comments today about welfare and welfare reform. In his 1996 article, *The Problem Child*, Peter situates us in the current political moment with his typical, devastating accuracy:

So far to the right is the political center, so dominant is the ideology of the market, that any serious attempt at interjecting discussion of the structural failings of our economic system; the debilitating effects of material deprivation on developing minds and bodies; or the enduring legacy of subordinating people on the basis of race, gender, and sexual orientation is dismissed as denying personal responsibility, or treated as the mindless reaction of an outdated and knee-jerk liberalism. Indeed, even to use the term

^{*} Assistant Professor, *American University Washington College of Law*. J.D. *Harvard Law School*; A.B. *Harvard College*, 1993. The author was previously a Skadden Fellow and staff attorney at the Asian Pacific American Legal Center in Los Angeles.

“capitalism” in any context other than to celebrate its unalloyed triumph over communism is to risk being regarded as an out-of-touch ideologue or as a tired old leftist.¹

To give you an idea of where I am going with this, I have no doubt that by the end of my comments this afternoon I, too, will be branded as an out-of-touch ideologue and a tired old leftist. For that matter, I hope all of you will be as well, for surely Peter was right in his repeated warnings about the predominance of market ideology and the marginal position that those of us who question it in the least are forced to occupy.² Welfare reform represents one of the great triumphs of market values over human values, a triumph that is exactly the kind of ugly vindication that fueled Peter’s project to articulate an alternative vision of justice in which morality rooted in human experience, and not merely the automated outcomes of market machinations, plays the central role.³

While far from a perfect system, AFDC,⁴ the main welfare program that was affected by welfare reform, performed one task: It provided income support to desperately poor families, and it did so as a federal entitlement. That is, it set an economic baseline below which we would not let families fall. For all its faults, the AFDC program represented an important commitment to the inherent dignity of all people, and reflected a recognition of the fact that from such dignity flows the right to subsistence for oneself and for one’s family. As served up by a Republican Congress and a Democratic President, welfare reform scrapped the AFDC program entirely, wiping out the right to welfare, which had existed for seven decades.⁵ So much for human dignity. Welfare reform promised to lift welfare recipients out of poverty, raise their self-esteem, and reduce their “irresponsible”

1. Peter M. Cicchino, *The Problem Child: An Empirical Survey and Rhetorical Analysis of Child Poverty in the United States*, 5 J.L. & POL’Y 5, 6-7 (1996).

2. See *id.* at 105 (contending that conservative politicians are mistaken in believing that “the market exhibits the same traits as the God of monotheism: omnipotence and benevolence” and that the market will provide whatever society needs).

3. See generally Peter Cicchino, *Defending Humanity*, 8(1) HUM. RTS. BRIEF 2 (2000).

4. Aid to Families with Dependent Children (“AFDC”) (formerly codified at 42 U.S.C. § 601 (1935)) (replaced by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2113 (1996)), amended by Pub. L. No. 105-33, § 5514(c), 111 Stat. 620 (1997).

5. See The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”), Pub. L. No. 104-93, § 101, 110 Stat. 2113 (1996) (codified at various locations in the U.S. Code, including 42 U.S.C. 601-619); Cicchino, *supra* note 1, at 33 n.126 (describing how the enactment of House Bill 3734 in August of 1996 ended the AFDC program and “welfare” as it had been previously understood).

out-of-wedlock births, all in one fell swoop.⁶ And all this was necessary, we were told, because of the “welfare queen,” that mythical obese African American woman who had more and more children in order to get a bigger and bigger welfare check, and thereby live forever off the dole.⁷

The genesis, racism, fallacy, and insidious deployment of this stereotypical welfare recipient in manufacturing public demand for welfare reform is well-documented,⁸ and I will not dwell on it. I raise it here only to note that the “welfare queen,” constructed to personify the immorality of welfare recipients – lazy, slothful, gluttonous – deviously masked a market-driven agenda for reform.

One of the salient features of welfare reform is a requirement that welfare recipients in the former AFDC program go to work in order to continue receiving a welfare check, hence the common phrase, “welfare-to-work.” While we may ascribe a moral value to work – and certainly proponents of welfare reform fed us that line – it is important to understand the market value of work, or more importantly, of participation in the labor pool, that lurks beneath this language of morality. The point is very simple: by forcing hundreds of thousands of welfare recipients into the job market, welfare reform

6. See PRWORA § 101 (blaming out-of-wedlock births for a number of social ills, including welfare dependence, child abuse, and neglect); see also Charles Murray, *The Coming White Underclass*, WALL ST. J., Oct. 19, 1993, at A14 (stating that another reason to “get rid of the welfare system” is to “free up” more money for orphanages and to provide “a warm, nurturing environment for children”).

