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Scapegoating the Poor: Welfare Reform All Over Again and the Undermining of Democratic Citizenship

Mark Neal Aaronson.*

Sarah saw the son whom Hagar the Egyptian had borne to Abraham playing. She said to Abraham, “Cast out that slave-woman and her son, for the son of that slave shall not share in the inheritance with my son Isaac.” Genesis 21.9-10.

I. INTRODUCTION: THE QUEST FOR CITIZENSHIP

In the contemporary American political lexicon, welfare is a pejorative term. It mainly, though not exclusively, has referred to the joint federal-state program known as Aid to Families with Dependent Children (AFDC). As a descriptive classification, welfare now primarily evokes

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Ending the AFDC program was a major element in congressional debates over proposed changes in the welfare system for the past two years. Except for some updated footnotes, this article represents my research and thoughts as drafted in late Spring 1996 when the actual enactment of new federal legislation was uncertain.
images of irresponsible single mothers and illegitimate children, who are overwhelmingly African American or unwelcome aliens. The dictionary meaning of welfare as "the state or condition with regard to good fortune, health, happiness, prosperity" scarcely resonates at all. Historian Linda Gordon succinctly describes the transformation in the political meaning of welfare as follows: "What once meant well-being now means ill-being." She adds, "Today 'welfare' means grudging aid to the poor, when once it referred to a vision of a good life." Welfare is, in short, what happens to individuals whom we perceive as the undeserving poor. A social stigma attaches to both those among the poor whom we hold in moral disrepute

2. While there are significant numbers of African Americans who have received AFDC, they have never been a majority of those receiving welfare at any one time. Congressional background information for 1994 indicates that 37.2 percent of the AFDC population was African American. STAFF OF HOUSE COMM. ON WAYS AND MEANS, 103D CONG., 2D SESS., BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS: 1994 GREEN BOOK 428-9 (Comm. Print 1994) [Hereinafter Green Book], cited in JOEL F. HANDLER, THE POVERTY OF WELFARE REFORM 47 (1995). The 1994 Green Book also reports that Latinos accounted for 17.8 percent and Asians and other minority groups another 6.1 percent of the AFDC population. Id. at 47-48. These statistics are not synonymous with a recent immigrant population, but they do provide a sense of the outer limits of what might account for a concern about newcomers disproportionately receiving welfare. Caucasians from non-Latino backgrounds comprised 38.9 percent of the AFDC population in 1994. Id.


5. Id.

6. In contrast, those who are presumed to have demonstrated their social worth by working receive benefits under the so-called insurance programs, such as social security for the elderly and unemployment compensation. These programs are subject to fewer conditions, and benefits are generally available without consideration of individual financial need.

The categorization of the poor as deserving or undeserving—as worthy or unworthy—and the tailoring of separate programs to meet the needs of each group is a feature of American social and economic policy that began in the 1830s. For a historical synopsis regarding the persistence of moral classifications in American welfare legislation, see JOEL F. HANDLER & YEHESKEL HASENFELD, THE MORAL CONSTRUCTION OF POVERTY 44-131 (1991). The moral condemnation of the poor underlying the actual structure of publicly supported relief programs can be traced further back in Anglo-American history. The most significant precedent for this is the Elizabethan Poor Law of 1601 (An Acte for the Reliefe of the Poore, 43 Elizabeth 1, ch. 2). See Jacobus tenBroek's seminal study, California's Dual System of Family Law (pts. 1-3), 16 STAN. L. REV. 257 (1964), 16 STAN. L. REV. 900 (1964), 17 STAN. L. REV. 614 (1965). Acknowledging our multiple ties to English intellectual and political history, Handler and Hasenfeld note that contemporary American moralistic theories about poverty, such as those found in the relatively recent writings of CHARLES MURRAY, LOSING GROUND (1984) and LAWRENCE MEAD, BEYOND ENTITLEMENT (1986) owe much to the English moral philosophies of Adam Smith, Jeremy Bentham and Thomas Malthus. HANDLER & HASENFELD, supra, at 9. See also GERTRUDE HIMMELFARB, THE IDEA OF POVERTY: ENGLAND IN THE EARLY INDUSTRIAL AGE (1984).
and the programs established for their support.\textsuperscript{7}

The term \textit{reform} in the context of welfare policy also defies its dictionary meaning, which is "the improvement or amendment of what is wrong, corrupt, unsatisfactory."\textsuperscript{8} The idea of reform as improvement

\textsuperscript{7} Welfare typically refers not only to AFDC, which is a national program, but to "general assistance" or "general relief" programs as well. These other programs are locally administered and funded, and are intended to provide minimal subsistence benefits as a last resort for single adults. Among the general assistance population are those whom we now tend to type as homeless. Jacobus tenBroek traces the legislative roots of general assistance provisions generally, and in California specifically, to the Elizabethan poor laws of the latter part of the 16th century and the beginning of the 17th century. TenBroek, \textit{supra} note 6, 16 STAN. L. REV. 291-298, 306-317, 939-944, 17 STAN. L. REV. 614-615. Not all states currently have general assistance programs. California still mandates counties to provide general assistance to indigents not otherwise supported. However, it has enacted a number of recent amendments that, paralleling national efforts with respect to AFDC, allow for increased discretion to cut back on aid amounts and to restrict eligibility terms. See CAL. WELF. & INST. CODE §§ 17000-17805 (West 1996).

