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A "WELFARE PRINCE" LOOKS AT WELFARE REFORM

*Dink Stover**

Today we are ending welfare as we know it . . . But I hope this day will be remembered not for what it ended, but for what it began: a new day that offers hope, honors responsibility, rewards work and changes the terms of the debate so that no one in America ever feels again the need to criticize people who are poor or on welfare.¹

I am a member of a select group, one of a handful of law professors in the United States who is an alum of the Aid to Families With Dependent Children ("AFDC") program.² Based in part on my personal experiences, I am deeply skeptical about AFDC's abolition and replacement with a more limited and punitive program called Temporary Aid to Needy Families ("TANF").³ I not only participated in AFDC, but also in most other federal welfare programs, and I liked them. In the late 1960s, when my family's clothing was incinerated by a defective laundromat dryer, a Legal Aid lawyer, funded in part by the Legal Services Corporation, obtained for us some redress. My

* The pseudonymous author received his undergraduate and law degrees from schools in the top ten of the *U.S. News and World Report* surveys, and is on the faculty of a first tier law school. The title is derived from the contemptuous term "welfare queen." See Risa E. Kaufman, Note, *The Cultural Meaning of the "Welfare Queen": Using State Constitutions to Challenge Child Exclusion Provisions*, 23 N.Y.U. REV. L. & SOC. CHANGE 301, 308-12 (1997).

¹ Bill Clinton, upon signing welfare reform bill. 1996 PUB. PAPERS OF THE PRESIDENT: WILLIAM J. CLINTON 32, see also WEEKLY COMP. PRES. DOC. 1484 (1997).

² For a vivid account of another professor's experiences, see BRIAN K. FAIR, NOTES OF A RACIAL CASTE BABY (1997). Rumors of others persist, including a dean out west and a chaired professor at a tier two law school who are reputed to be the first in their families to graduate from high school.

³ 42 U.S.C.A. § 603 *et seq.* (West 1998).

mother, sister and I received health services through Medicaid and thanks to food stamps and subsidized school lunches, we were never hungry. When I went to college, Pell grants, federal Work Study funds and subsidized student loans helped pay the bill. What's *not* to like? .

While some welfare critics argued that AFDC should be changed to help its recipients, particularly to avoid leaving us dependent and unmotivated, I don't think any of this government aid particularly hurt me. Welfare left my family poor but made us less poor. Medicaid kept us healthy, and I was fortunate in that I never worried that we might go hungry or be without adequate shelter. Yet, even putting everything together, the welfare package fell well short of an attractive situation. Welfare grants allow what I call a *Gilligan's Island* lifestyle, "no phones, no lights, no motor car, not a single luxury," as the theme song goes.⁴ My college dorm room was an elegant accommodation compared to the mattress on the living room floor on which I slept at home until I was 21. Things that seem to me today like necessities—a color TV, a VCR, a microwave oven, a car, a phone—were simply out of reach for us as a welfare family. There was always good reason to look for an alternative to AFDC.

I have shaken most of the traces, the taint of welfare, I think. My sister and I won the lottery by being admitted to elite colleges and graduate schools.⁵ Later, as a lawyer at a large firm, I was able to earn a lot of money. As a summer associate in New York in the mid-1980s, the very first social event I attended was a \$500 a plate fund raising dinner, at the Waldorf, if I recall correctly,

⁴ See Gilligans Island FAQ: Episode Guide (visited Dec. 29, 1998) <<http://www.landfield.com/faqs/tv/gilligans-isle/guide/>> .