7. See *id.* at 34-39 (citing CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950-1980* (10th ed. 1994) for the conservative proposition that poverty relief programs such as AFDC encourage social pathology among the poor and, in particular, have been linked to such destructive behaviors as an increase in non-marital births). “Also, conservatives argue that because the AFDC budget increases with family size, the program has created a cash incentive for poor people to have more children.” *Id.* at 39. See also Dorothy E. Roberts, *The Value of Black Mothers’ Work*, 26 CONN. L. REV. 871 (1994).

When welfare reformers devise remedies for maternal irresponsibility, they have Black single mothers in mind. Although marital status does not determine economic well-being, there is a strong association between Black single motherhood and family poverty. The image of the lazy Black welfare queen who breeds children to fatten her allowance shapes public attitudes about welfare policy.

Id. at 873.

8. See, e.g., *id.* at n.132 (citing MICHAEL LIND, *UP FROM CONSERVATISM: WHY THE RIGHT IS WRONG FOR AMERICA* 168 (1997) as rejecting the conservative criticisms of poverty relief programs such as those advanced by Charles Murray: “Lind not only abolishes the myth of an epidemic of illegitimacy, but provides an interesting account of why and how the issue came to be used as a weapon in the conservative rhetorical arena.”); JILL QUADANGO, *THE COLOR OF WELFARE: HOW RACISM UNDERMINED THE WAR ON POVERTY* (1994); Catherine R. Albiston & Laura Beth Nielson, *Welfare Queens and Other Fairy Tales; Welfare Reform and Unconstitutional Reproductive Controls*, 38 HOW. L.J. 473 (1995).

threatens to drive down wages, particularly in low-wage industries already rife with worker abuse and exploitation. Moreover, enhanced competition for poverty-wage jobs and the unavailability of a safety net render welfare recipients and workers alike increasingly desperate for work, thereby intensifying economic insecurity and decreasing workers' willingness or ability to demand more from their employers. These conditions also render the low-wage workforce more susceptible to division; poor and desperate people are put in competition with other poor and desperate people, fueling chauvinism and mistrust on the basis of ethnicity and immigration status. Thus, the benefit to employers is twofold: not only the depression of wages, but the frustration of worker-organizing efforts as well.

To understand the nature of the divisions created by welfare reform among poor populations, we need only look at the nation's immigrant workers. Immigrant workers are among the most vulnerable workers in the United States today, their sense of job security eviscerated by racial bias, language barriers, and fears of deportation. It is therefore no surprise that many of the most undesirable jobs in the country, from meat-packing and fruit-picking to dish-washing and taxi-driving, are performed by immigrants. Consider, then, the effect of Operation Jobs,⁹ a pilot program of the INS in which employers in different parts of the country whose Latino workers were deported following INS raids were referred to welfare departments to have the jobs filled by mostly white and African American welfare recipients.¹⁰ The deployment of welfare recipients not only replenishes the labor pool, but stirs a racial competition among blacks, whites and Latinos, salting the soil in which cross-cultural worker unity might otherwise have had a chance to grow.

For a second example, let me turn to my work in Los Angeles, where hundreds, if not thousands, of individuals in the welfare-to-work program are being placed in jobs in the garment industry. The Los Angeles garment industry is notorious for its sweatshop conditions, with workers typically making as little as three dollars an hour and constantly facing the threat of retaliatory firing for demanding higher wages. Many of the workers are undocumented,

9. See *Combating Illegal Immigration: A Progress Report*, 105th Cong. 10 (1997) (testimony of George Regan, Acting Assoc. Comm'r of the Immigr. and Naturalization Serv., before the House Subcomm. on Immigr. and Claims).

10. See *Poverty and Welfare Reform*, 4(2) MIGRATION NEWS (Feb. 1997), available at www.un.org/popin/popis/journals/migratn/mig9702.html.

and therefore face an additional, very real threat of deportation. For these and many other reasons, organizing garment workers has been a Herculean task—one which, thus far, has failed. Fewer than one percent of the more than 100,000 garment workers in Los Angeles are union members. The introduction of welfare recipients makes sweatshop conditions even worse, and makes the already tough job of organizing all the more difficult.