In 1972, Congress nationalized the joint federal-state public assistance programs for the aged, blind and disabled as a new Supplemental Security Income (SSI) program. Social Security Act of 1935, tit. XVI, as amended; Pub. L. No. 92-603, tit. III, § 301, 86 Stat. 1465; 42 U.S.C. §§ 1381-1385 (1994). SSI is a federally administered program with nationwide provisions determining eligibility conditions and minimum benefit levels. The states have the option to augment benefit levels with an additional supplement. For persons who are elderly or who are unemployable because of certain disabilities, the advent of SSI reduced but did not eliminate entirely the stigma associated with the receipt of public assistance. In particular, individuals who have mental disorders or alcohol or substance abuse problems still often are labeled as welfare recipients.

As of March 29, 1996, claimants for whom alcoholism or drug addiction is a contributing factor material to their determination of disability are prohibited from receiving either Social Security or SSI disability benefits. Current beneficiaries who have a history of drug or alcohol abuse will be subject to a similar standard of review and termination, unless new medical determinations, to be completed by January 1, 1997, support their continuing eligibility. Contract with America Advancement Act of 1996, Pub. L. No. 104-121, §§ 105(a)(1) & (b)(1) (to be codified at 42 U.S.C. §§ 423(d)(2)(C) & 1382c(a)(3)(I)) (1994). These provisions were signed into law by President Clinton as accompanying legislation to a continuing budget resolution needed to keep the federal government operating toward the end of the protracted, budget authorization process for fiscal year 1995-96. \textit{See} Sam Delson, \textit{Welfare Bill Frightening to Counties}, OAKLAND TRIBUNE, April 9, 1996, at A1, A9. Since February 1995, receipt of SSI benefits by alcoholics and drug addicts has been subject to a 36-month limit on assistance. 42 U.S.C.S. § 1382(e)(3)(A)(v)(I) (Law. Co-op. Supp. 1996). The practical effect of eliminating the eligibility of alcoholics and drug addicts for disability benefits is to thrust the responsibility for their subsistence support on state and local governments, principally through general assistance programs, if and to the extent they exist.

A resurgence in nativist feelings, partly fueled by an increasing number of recent elderly immigrants on public aid, also has led to newly enacted prohibitions on non-citizens receiving welfare cash benefits, such as SSI and the new family assistance block grants. \textit{See} Personal Responsibility Act of 1996, \textit{supra} note 1, tit. IV, §§ 400 & 401. For illegal aliens, these prohibitions apply as well to state-only cash benefit programs, such as general assistance, unless states in the unlikely event subsequently pass legislation explicitly making them eligible. \textit{Id.}, tit. IV, § 411.

\textsuperscript{8} \textit{WEBSTER'S UNABRIDGED DICTIONARY}, \textit{supra} note 3, at 1206.
suggests progressive advancements that seek to rectify past mistakes, failings and deficiencies. The objective is to make matters better rather than worse. With respect to welfare, reform has come to signal not a new direction but a restoration of old ideas and assumptions about what accounts for poverty. It is an attempt to undo some of the features of the existing system of relief with little attempt to learn from the past. Instead, one finds implemented in the name of reform, policies and practices which by and large have been tried and found inadequate before.

The premise of this article is that welfare reform at its most meaningful political level is neither about welfare nor reform. Rather, welfare reform is a code for a set of punitive public policies aimed at scapegoating the poor and distracting and disciplining most of the rest of the population. It is a classic negative example of the symbolic uses of politics,9 where politicians seek to obtain short term electoral gains by playing to divisions, anxieties and fears within the society. Welfare reform neither responds to the underlying social and economic reasons for poverty nor realistically attempts to provide subsistence benefits for those needing support.

The principal function of welfare reform in the AFDC context is ideological. A campaign for welfare reform is mostly about exploiting certain prominent features of American political culture, not about seeking solutions to social and economic problems. Of particular importance are our most strongly ingrained beliefs about racial, ethnic and gender differences and a broadly shared under-appreciation of how the distribution of benefits and opportunities within a society reflect class interests. In heightening or suppressing these social distinctions, a campaign for welfare reform also invokes the strong emphasis in American political thought on both a rugged version of individualism and the institutional importance of limited government. A chief effect of the former is to downplay structural causes of poverty, while the latter recurrently takes the form of a popular aversion to taxation.