⁵ I say that we "won the lottery" because due to our facility with largely meaningless "fill in the dots" tests, (*cf. infra* note 9) we won scholarships to schools with plentiful resources. Unfortunately, the Supreme Court has not been sensitive to the needs of poorer districts, holding that a state's school financing system which favored more affluent districts did not interfere with the exercise of a "fundamental right" to education since all children were provided with a basic minimum education. See *San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1 (1973).

paid for by the firm. Senator Edward M. Kennedy was the keynote speaker. He opened his talk by saying, "I don't think about being president any more . . . But I don't think about it any less!" It was immediately obvious that the tan suit I bought from Brooks Brothers in an effort to pass was, under the circumstances, absurd; every other person there was wearing black tie. It didn't matter though, I knew that being in that room, with those people, with Ted Kennedy making a joke in part for my benefit, meant everything had changed. I was right. My sister and I both became university professors. My mother got off welfare, finished college and has been gainfully employed for well over a decade. I have my own tuxedo now; the cuff links and shirt studs which go with it cost more than we ever received in a month from the state.

In my case welfare was not a trap. It was not seductive or debilitating, it was a lifeline offering minimal support to family until we children could fend for ourselves. For us, welfare was not an obstacle to upward mobility, it was indispensable to making it happen. And it was almost not enough. I worked from age eleven, so I could have spending money and help out with necessities. This was a major distraction to serious scholarship. My high school record was entirely mediocre. I was helped thanks to my undergraduate institution's generous financial aid policy, which recognized that talent might be found in surprising places.

My family's experience with welfare may not be entirely typical,⁶ but it is hardly rare. Over the years, I have learned that a number of my friends were in the same position. My spouse, who like me has an Ivy League graduate degree, grew up "on the dole" but was a serious student and is now a committed and successful professional. A close pal was impoverished after his father abandoned the family as a child, but finished college and

⁶ Research shows that some recipients of welfare remained on welfare for many years; others were on welfare for short periods of time, or cycled on and off. See Greg J. Duncan & Gretchen Caspary, *Welfare Dynamics and the 1996 Welfare Reform*, 11 NOTRE DAME J.L. ETHICS & PUB. POL'Y 605 (1997).

now never has to work again—not because of public assistance—but because he made a fortune in business. The mother of a family we were close to earned a college degree while on welfare. Her daughter was a brilliant scholarship student who started her education at an eastern prep school, an elite university, and now attends from a leading medical school.

Talking about our experiences with AFDC is not easy or pleasant for any of us. I don't think this is because of any shame we feel for having gotten something for nothing, but because of the shock of knowing that one's very survival resulted from a grudging handout rather than a willing, generous gift or even an entitlement based on recognition of our common humanity.⁷ I doubt that my circle of friends is unique. I suspect that there are many, many productive, energetic, contributing members of society who, perhaps unbeknownst to all but their closest friends and colleagues, can thank AFDC and other welfare programs for feeding, clothing and sheltering them as children so they could develop and share their gifts as adults. In this respect, criticism of welfare is a canard.

A recent column in *Parade Magazine* summarized for me the ugly side of the motivation for the 1996 welfare reforms. Reader Charles Heinze sent a letter to Marilyn Vos Savant, author of the "Ask Marilyn" column. He asked a reasonable question which calls into question the premises of welfare reform:

The losing candidate in the last Presidential campaign promised a tax cut and welfare reform that would require people to work. How would that have been possible, considering the number of people who receive government assistance? And how could we require them to work if the work isn't there--especially for the unskilled?

Vos Savant, who bills herself as the smartest woman in the world based on her astronomical IQ, replied that welfare recipients could become household servants:

⁷ See MICHAEL B. KATZ, IMPROVING POOR PEOPLE: THE WELFARE STATE, THE 'UNDERCLASS,' AND URBAN SCHOOLS AS HISTORY (1997).

There's a huge amount of work that the unskilled could do, and most of us routinely perform it for ourselves every day. We cook and clean, wash and iron, walk the dog and run errands. The problem is that few of us have the money to pay someone else to do it. If I'd been a candidate who wished to both cut taxes and put unskilled people to work, I would have proposed a tax cut for households that hire unskilled workers Such a simple arrangement would have been a no-lose situation all around.⁸

Vos Savant suggests that the real purpose of welfare reform is to regenerate the supply of domestic servants rather than to help the poor lead more dignified and promising lives, instead of assistance and firm encouragement, it suggests some sink or swim social Darwinism. In my less temperate moments, it seems to me that this bitch thinks that rather than teaching law school, people like me should be cleaning her toilets.⁹

