

RESHAPING THE WELFARE DEBATE:

THE POOR PEOPLE'S LABOR MOVEMENT

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James Baldwin once exclaimed that “[p]eople are trapped in history and history is trapped in them.”¹ Indeed, we make our history at each turn of the road, with each choice. The wise fill our history-making with history-made, which is cause to be wise at our present juncture. The reauthorization of the Personal Responsibility and Work Opportunity Reconciliation Act², which is the nation’s main public welfare legislation, brings to center stage, yet again, our social policy discourse.³

The history that we will co-create in welfare law and policy will be a better history if we remember the dialogue of 1996, and apply lessons learned to the work of law reform. Let us re-imagine and strategize for a new anti-poverty agenda. Let us turn to the substantive and tactical undertakings in which we must engage if we are to evolve a welfare policy that affirms human dignity and attacks poverty affirmatively, aggressively, and intentionally.

Our first mission must be remembrance and humility. We, who consider ourselves advocates for the poor, do not serve our cause well by failing to identify our own dialogical failures in the great welfare debate of the mid-1990’s. The chief failure for many of us was to

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1. James Baldwin, *A Stranger in the Village*, in NOTES OF A NATIVE SON (1955) available at <http://www.uwm.edu/~gjay/Whiteness/stranger.htm> (last visited Feb. 9, 2002).

2. Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified in scattered sections of 42 U.S.C.).

3. See *Welfare Reform: An Examination of Effects Before the House Comm. On Education and the Workforce, Subcomm. On 21st Century Competitiveness*, 107th Cong. (2001) (statement of Sanford F. Schram, Professor of Social) (indicating that the 1996 “welfare reform” has done little to reduce poverty and help families, and recommending that reauthorization focus on reducing poverty); see also Rebecca M. Blank & Ron Haskins, *Revisiting Welfare*, WASH. POST, Feb. 14, 2001, at A25 (summarizing the effects of the 1996 legislation and recommending what should be done in the reauthorization).

cling intently to the view that anything shy of an entitlement-based Aid to Families with Dependent Children ("AFDC") regime was an unacceptable pollution of the national commitment to a social welfare safety net.⁴

In hindsight, I think we miscalculated the politics of that moment and overestimated the resonance and efficacy of our own claims. As images of "welfare queens" and teenage mothers proliferated in the public consciousness, we relied too heavily on an empiricism that was simply too right and too true for our own good. We knew the data showed that relief for the poor did not cause pregnancy, domestic violence, or promiscuity.⁵ We knew that the vast majority of the poor were children,⁶ and that the surest way to mitigate their circumstances was to provide a comprehensive social security program like AFDC. We were right then, and we are right now. But, that knowledge bred into many of us what Peter Cicchino ("Peter") would have called Socratic arrogance.⁷

At the time, we focused on disproving outrageous lies about welfare and morality. We misunderstood the political dialogue. The objections of the Right were not really empirical objections. The Conservative scholars Charles Murray⁸ and Lawrence Mead,⁹ for example, have used empiricism as something of a rhetorical missile, but their most penetrating claims are not about the numbers. They are about the people. For example, we now have considerable

4. See U.S. CENSUS BUREAU, WHAT IS AFDC? 1 (stating that Aid to Families with Dependent Children (AFDC) was a state and federally funded program that assisted families with dependent children under 18 years of age who were deprived of the financial support from one parent due to death, absence, or incapacity), at <http://www.census.gov/population/socdemo/statbriefs/whatAFDC.html> (last visited Oct. 8, 2001).

5. See LUCY A. WILLIAMS, DECADES OF DISTORTION: THE RIGHT'S 30-YEAR ASSAULT ON WELFARE, (Pol. Res. Assocs. Dec. 1997) (citing statistics of AFDC families and remarking that "a reductionist view of welfare as an inner-city long-term, intergenerational, teenage pregnancy, or illegitimacy problem does not capture the experiences of the vast majority of mothers and children who have been receiving" AFDC benefits), at <http://www.publiceye.org/welfare/Decades-of-Distortion.htm>.