As I will discuss later, the key subtexts of AFDC welfare reform interweave sociological and philosophical themes. Sociologically, the pivotal facts involve appeals to racist and nativist feelings, a reassertion of patriarchal norms, and an implicit reliance on a weak sense of class consciousness as a concern in the development of public policy. Philosophically, support for welfare reform builds on our deep ideological inclinations

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9. Political forms of expression often serve symbolic functions in addition to whatever their actual impact on the distribution of benefits and resources within a society. In explaining the significance of symbolic appeals, Murray Edelman writes as follows: "It is characteristic of large numbers of people in our society that they see and think in terms of stereotypes, personalization, and oversimplifications, that they cannot recognize or tolerate ambiguous and complex situations, and that they accordingly respond chiefly to symbols that oversimplify and distort." MURRAY EDELMAN, THE SYMBOLIC USES OF POLITICS 31 (1964).
to attribute the principal causes of poverty to personal character defects and
to deprecate the potentially positive role of government in social and
economic life. It is the convergence of these popular predispositions and
sentiments and their shortsighted exploitation by politicians that largely
account for the befuddled and unproductive nature of present discussions
about welfare policy.

While President Clinton may have wanted to include beneficial
developments for the poor within his call "to end welfare as we know it,"
what he was signaling was not so different from President Reagan's
previous, critical reliance on welfare reform as a campaign issue and as a
cornerstone of domestic policy. Wittingly or not, President Clinton set
the stage for a renewed version of welfare reform along conventional, late
20th century, Republican lines. Though not always acknowledged, the
objective of this now institutionalized version of welfare reform is
essentially twofold: to obtain sufficient public support for or acquiescence
to cutbacks in public spending for welfare benefits; and to preserve or
restore traditionally dominant power relationships. The short-term
consequence is that the lives of the poor are made more miserable. The
underlying societal effect is that cultural norms of conformity are reinforced
and attempts for progressive social and economic change are stifled.

In this article, I have two objectives. The first is to show why support
for poor families is such an intractable policy issue. My argument is that
there presently cannot be a sensible discussion about whether and how to
assist financially needy, mainly female-headed households with young
children, when the issue is framed as one of welfare reform. The reason is
that welfare reform as an idea provokes a number of unsettling and
unresolved cleavages within the American polity sociologically and
philosophically. Together, these cleavages overwhelm the confines of
welfare policy discourse. For the past 25 years, AFDC policy has been
largely a surrogate for many of our most serious apprehensions about
domestic social control and an uncertain future in a changing, post-
industrial, global economy. The current discussion about welfare reform is
not about reforming welfare but about reaffirming social divisions and
reinvigorating certain popular chords in American ideology, as part of a
reactionary response to disturbing social and economic problems that appear
to defy resolution.

11. See generally Mark N. Aaronson, Legal Advocacy and Welfare Reform: Continuity
and Change in Public Relief (1975) (unpublished Ph.D. dissertation, University of California
(Berkeley)); LOU CANNON, REAGAN 176-184 (1982), and LOU CANNON, PRESIDENT
REAGAN: THE ROLE OF A LIFETIME 518-519 (1991); TOM JOE & CHERYL ROGERS, BY THE
FEW FOR THE FEW: THE REAGAN WELFARE LEGACY (1985); HANDLER AND HASENFELD,
supra note 6, at 170-186.
My second objective is to suggest that we begin working now on establishing the intellectual grounding for a constitutional recognition of social rights. An expansion of individual rights is not a panacea for social and economic injustice and certainly is not without limitations and drawbacks. But rights-based developments are an important part of our political culture, even if alone they are not sufficient to ensure long-lasting progressive change. Clearly, with respect to poverty, critical attention needs to be paid to the economy and the direct generation of private and public sector jobs. Yet, just as the notion that "picking yourself up by your own bootstraps" is raw American ideology, so too is the belief that each of us has rights that matter and need to be protected. Citizenship for most Western European nations has involved an ongoing vesting of civil, political and social rights.12 In contrast, the development of social rights in the United States has been stunted. It is time to think seriously about how to revitalize political and constitutional discourse, and to acknowledge the need for new or redefined rights to counter the ravages of poverty that continue to be borne disproportionately by women and children, particularly those of color.