Nevertheless, Vos Savant may be on to something with respect to the basic nature of welfare reform. Although the provisions of

⁸ Marilyn Vos Savant, *Ask Marilyn*, PARADE MAG., Oct. 19, 1997, at 9. Ms. Savant was listed on page 26 of the 1989 edition of THE GUINNESS WORLD BOOK OF RECORDS. Her IQ is supposed to be 228 but her record was retired because the IQ test are no longer scored in the same way. See Herb Weiner, Marilyn's Wrong (visited Dec. 28, 1998) <<http://www.wiskit.com/marilyn/marilyn.html>>.

⁹ It is ironic that Ms. Savant suggests what is in effect a subsidy for the rich. Instead of providing monetary assistance to the poor, the government is providing employers with "free" labor. Pub. L. No. 104-193, § 404(f), 110 Stat. 2105 (1996) (codified in 42 U.S.C.A. § 603 (West 1998)). Subsection 404(f) of Temporary Aid to Needy Families provides in pertinent part:

A State to which a grant is made ... may use the grant to make payments (and provide *job placement vouchers*) to State-approved public and private job placement agencies that provide employment placement services to individuals who receive assistance under the State Program. . . .

Id. See generally, Julie A. Nice, *Welfare Sensitive*, 1 GEO J. ON FIGHTING POVERTY, 340 (1996).

the TANF programs are efficient and harsh,¹⁰ and may be as callous as the suggestion that the poor eat cake, they are far more logical. Welfare Reform works in the sense that it offers a theoretical chance to swim, while it also promises to let the vulnerable sink. Professor William Quigley persuasively describes TANF as a throwback to an earlier era: like “the poor laws of the Middle Ages,” the new law holds that

[r]egardless of the adequacy or inadequacy of the compensation for that work, putting all poor people to work is paramount. The second common legislative theme is that helping the poor actually hurts the poor, thus assistance to the poor, if it is to be given at all, must be given sparingly. Third, both sets of legislation consider poverty not the result of economic accident or transition but as individual moral failure. A dangerous extension of this belief is that poor parents are also bad parents whose behavior must change to avoid economic punishment of their family.¹¹

TANF is a block grant program, rather than an entitlement. States live within certain general guidelines, but have broad discretion about how to spend their money.¹² No block grant funds can go to a person who has received TANF for more than

¹⁰ A number of articles describe the basic provisions of the law. *See, e.g., Development in Policy: Welfare Reform*, 16 YALE L. & POL’Y REV. 221 (1997); *Policy & Practice: The Temporary Assistance for Needy Families Block Grant*, 4 GEO. J. ON FIGHTING POVERTY 311 (1997).

¹¹ William P. Quigley, *Backwards into the Future: How Welfare Changes in the Millennium Resemble English Poor Law of the Middle Ages*, 9 STAN. L. & POL’Y REV. 101 (1998); *see also* William P. Quigley, *Work or Starve: Regulation of the Poor in Colonial America*, 31 U.S.F. L. REV. 35 (1996).

¹² Pub. L. No. 104-193, § 404(1), 110 Stat. 2105 (1996) (codified in 42 U.S.C.A. § 603 (West 1998)). Subsection 404(1) provides in pertinent part: “A State to which a grant is made . . . may use the grant . . . in any manner that is reasonably calculated to accomplish the purpose of this part . . .” *Id.* However, States are not granted total discretion on how to spend the money; for example, if they fail to find people employment, the State is subject to a five percent fine. *Id.* at § 409.

five years, so effectively there is a five year lifetime limit. States must impose work requirements after two years of receiving benefits. During those two years, states can impose job training, workfare or community service requirements.¹³ Block grants are based on 1994 spending and states are expected to spend at least 80 percent of what they spent in 1994.