6. See JOHN ICELAND ET. AL., U.S. CENSUS BUREAU, ARE CHILDREN WORSE OFF? 1 (noting that the poverty rates for children in the United States continue to surpass adults and the elderly), at <http://www.census.gov/hhes/poverty/povmeas/papers/iceland/john.html> (April 9, 1999).

7. See Peter M. Cicchino, *To Be a Political Lawyer*, 31 HARV. C.R.-C.L. L. REV. 311, 311 (1996) (explaining the idea that "Socrates knew something important").

8. See CHARLES MURRAY, LOSING GROUND: AMERICAN SOCIAL POLICY 1950-1980 (1984) (argues that welfare programs were ineffectual and exacerbated the conditions for the poor and disadvantaged); see also Biography of Charles Murray, Bradley Fellow at <http://www.aei.org/scholars/murray.htm> (last visited Feb. 9, 2002).

9. See LAWRENCE M. MEAD, THE NEW POLITICS OF POVERTY: THE NONWORKING POOR IN AMERICA (1992) (arguing that the traditional solutions to poverty relief have proven fruitless; therefore, a conservative perspective to poverty relief and welfare reform may cure welfare recipients' dependency on the government).

evidence that the principle of child exclusion which prohibits benefits for children born to women who are receiving welfare, does not deter pregnancies, as the Right claims,¹⁰ and may incentivize abortions.¹¹ Yet, child exclusion is law in most of this country.¹² The numbers have not driven many pro-life critics of welfare to seek changes.

The silence from many on the Right about the numbers showing an upward trend in abortion services has been deafening. This silence illustrates that the welfare debate is in many ways not about causation, empiricism, or demography. It is about whom we like, why we like them, and what we give them because we like them.

The Right's effort to label and stigmatize poor mothers in 1996 was identical in tone and in spirit to similar vulgarities used in construction of the poor laws in Elizabethan England.¹³ That said, Murray's and Mead's most persuasive and cunning moments were achieved when they had the social contract in the cross-hairs, espousing a view of market-based interaction that should govern our social policy.¹⁴ The argument was akin to: everyone pulls his/her own weight and the independent prevail. The Right targeted the national safety net because they said it created incentives against independence.¹⁵ They invoked American notions of individualism.

10. See Williams, *supra* note 4.

11. See Jennifer Preston, *Births Fall and Abortions Rise Under New Jersey Family Cap*, N.Y. TIMES, Nov. 2, 1998, at B8 (commenting on a Rutgers University study which examined, amongst other issues, the effect of New Jersey's family cap (child exclusion) policy on welfare recipients). Researchers found that the abortion rate "among welfare recipients increased compared with the general population of New Jersey." *Id.* See generally *Child Exclusion Policies in Welfare Reform*, REPROD. RTS. UPDATE (ACLU, New York, NY) (Apr. 1997) (arguing that child exclusion is irrational because it denies women reproductive freedom, penalizes children, ignores the fact that welfare families are no larger than those not on welfare, assumes women are solely responsible for additional births and wrongly assumes women bear more children for the promise of more welfare money) at <http://www.aclu.org/library/childex.html>.

12. See, e.g., *C.K. v. Shalala*, 883 F. Supp. 991, 1015 (D. N.J. 1995) (holding that New Jersey's limitation on benefits to parents with children is a legitimate state interest and it does not interfere with the parents' procreation rights); see generally Melynda G. Broomfield, *Controlling the Reproductive Rights of Impoverished Women: Is This the Way to "Reform" Welfare?*, 16 B.C. THIRD WORLD L.J. 217, 237 (1996) (advocating that limits on the number of children women can have, such as the limit in New Jersey, are unconstitutional).

13. See generally RAPHAEL HOLINSHED, *CHRONICLES OF ENGLAND, SCOTLAND AND IRELAND*, Book III, Chap. 5 (1577) (discussing the difference between poor people who deserve help because they are poor due to disease or casualty and poor people who should not be helped who are poor due to their own vices).

14. See generally MURRAY, *supra* note 8, at ch. 17 (providing several proposals for social policy and race, education, and public welfare); MEAD, *supra* note 9, at 254-57 (proposing that if we encourage low-income people to work at higher-levels and enter the workforce as "new workers," then poverty rates will fall because the "new workers" will have stake in America and the economy).