Thirty-five years ago, the political scientist E. E. Schattschneider coined the phrase "mobilization of bias" to describe how "[s]ome issues are organized into politics while others are organized out."13 He characterized this process of exploiting some issues and suppressing others as a "displacement of conflicts" political strategy.14 Welfare reform sets an agenda for the political right in America. It is not a neutral, value-free concept but is instead an example of how conservatives have mobilized "bias in favor of the exploitation of some kinds of conflicts and the suppression of others."15 If one wants to lessen poverty and its consequences, the terms of public debate need to be presented and defined differently.16

In the main body of this article, I focus on AFDC as a symbolic political issue, in particular, the symbolic appeal of what I have referred to as the subtexts of welfare reform. My purpose is to highlight how and why welfare reform, as a framing of policies regarding social and economic support for poor families, is an especially powerful displacement of conflicts political strategy. In the concluding section, I briefly address the inchoate nature of social rights in the evolution of democratic citizenship

14. Id. at 70-71.
15. Id. at 71.
in America.

At this juncture in our political history, nothing beneficial for the poor—or any of us—can come from what we now call welfare reform. We need to pay the most attention to the structural causes of poverty, especially the unavailability of jobs paying a living wage. We also need to think creatively about how to build on our liberal, constitutional heritage of individual rights so that social rights, along with civil and political rights, become an institutionalized and integral part of our concept of citizenship, and, consequently, they will become a meaningful resource in our attempts to protect individuals, not only from arbitrary government, but also from a capricious society and economy.

II. MOBILIZING POLITICAL BIAS IN THE WAR ON WELFARE

A. Showing the Way: The Transformation of Welfare Reform into a Symbolic Message

In the 1970s and 1980s, the war on poverty launched as part of President Lyndon Johnson's domestic programs for a Great Society was superseded by an impassioned war on welfare and a smiling war on the poor. The chief architect of this transformation was Ronald Reagan.

To an extent not usually acknowledged in the present debates over AFDC policy, there was relatively little legislative activity regarding AFDC during the Johnson years. The initiation of federally supported legal services for the poor as part of the Office of Economic Opportunity (OEO) and the rise of grass roots welfare organizing during this period, however, contributed considerably to a lessening of restrictions on AFDC eligibility and a substantial rise in participation by potentially eligible recipients.

17. In 1967, Congress enacted a number of AFDC amendments intended both to encourage and compel welfare recipients to work. Social Security Amendments of 1967, Pub. L. No. 90-248, 81 Stat. 821. The carrot was a work incentive disregard which allowed recipients to keep $30 plus one-third of the balance of their earnings before counting such earnings in determining eligibility and grant amounts. Id. at 881 (amended 1988). The stick was to mandate work training programs for recipients over the age of sixteen. Id. at 890 (amended 1971). The chief sponsor of the legislation was House Ways and Means Chairman Wilbur Mills. JOE & ROGERS, supra note 11, at 21. Johnson's original initiative was to compel states to pay the full amount of what they determined to be a minimum subsistence standard of need rather than a lesser amount, but Congress transformed the proposal into the first-ever compulsory work requirement and a two-year freeze on federal funding for AFDC. See Peter B. Edelman, Toward a Comprehensive Antipoverty Strategy: Getting Beyond the Silver Bullet, 81 GEO. L.J. 1697, 1716-1717 (1993).

18. Between 1965 and 1971, the number of AFDC recipients doubled, reaching 9.7 million. The rolls in the 1970's peaked at 11.5 million persons in 1976 and then leveled off at 10.5 million persons. JOE & ROGERS, supra note 11, at 22-23. The next big increase in AFDC rolls occurred between 1988 and 1992, when the number of recipients rose from
The reaction to the resulting increase in AFDC rolls occurred most strongly in California, when Governor Reagan in 1971, shortly after his second inauguration, transmitted a message to the California Legislature calling for comprehensive welfare and medical reform. Following a period of intense negotiations with the Democratic-controlled legislature, the legislature enacted the Welfare Reform Act of 1971. Although the effectiveness of Reagan's legislative program and accompanying administrative initiatives was limited, he trumpeted his program as a major success. The real triumph was his use of the phrase welfare reform as signaling a political agenda for getting tough on welfare and AFDC recipients.

In campaigning for the presidency, unsuccessfully in 1976 and then successfully in 1980, Reagan conveyed his inflated sense of accomplishment in getting people off the California welfare rolls as a promise of what he would do as president. Once elected, he acted on his electoral message and prevailed on Congress to enact a number of important changes in federal AFDC legislation as part of the Omnibus Budget Reconciliation Act of 1981 (OBRA). The absence of these particular provisions while Reagan was governor stymied aspects of his state welfare reform program. Unlike the California Legislature ten years earlier, the Democrat-
ic-controlled Congress capitulated to his requests without much meaningful opposition. With the enactment of the OBRA changes, Reagan institutionalized a conception of welfare policies for poor families that still endures as the national agenda for welfare reform.  