For a number of reasons, I am afraid of what is going to happen to the children, women, immigrants, racial minorities, and other people who, many commentators have recognized, will be most severely affected by this legislation.¹⁴ First, it will be very hard for some adults to make the transition from welfare to work, and many states aren't providing the necessary tools.¹⁵ Some people need but a little push to get them into the work force, but there are many of what those in the business call "drawer people," aid recipients with physical or mental problems, or who are uneducable but not disabled as defined by law.¹⁶ Their files sit in drawers while easier candidates are helped. Drawer people may need expensive and extensive help to obtain and hold a job: they may be virtually unemployable without drug treatment, mental or physical care, telephone service, transportation (sometimes to suburban areas where entry-level service jobs are available), child care,¹⁷ housing,¹⁸ job

¹³ *Id.* at § 407(d).

¹⁴ See, e.g., Charlotte Snow, *The Impact of Welfare Reform on Women*, HUMAN RIGHTS 14 (Spr. 1998); Mark Neal Aaronson, *Scapegoating the Poor: Welfare Reform All Over Again and the Undermining of Democratic Citizenship*, 7 HASTINGS WOMEN'S L.J. 213 (1996); Jason DeParle, *What Welfare-to-Work Really Means*, N.Y. TIMES MAG., Dec. 20, 1998, at 50.

¹⁵ For descriptions of how two states have implemented their policies see Margaret Ann Shannon, *Public Assistance: Repeal "Aid to Dependent Children Act"; Create "Temporary Assistance for Needy Families Act"*, 14 GA. ST. U. L. REV. 284 (1997); Quintin Johnstone, *The "Vanishing Poor": Connecticut's Response to Welfare Reform*, 71 CONN. B.J. 278 (1997).

¹⁶ See Jason DeParle, *The Drawer People*, N.Y. TIMES, Nov. 20, 1997, at A1.

¹⁷ See Carla Rivera, *Who Will Watch The Kids*, L.A. TIMES, Mar. 8, 1998, at B1 (noting that affordable childcare was unavailable for many welfare recipients).

¹⁸ See, e.g., Peter W. Salsich, Jr., *Welfare Reform: Is Self-Sufficiency Feasible Without Affordable Housing?*, 2 MICH. L. & POL'Y REV. 43, 45

training, help with domestic violence,¹⁹ or even something as simple as appropriate business clothing. In short, in many cases, it will cost much more money to take someone from welfare to work than just to pay them. Offering these kinds of services may be impossible if spending levels fall, as they have, and will continue to do so, as TANF block grants drop each year as is currently budgeted.

Another reason I am afraid of the effect welfare reform is having on children, women and minorities is the drop in welfare rolls. Caseloads have dropped substantially since the abolition of AFDC, in some states as much as 50%.²⁰ Not all of the decrease is due to punitive provisions of welfare reform; some is due to increased job availability leading to increased earnings.²¹ I am delighted when a welfare recipient graduates from the program and becomes self-sustaining. On the other hand, studies show that many of those who dropped off welfare were terminated as a

(1997) (arguing that "the new welfare policy will not succeed unless it is accompanied by a revitalized housing policy."); Melissa Healey, *Shelters Bulge at Welfare Vanguard*, L.A. TIMES, Mar. 1, 1997, at A10 (noting that Wisconsin experienced an increase in homelessness following welfare reforms).

¹⁹ Several commentators have urged that victims of domestic violence be given some consideration in light of the difficulties they are likely to face in becoming self-sustaining. See, e.g., Jennifer M. Mason, Note, *Buying Time for Survivors of Domestic Violence: A Proposal for Implementing an Exception to Welfare Time Limits*, 73 N.Y.U. L. REV. 621 (1998); Maria L. Imperial, *Self-Sufficiency and Safety: Welfare Reform for Victims of Domestic Violence*, 5 GEO. J. ON FIGHTING POVERTY 3, 4 (1997).

[E]merging data suggests that domestic violence may in fact be a key cause of welfare dependency. . . Welfare may also be a battered women's bridge to freedom. When women, often with dependent children, leave their batterers, they often have no means of self-support other than welfare. Many battered women state that their ability to obtain welfare is a critical first step to becoming independent.