15. See MURRAY, *supra* note 8, at 175-76 (analyzing the incentives to rely on welfare

Think about Walden Pond, for example.¹⁶ The text has become a signal movement in American literature, understood by many to express the growing individualism of American culture as it passed from its collectivist settlement-based origins. There are resonant connections between Walden Pond and the social criticisms of the Right, and these connections provide a familiar and comfortable rhetorical framework for Mead, Murray and others.

By understanding welfare's critics, we can enter the discourse more effectively. This is really a gift from them to us. The Right provides us with an opening to enter the fray and think about antipoverty strategies and the Temporary Assistance For Needy Families ("TANF") legislation as capacity building and opportunity-enhancing for emerging workers.¹⁷ In hindsight, it was ludicrous for most of us to focus on empiricism while neglecting, in my view, the cousin enterprises of effective political claims-making, grassroots coalition building, lobbying, and message deployment. In 1996, the legal and social policy academy relied too heavily on the research component of this enterprise and spent too little time on making the case for a national antipoverty strategy.

Peter's own scholarship in this area offers important clues to our present course. In 1996, before the enactment of the modern TANF regime, Peter published *The Problem Child*, an article that delivers a comprehensive, clever, and empirically rigorous challenge to the political assumptions and claims of the Right.¹⁸ In *The Problem Child*, Peter is hard core "Peter the Scientist." He becomes Hercule Poirot¹⁹ in an AP physics class. He is quantitative; he is logical; he is deductive. But, as Peter readily admitted, his approach was not of an uncommon type at the time. It was part of national antipoverty literature. It may have been among the best, but it was not uncommon.

programs as being in one's short-term interests); MEAD, *supra* note 9, at page # (arguing that our welfare program promotes dependency, which in turn impedes work levels and growth for welfare recipients).

16. See generally HENRY DAVID THOREAU, WALDEN (New England Landmarks 2001) (1861) (explaining Thoreau's personal discovery as he examined the world in which he lived at Walden Pond).

17. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. § 603(a)(3) (2001) (explaining that the federal government may make block grants to states under the TANF legislation).

18. 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, 5 (1996) (arguing for the need to assist impoverished children).

19. Hercule Poirot was a Belgian detective in several of Agatha Christie's novels. See, e.g., AGATHA CHRISTIE, THE MYSTERIOUS AFFAIR AT STYLES (Mass Market Paperback 2001) (1920) (introducing the character of Hercule Poirot for the first time).

Peter's subsequent law review contribution, a wonderful piece entitled *To Be a Political Lawyer*,²⁰ prescribes an essential ingredient to organized success. If the history that we are about to make is to be a good history for all people, then we must tell a "faith story", as he calls it: "an account of rational hope that provides people with an image of, and principles for, realizing the sort of lives they ought to live."²¹ To prevail, we must adopt the spirit of this faith story and evangelize a cause of optimism. We must prescribe a series of conditions which, when supported and achieved, help us to attack the longstanding blights of poverty and chronic unemployment.

I do not wish to say that longitudinal data collection and analysis have no place in our upcoming debate. To the contrary, we have to be led first and foremost by the empiricism. We have to be wise decision-makers, disciplined in our commitment to analyze complex challenges associated with poverty and income assistance. Let us be led by our empiricism, but let us not lead with it this time.

The task is to envision a progressive "faith story" that convinces lawmakers that we are the hope-givers and the problem-solvers. Let us resolve specifically this year, as welfare advocates and poverty lawyers, to flip this ideological nonsense on its head and become the labor movement that the Right has dared us to become.