Reagan’s ability to shift the operative meaning of welfare reform into a symbolic message consistent with his brand of conservatism can be seen in the threefold approach he took to galvanize support for his initial program of state welfare reform. As President, he basically sounded the same themes.

First, in mounting a California campaign for welfare reform, Reagan explicitly tied AFDC policy to tax relief. His most persistent refrain was that reducing AFDC expenditures would ease burdens on the taxpayer. In July 1970, in a letter to the chairmen of all county boards of supervisors, he stated: “The fact is California taxpayers are looking to their elected representatives in government—at every level—to make the kinds of tough decisions necessary for bringing runaway welfare costs back in check.” Welfare reform meant tax relief, a point vividly underscored when the changes he wanted as President were passed as part of a budget shifting and cutting measure.

Second, Reagan placed the blame for rising AFDC costs and rolls elsewhere. At various times, he and his associates attributed the increases to previous state legislation, cumbersome federal requirements, laxity in administration by counties and individual case workers, unwarranted policy. There were twenty-seven different titles and over six hundred pages of text. The entire bill was fully understood by few and was voted on as a single package. Its enactment, which bypassed normal congressional methods of operation, was the result of astute political maneuvering by the Reagan Administration in alliance with conservative Southern Democrats. All twenty-seven Reagan Administration changes regarding AFDC were passed as proposed, except the Senate gave states the option to implement, instead of mandating, a compulsory workfare plan for recipients. JOE & ROGERS, supra note II, at 55-57.

25. Both the Nixon and Carter Administrations put forward national proposals styled as welfare reform. The Nixon proposal, the Family Assistance Plan (FAP), was developed and promoted mainly by Daniel Patrick Moynihan and was at first strongly opposed by then Governor Reagan. It involved a guaranteed income, set at $1,600 for a family of four, without any work requirements. Its defeat in 1971 was due to the combined opposition of the right and the left. See DANIEL P. MOYNIHAN, THE POLITICS OF A GUARANTEED INCOME (1973). After a meeting with President Nixon in March, 1971, Reagan softened his opposition to FAP in exchange for certain concessions he wanted with respect to his plan for welfare reform in California. CANNON, REAGAN, supra note 11, at 178-179. FAP was the last serious effort to cast welfare reform in mainly non-punitive terms. The Carter Administration proposal, which also was defeated because of opposition from the right and the left, involved a two-tiered system where the “able-bodied” (the undeserving), which included mothers with children over six, would have to participate in job searches and public employment and would be eligible only for benefits set at half the standard level. HANDLER, supra note 2, at 60-61.

interference by courts, poverty attorneys, and welfare rights organizations, and the suspect behavior of welfare recipients themselves. Welfare reform meant both undoing recent changes that limited administrative discretion to restrict eligibility and reduce benefits and countering still emerging notions about the rights and remedies to be afforded welfare recipients.

Third, Reagan's policy proposals recalled and reinvoked a political vocabulary, which had long been associated with public relief and dated back to the Elizabethan poor laws of the sixteenth and seventeenth centuries, but which had been recently challenged by rights-oriented developments. The Elizabethan poor laws emphasized three main, policy principles: (1) moral condemnation of the poor based on a "characterological" theory of poverty, which defined the poor as "the victims of their own vices;" (2) local governmental assumption and control of public relief responsibilities; and (3) coercive work for the poor both to counter idleness and to minimize public expenditures. Reagan's version of the moral categorization endemic to traditional systems of public relief was to speak of assisting only the "truly needy." An important subtheme was his emphasis on strengthening family ties—a not-so-oblique reference to a concern for curbing illegitimacy and enforcing male support obligations. Reagan also sought multiple waivers from federal AFDC requirements to increase opportunities for state and local experimentation, particularly with respect to the establishment of mandatory work programs. It followed that the centerpiece of his proposed changes was a compulsory employment program for those capable of working. The main message of welfare reform was that poor people must be required to work because they could not be morally trusted to exercise such initiative on their own. The chief principles underlying the OBRA changes were similar.

The emphasis on work, however, was largely symbolic and not without irony. In fashioning the statewide welfare reform program, California officials neither consulted nor incorporated specific data about the prospects

27. WELFARE REFORM IN CALIFORNIA, supra note 21, at 1-22.
29. TenBroek, supra note 6, at 262-270.
30. Id. at 270-279.
31. WELFARE REFORM IN CALIFORNIA, supra note 21, at 10.
33. Id.
34. HANDLER & HASENFELD, supra note 6, at 170, described these principles as follows: "(a) Welfare should be granted only to the 'truly needy,' (b) a strict work-test requirement should be enforced, and (c) responsibility for welfare should be shifted from the federal government to state and local governments and private institutions . . . ."
for private or public employment. They had only the slightest awareness of actual labor market needs. Furthermore, there were few steps taken to establish the necessary day care facilities for children who were to be left unattended, while their mothers sought work. The appeal being made was to an abstract value “work,” not a meaningful program of employment.