Id.

²⁰ See Virginia Ellis, *California Welfare Rolls Shrinking at Record Pace*, L.A. TIMES, July 26, 1998, at A1.

²¹ Although the economy is currently at a record level of employment, there has been little commitment to providing a living wage and medical benefits.

sanction, for non-compliance with a rule.²² Missing a meeting, failing to show up for work, or even arriving late can get a benefit reduced or a family dropped from the program.

One problem with the sanctions is that some of them appear to be imposed erroneously. For example, in the Children's Social Security Disability program, 150,000 were dropped in 1997 based on paper reviews of their casefiles; in some states, 100 percent of those who appealed were ultimately restored.²³ As opposed to the AFDC, which was an entitlement, the law creating TANF expressly states that there is no individual entitlement to benefits. "Since Congress explicitly eliminated the federal entitlement to welfare, a TANF recipient faced with reduction or termination of federal benefits cannot successfully challenge that action under the Due Process Clause."²⁴ Even when the recipients actually violate the rules, such non-compliance is often due to mental illness, disability, or child care responsibilities, the very reason which makes them unemployable in the first place.

Moreover, the law will make children suffer for the sins (or bureaucratic errors) of their parents. Even if the parents culpably disobey the welfare rules, the consequences of the cutting income will fall on children who are both innocent and helpless. Harvard professors Mary Jo Bane and Richard Weissbourd, the former, a Health and Human Services official who quit when President Clinton signed TANF into law,²⁵ report that:

²² A Federal study of welfare conducted over a three-month period in 1997 indicates that 38% of recipients who withdrew did so because of state sanctions. See Barbara Vobejda, *Sanctions: A Force Behind Falling Welfare Rolls*, WASH. POST, Mar. 23, 1998, at A1.

²³ Benefits to children were restored in 100% of the cases appealed in the states of Illinois and Michigan, and in the majority of instances in other states. See Robert Scheer, *A Booster Shot of Fairness for Ill Children*, L.A. TIMES, Nov. 18, 1997, at B7.

²⁴ Michelle L. VanWiggeren, Comment, *Experimenting With Block Grants and Temporary Assistance: The Attempt to Transform Welfare by Altering Federal-State Relations and Recipients' Due Process Rights*, 46 EMORY L.J. 1327, 1358 (1997).

²⁵ Assistant Secretary for Planning and Evaluation Peter Edelman was another. See Peter Edelman, *The Worst Thing Bill Clinton Has Done*, ATL.

Wider and deeper poverty and greater unemployment may be the immediate result created by state budget cuts during leaner times. Time limits and strict work requirements may also lead to some short-term increases in the number of families living in poverty. Widening poverty in turn will increase the kinds of problems among children that have generated intense media attention in recent decades: serious neglect and abuse, domestic violence, drug abuse, and teen pregnancy.²⁶

TANF will help accelerate the increase in child poverty. In 1973, 14% of children were poor; in the prosperous year of 1996, the statistic jumped to 20%.²⁷ TANF will result in more children being desperately poor -- an additional 1.3 million, according to one estimate²⁸-- and more children being taken from parents who are fully qualified to take care of them in every respect but financially.²⁹

MONTHLY, Mar. 1997, at 43. See also Alison Mitchell, *Politics; Two Clinton Aides Resign to Protest New Welfare Law*, N.Y. TIMES, Sept. 12, 1996 at A1.

²⁶ Mary Jo Bane & Richard Weissbourd, *Welfare Reform and Children*, 9 STAN. L. & POL'Y REV. 131, 134 (1998); see also Lisa Knott Garfinkle, Comment, *Two Generations at Risk: The Implications of Welfare Reform for Teen Parents and Their Children*, 32 WAKE FOREST L. REV. 1233, 1259 (1997) (arguing that if welfare reform "results only in simplistic solutions based on the politically popular rhetoric of condemnation, teen parents and their children will quickly fall through the cracks.").

²⁷ See Carla Rivera, *Children's Status Falling*, L.A. TIMES, Mar. 28, 1998 at B1.