The Right's story in 1996 was that dependency was the problem, and AFDC made it worse. I propose today that our story be that poverty is the problem, and TANF should be making it better. Our success in this political climate will come when we re-imagine our ambition not as the vindication of a dormant entitlement-based system, but rather as the transformation of the TANF regime into a system that cultivates and nurtures meaningful labor force participation. Our gospel acclamation-I thought Peter would be happy if I used the phrase gospel acclamation-must be "make work pay," and our agenda must be of a sort that moves the law further in this regard. The law already requires the vast majority of TANF families to be at work.²² TANF families are not welfare recipients. They are workfare workers.²³ They are not on the dole. They have a job. Workfare is a major component of TANF programs in many

20. Peter M. Cicchino, *Response Essay: To Be A Political Lawyer*, 31 HARV. C.R.-C.L. L. REV. 311 (1996).

21. *Id.* at 313.

22. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. § 607 (2001).

23. See *id.*, see also Walter M. Luers, *Workfare Wages Under the Fair Labor Standards Act*, 67 FORDHAM L. REV. 203, 204 (1998) (defining workfare workers as welfare recipients who must work for their benefits, and therefore, resemble state employees).

states,²⁴ and we can accomplish much if we advocate that lawmakers ensure workfare participants are covered by the Fair Labor Standards Act²⁵ and receive minimum wage for their labor.²⁶

The Department of Labor in the Clinton Administration issued supportive regulations, but California and other states publicly flouted the Department. In California, for example, a workfare participant with two children receives approximately \$611 a month.²⁷ That divides to \$3.82 per hour, and California is the eighth most generous state in the country.²⁸ In the District of Columbia, that worker earns \$2.37 per hour.²⁹ In Texas, it amounts to \$1.25 an hour.³⁰ In Mississippi, it is \$1.07 an hour.³¹

We should also seek repeal of those provisions of the Taxpayer Relief Act of 1997³², which prohibit workfare workers from claiming the Earned Income Tax Credit.³³ The credit was invented in the 1970's to provide cash incentive to low-wage workers as their income grows to a certain level. If workfare participants were able to apply for the credit based on their workfare wages, they would augment their income by forty percent per year. In New Jersey, for example, a family of three who earns just over \$5,000 a year in workfare wages could increase those earnings by another \$2,000 if the credit applies.³⁴ That would still leave the family almost \$6,000 below the poverty line, but it is a modest proposal in the tradition of making work pay, and that should be our mantra.

24. See 7 U.S.C. § 2029 (1999) (allowing states to set-up workfare programs).

25. 29 U.S.C. §§ 201-219 (2000).

26. See e.g. Peter Weiss, *Economic and Social Rights Come of Age*, HUMAN RIGHTS BRIEF (Washington College of Law at American University, Washington, D.C.) (discussing the Poor People's Economic Human Rights Campaign's petition alleging in part that the United States welfare reform policies have led from welfare to working poverty, with only a very small percentage of families receiving weekly wages above the poverty line), at <http://www.wcl.american.edu/pub/humright/brief/v7:2/economic.htm> (last visited Sept. 28, 2001).

27. HOUSE COMM. ON WAYS AND MEANS, 106TH CONG., 2000 GREEN BOOK: BACKGROUND MATERIAL ON PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS 385 (Oct. 6, 2000) (citing, state-by-state, the "maximum monthly TANF benefit for families of one to six persons, January 1, 2000"). To determine California's total and hourly wage the mean was calculated between Region 1 and Region 2. The monthly total for Region 1 is \$626 and for Region 2 it is \$596. *Id.*

28. *Id.* at 385

29. *Id.*

30. *Id.*

31. *Id.* at 386.

32. Pub. L. No. 105-34, § 1085(c), 111 Stat. 788 (1997).

33. See Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 1085(c), 111 Stat. 788, 956-57 (1997) (illustrating that workfare payments are not included in earned income).

34. See N.J. STAT. ANN. § 54A:4-7 (West 2001).

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Finally, the law limits adult recipients to sixty months of TANF aid in a lifetime.³⁵ The clock should toll when individuals are involved in education and training; when they are working, even in a workfare post or a government-subsidized position; when they are caring for a child who is under one; or when they are expected to care for a sick family member.

To his abiding credit, Peter simply could not fathom intentional antipathy for the poor. Ours will be a better history if we adopt that posture, and resolve to eradicate poverty at every turn.

35. See PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996, 42 U.S.C § 608 (a) (7) (A) (2001).