We tend to think of welfare reform as introducing work into the welfare system, but even prior to welfare-to-work, welfare has always been about work, workers, the labor market, and market ideology.¹¹ As Francis Piven and Richard Cloward describe, the development of the welfare state has historically been a “class accord,” a compromise between the need “to quell unrest” among the poor, who at critical points in American history have demanded state intervention to protect against their destruction by market forces, and the market’s competing need “to ensure a supply of low-wage labor.”¹² Thus, programs like unemployment insurance, disability benefits, and Social Security were permitted at times of economic hardship and social unrest – during the Depression, for example – but systematic attempts to scale back these programs have ensued in order to ensure that too many workers are not removed from the labor pool.¹³ By providing some economic support to people who lose their jobs or become disabled, we reduce the necessity that they accept just any old job. Of course, this respect for human frailty, which is exactly the kind of respect that Peter urged upon us, flies in the face of market values, and therefore has fueled decades of business attempts to downsize the “welfare state,” – for surely, if there is anything that business is good at, it is downsizing.¹⁴

Welfare reform has left welfare recipients, and indeed has left all of us, in a terrible position. All we can do, it seems, is to attempt to soften the blow of an already swinging fist, rather than try to stop and reverse the cycle of violence. Peter understood that we were in a period of retrenchment, but he urged us not to give up, and in that spirit I want to offer a few words of encouragement.

11. See FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* 3 (2d ed. 1993) [hereinafter PIVEN & CLOWARD, *REGULATING THE POOR*] (describing how welfare regulates market forces and how it provides stability in capitalist societies where “instability [is] inherent”).

12. FRANCES FOX PIVEN & RICHARD A. CLOWARD, *THE BREAKING OF THE AMERICAN SOCIAL COMPACT* 185-86 (1997).

13. PIVEN & CLOWARD, *REGULATING THE POOR*, *supra* note 11, at 5-8.

14. See Peter Cicchino, *Defending Humanity*, 8(1) HUM. RTS. BRIEF 2, 3 (2000) (explaining that “[i]f a firm can double its profits by firing half its workforce and thereby destroying a community, the market’s imperative is no different.”).

Simply put, we cannot give up, not merely because the lives of others will suffer if we do, but because our own lives will suffer as well. As Peter insisted, our humanity depends upon defending the humanity of others.¹⁵ The only way we can tolerate the violence wrought by unconstrained market forces is if we accede to the demand that humanity has no market value.¹⁶ But so long as we work with poor and marginalized peoples, so long as we represent welfare recipients, fight for immigrants, defend criminal defendants, organize workers, stand up for the rights of gays and lesbians, and advocate for people with disabilities, we will be steeped in humanity. The humanity of others will be as undeniable as the humanity of ourselves.

Lastly, let me suggest that it is not only public interest lawyers who must resist market sway, it is the legal profession as a whole. For too long, we have been the willing accomplices of business forces. We must take Peter's prescription for what it means to live a good and happy life and make ours a good and happy profession, so that we may give real meaning to the term, "professional responsibility."¹⁷

As Professor Volpp mentioned, I am going to be joining the faculty here in a few months. While the decision to come to American University was in many ways a very easy one, I did give it a little bit of thought and tried to think about the points arguing in favor of my coming here. As part of that thought process I said to myself, "Well, Peter's here" – and then I had to catch myself and say, "No, Peter's not here anymore." But then it struck me: Peter is here still. That is the feeling I got when I came to visit here before, and that's the feeling I've had in the last couple of days that I've been here.

It would not be an understatement to say that the presence of Peter and the effect that he has had on this institution have been a large part of my decision to come to American University. I feel very privileged to be able to share this moment with you today, and to be part of a community that so welcomed Peter and continues to reflect the power and the values that he brought here.

15. *See id.* at 4 ("[I]n my own life I have struggled with the question of what makes a good and happy life. I have become ever more convinced that struggling to secure the conditions for a decent human life for others is a large part of the answer.").

16. *See id.* (noting that "[c]apitalism is premised on the notion that human labor is a commodity . . .").

17. *See id.* ("[D]efending the human rights of others is itself a constituent part of leading a good and happy life.").