The commitment to the “truly needy” was no less inconsistent. The concept, like older notions such as the “deserving poor,” appeased altruistic impulses but in application was elusive. The “non-needy” or “greedy” more often than not turned out to be those recipients who, under federal law entitled to partial income exemptions, were struggling to get off the AFDC rolls by working. Reagan welfare officials, both when he was Governor and when he was President, viewed these work-incentive provisions as encouraging welfare dependency. Capping the income eligibility of working recipients and tightening the formulas for taking into account their earned income and work-related expenses before they would be terminated from assistance became key features of the OBRA changes.

The upshot was that adult AFDC recipients could not escape political stigmatization. If they were not working, the reason was that they did not want to work and had to be compelled to seek employment. If they were working, they were “non-needy” and thus, by implication, were wrongfully receiving AFDC benefits. Welfare reform was important for what it signaled, not what it delivered.

The uses of welfare reform in the 1990s, electorally and legislatively, very much follow the approach forged by Ronald Reagan. The various

36. JOE & ROGERS, supra note II, at 33-35.
37. The Personal Responsibility Act of 1996, supra note 1, passed by Congress, addresses many of the same issues and contains similar provisions as those proposed in previous legislation before the 104th Congress. The final House vote on the enacted bill was 328 in favor and 101 opposed. Robert Pear, Clinton to Sign Welfare Bill that Ends U.S. Guarantee and Gives States Broad Power, N.Y. TIMES, Aug. 1, 1996, at A1. The vote in the Senate was 78 to 21. Robert Pear, Senate Passes Welfare Measure, Sending It for Clinton’s Signature, N.Y. TIMES, Aug. 2, 1996, at A1. Every liberal Democratic Senator up for re-election in 1996, except Senator Paul Wellstone of Minnesota, voted in support of the legislation. How Senate Voted on Welfare Bill, N.Y. TIMES, Aug. 3, 1996, at 10. At a Rose Garden ceremony, President Clinton signed the bill into law on August 22, 1996, days before he was nominated for a second term at the Democratic Party Convention. Francis X. Clines, Clinton Signs Bill Cutting Welfare; States in New Role, N.Y. TIMES, Aug. 23, 1996, at A1, A10. The instant article, which is not intended as a detailed analysis of specific welfare reform measures before Congress this past term, only cursorily refers to certain illustrative sections of the enacted bill.

The following is a brief history of the previous proposals before the 104th Congress. President Clinton’s proposal, the Work and Responsibility Act, was introduced on June 21, 1994, in both the House of Representatives and the Senate. Following the Republican
proposals have treated virtually all AFDC recipients as the undeserving poor, who the government must force to leave the welfare rolls. The most graphic illustration of this assumption has been the emphasis on time-limited assistance, with lifetime caps variously set at two to five years. There also have been proposals to deny additional assistance to meet the needs of children born into families already receiving AFDC. The twin purposes of these provisions were to cap family allowances and to deter poor people from having more children. All the reform proposals have


For the last several years, CLASP’s Mark Greenberg has prepared especially useful summary descriptions and analyses of the various welfare reform proposals pending before Congress. See New Trees, Same Forest, supra; MARK GREENBERG, CLASP, The Temporary Family Assistance Block Grant (1995); MARK GREENBERG, CLASP, Contract with Disaster (1994); MARK GREENBERG, CLASP, Understanding the Clinton Welfare Bill (1994); MARK GREENBERG, CLASP, The Devil Is in the Details, (1993) (copies on file with the author). Greenberg’s initial assessment of the 1996 Personal Responsibility Act’s temporary family assistance provisions is found in MARK GREENBERG & STEVE SAVNER, CLASP, A Detailed Summary of Key Provisions of the Temporary Assistance for Needy Families Block Grant of H.R. 3734 (1996) (copy on file with the author).


39. HANDLER, supra note 2, at 134; BACKER, supra note 36, at 388. In a remarkable display of vindictiveness directed at illegitimate children, the Republican-controlled House’s initial proposal would have prohibited states from ever providing aid to a child born to a teenage mother under eighteen, or at a state’s option under twenty-one, unless the mother married the father or had the child adopted. HANDLER, supra note 2 at 134. The potential punishment would have been borne by the child for life.

While early childbearing is a socially troubling issue, the teen-age birth-rate has not
strongly emphasized mandatory employment programs, though the specific proposals have had somewhat different provisions, particularly with respect to child care, education and training. An especially important feature of the enacted legislation is the use of block grants to provide federal funds for the support of poor families. The objectives are to return to the states increased discretion to structure and implement welfare programs for poor families, and to set hard budgetary limits on federal subsidies. Though harsher on the poor in the details than the Reagan welfare reform legislation of fifteen and twenty-five years ago, the basic features of today’s provisions are not very different in premise and direction. Like the Reagan reforms, they largely reflect and give renewed vitality to principles of relief-giving dating back to the Elizabethan poor laws.