²⁸ See Daan Braveman & Sarah Ramsey, *When Welfare Ends: Removing Children from the Home for Poverty Alone*, 70 TEMP. L. REV. 447 (1997).

²⁹ *Id.* at 449 ("[T]he family integrity of poor families is at serious risk because the new welfare cutbacks will push even more children into poverty and then into out-of-home care."). Not everyone will suffer from welfare reform: Barbara Ehrenreich reports that many private enterprises will make a killing offering training, placement, counseling and other services to governments phasing out cash grants. See Barbara Ehrenreich, *Spinning the Poor into Gold: How Corporations Seek to Profit from Welfare Reform*, HARPER'S MAGAZINE, Aug. 1997, at 44.

What kind of work are TANF people supposed to do? Many of the workfare jobs available are makework or exploitative.³⁰ In an era when the growth areas in the economy require strong skills and long-term training, workfare jobs are often not training or internships, some of them are like sentences of community service imposed on minor criminal offenders. There are not enough jobs to employ all welfare recipients.³¹ Some recipients have been compelled to leave college or other training for dead-end jobs: “[d]rastic declines . . . have occurred at City University of New York, where the number of students on welfare dropped from 27,000 to 14,000, and [at] Milwaukee Area Technical College, the country’s largest community college, where enrollment of students on welfare dropped from 1,600 to 250.”³² If we had been born twenty years later, would my sister and I have been forced to go to work instead of college? Meanwhile, members of the working poor who are not getting welfare and are just getting by can expect increased competition for jobs, and downward pressure on wages.³³

It is ironic that these unfortunate consequences have been risked for a program which knowledgeable commentators believe cannot work. Yale’s Quintin Johnstone, for example,

³⁰ See Craig L. Briskin & Kimberly A. Thomas, Note, *The Waging of Welfare: All Work and No Pay?*, 33 HARV. C.R.-C.L. L. REV. 559, 561 (1998) (“The removal of the federal welfare safety net may stimulate innovation in programs among the states, but it also promotes inequity and abuse in the workplace.”); Joel M. Poch, *Workfare—An Analysis of a Doomed Elixer*, 69-APR N.Y. ST. B.J. 42 (March/April, 1997). One executive at a catfish gutting factory praised sanctions, explaining “if they can go back to Uncle Sam, you can’t keep them in the plant.” Jason DeParle, *What About Mississippi*, N.Y. TIMES, Oct. 16, 1997, at A1.

³¹ See Alan Finder, *Welfare Seekers Outnumber Jobs they Might Fill*, N.Y. TIMES, Aug. 25, 1996, at A1 (noting that even if all new jobs in New York City went to former welfare recipients, it would still take 21 years to absorb them all into the economy).

³² Robert E. Pierre, *Trading Textbooks for Jobs: Welfare Changes force Many to Leave College*, WASH. POST, Dec. 29, 1997, at A1.

³³ See Virginia Ellis & Ken Ellingwood, *Welfare to Work: Are there Enough Jobs?* L.A. TIMES, Feb. 8, 1998, at A1.

summarizing the results of a symposium on the new law, observed that welfare reform was aimed at

pushing people into an employment market that can absorb only a modest percentage of those being supplied, given the limited abilities of most of those on welfare . . . If jobs cannot replace the need for welfare, what appears inevitable is continuation indefinitely into the future of a welfare system covering millions of people and at costs so high that the system must be largely government financed and administered . . . It seems certain that the needy poor will not vanish, the welfare system will not disappear, and welfare reform will remain as a continuing feature of the American legal scene.³⁴

Finally, it is unfortunate that welfare reform comes as attacks on affirmative action become increasingly successful and aggressive. Under TANF, the poor are not guaranteed even the minimum sustenance needed to support life, and people who unwisely failed to arrange to be born rich, or into an educationally sophisticated family, are offered less and less help to make something of themselves. One is left to wonder: What do they want poor to do? Where do they want the poor to go?

³⁴ Johnstone, *supra* note 16, at 297-98.