From a programmatic standpoint, the present proponents of welfare reform seem not the least bothered that there is little evidence that such measures actually have a significant impact on getting people jobs, on increased in any significant way during the last fifty years. Indeed, it was higher in the 1950s. What has gone up dramatically is the rise of single parenting among all races, classes, and child-rearing age groups. As an across-the-board social development, out-of-wedlock births are up, and marriage rates appear to be down. Now, sixty percent of American families with minor children have a single parent, and for half of them that parent has never been married. See Kai Erikson, Scandal or Scapegoating?, N.Y. Times Book Review, Sept. 1, 1996, at 12-13, reviewing KRISTIN LUKER, DUBIOUS CONCEPTIONS: THE POLITICS OF TEENAGE PREGNANCY (1996).

40. The Personal Responsibility Act of 1996, supra note 1, tit. I, §103(a), adds new Social Security Act section 407, requiring states in administering family assistance block grants to meet certain caseload participation rates regarding mandatory work requirements applicable to adult recipients. The targeted rates as a percentage of all families on assistance incrementally increase from 25% in 1997 to 50% in 2002. For discussions of provisions in previous legislation not enacted, see HANDLER, supra note 2 at 113-133; BACKER, supra note 36, at 378-384; GREENBERG, The Temporary Family Assistance Block Grant, supra note 37, at 8-15.

41. The legislation enacted replaces AFDC with block grants to the states to be used to provide Temporary Assistance for Needy Families (TANF). This legislation both requires and encourages the states to take actions designed to limit the welfare caseload. The block grant provisions include strong standards regarding work requirements for adults and school attendance for minor children, incentives for reducing illegitimacy and teenage pregnancy, and various additional restrictions on who is eligible to receive assistance.

A state’s initial funding level is set at the higher of the average federal support received for AFDC and certain related programs for fiscal years 1992-1994 or certain formulas based on federal assistance received in fiscal year 1994 or 1995. While there are provisions for sanctioning the states for noncompliance and several limited provisions involving bonuses or special supplements, state shares are basically frozen at the initial levels of funding through fiscal year 2002. Personal Responsibility Act of 1996, tit. I, § 103(a), supra note 1. Unlike the existing AFDC program, there is nothing that holds the states accountable for meeting the subsistence needs of all poor families as a condition for obtaining federal financial support. Regarding similar provisions included in other bills before the 104th Congress, see HANDLER, supra note 2, at 135-137; BACKER, supra note 36, at 364-367; GREENBERG, The Temporary Family Assistance Block Grant, supra note 36, at 1-8, 16-24.
reducing the need for income support programs, or on changing behavior.\textsuperscript{42} Reagan’s welfare reform measures did provide new grounds for cutting people off welfare rolls for not complying with program conditions. Their threatened application also may have served to deter some potential recipients from applying for benefits. Yet nothing Reagan implemented prevented a substantial rise in the AFDC rolls, which started in his last year as President and ran through President George Bush’s term in office, a period which, not surprisingly, coincided with a serious downturn in the economy.\textsuperscript{43}

Welfare reform as a concept has taken on a life of its own. It has little to do with helping people find and keep employment, with reducing the incidence of poverty as a social and economic condition, or even with curbing public costs over the long run. Like other terms concerning poverty, welfare reform is important because of what it has come to mean symbolically to politicians and to ordinary people.\textsuperscript{44} To the extent that welfare reform ever had a meaning that could embrace progressive change that time has passed.\textsuperscript{45}

\textsuperscript{42} Handler, supra note 2, at 56-88; Joe & Rogers, supra note 11 at 89-104; see also Michael K. Gottlieb, Pennsylvania’s Learn/are Experiment, 100 Dick. L.R. 151 (1995).

\textsuperscript{43} See supra note 17.

\textsuperscript{44} The persistent legacy of the Elizabethan poor laws makes the use of certain terms especially powerful and suggestive. Words originally neutral or descriptive not infrequently take on new meaning as part of a moralistic vocabulary. The sociologist Herbert Gans points out that “new labels are invented all the time.” Herbert Gans, The War Against the Poor: The Underclass and Antipoverty Policy 2 (1995). For example, the undeserving poor over the years have been called “paupers,” “vagrants,” or a “dangerous class.” Id. The focus of Gans’ book is on how underclass has become today’s favorite label for stereotyping poor people in a negative way so as to support welfare policies and practices that mistreat and punish them for being poor. An economic term first used by Gunnar Myrdal in 1963 to describe workers being forced out of an emerging postindustrial economy has been transformed into a behavioral term “to describe poor people who are accused, rightly or wrongly, of failing to behave in the ‘mainstream’ ways of the numerically or culturally dominant American middle class.” Id.

Even ideas take on intensified and changed meanings. Within contemporary discussions of welfare policy, dependency for adults is a negative concept and carries a moral opprobrium. See Nancy Fraser and Linda Gordon, A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State, 19 Signs 309 (Winter 1994). In preindustrial society, dependency was a relatively neutral term applied to people who had to work and did not have “independent” means. Id. at 312-313. The progressive reformers of the 1890s used “dependent” as a substitute for “pauper” precisely to destigmatize the receipt of public assistance. The attempt was unsuccessful. Id. at 320-321.

\textsuperscript{45} Nancy Fraser makes a similar point when she states, “During the Reagan-Bush-era, the meaning of ‘welfare reform’ changed dramatically. In the 1960s and ‘70s, its principal sense was strengthening recipients’ entitlement: broadening eligibility, increasing benefits, removing strings and administrative discretion, and eliminating stigma—in short, making ‘welfare’ a ‘right.’ During the Reagan-Bush-era, in contrast, ‘welfare reform’ meant curtailing entitlement and cutting costs: conditioning benefits on recipient ‘obligations,’ restricting eligibility, decreasing allowances, imposing work requirements, or even abolishing support for poor women and children altogether.” Nancy Fraser, Clintonism, Welfare and
Though the coded message of welfare reform is now decidedly right-wing, there is ample room for individuals to find their own meanings in what they perceive as its consequences. Indeed, its power as political rhetoric derives in large part from the multi-sided nature of its appeal. It is the stories behind and the assumptions underlying welfare reform that most matter. Meaning is conveyed symbolically, and political power is leveraged accordingly. Those whose support is sought need to receive nothing tangible in return. The main audience for welfare reform is not the poor themselves but the rest of the tax-paying public.

One of the stories Reagan repeated most often on his way to the presidency and as President involved a woman whom he referred to as the "Chicago welfare queen." He heard about her during his failed 1976 campaign, and she became an enduring symbol of his effort not only to attack welfare fraud but to cut back on welfare expenditures generally. As he told the story, she "has eighty names, thirty addresses, twelve Social Security cards and is collecting veterans' benefits on four nonexistent deceased husbands. . . . Her tax-free cash income alone is over $150,000." In 1977, the Chicago welfare queen was convicted of welfare fraud and perjury because she had used two aliases to get twenty-three welfare checks totaling $8,000. Reagan apparently never identified her by race, but her picture appeared widely on midwestern television. She was black.

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the Antisocial Wage: The Emergence of a Neoliberal Political Imaginary, 6 RETHINKING MARXISM 9, 12 (Spring 1993). Fraser neglects the California origins of Reagan's conception of welfare reform. Her contrast is also overdrawn: anti-poverty lawyers and welfare rights organizers rarely used the term "welfare reform" to characterize their objectives. But I agree with her that the widespread meaning of welfare reform is now neoconservative, and that neoliberals like President Clinton share many of the same assumptions. Id. at 14-20.

46. CANNON, PRESIDENT REAGAN, supra note 11, at 518-519.
47. Id. at 518.
48. Id. at 518-519. The image of the black welfare queen conveys a powerful political message—one which draws on deep emotions embedded in our culture. In commenting on the Anita Hill/Clarence Thomas confrontation, Wahneema Lubiano writes, "Categories like 'black woman,' 'black women,' or particular subsets of those categories, like 'welfare mother/queen,' are not simply social taxonomies, they are also recognized by the national public as stories that describe the world in particular and politically loaded ways—and that is exactly why they are constructed, reconstructed, manipulated, and contested. They are, like so many other social narratives and taxonomic social categories, part of the building blocks of 'reality' for many people; they suggest something about the world; they provide simple, uncomplicated, and often wildly (and politically damaging) inaccurate information about what is 'wrong' with some people, with the political economy of the United States." Wahneema Lubiano, Black Ladies, Welfare Queens, and State Minstrels in, RACE-ING JUSTICE, EN-GENDERING POWER: ESSAYS ON ANITA HILL, CLARENCE THOMAS, AND THE CONSTRUCTION OF SOCIAL REALITY 323, 330-331 (Toni Morrison ed., 1992).
B. Welfare Reform as a Political Agenda for the 1990s

Welfare reform sets both a short and a long term political agenda. It is an ideological umbrella for images like the Chicago welfare queen. The stated and unstated references which accompany such images largely account for why a campaign for welfare reform is now almost always politically expedient. Such a campaign over the long run also has important structural consequences as a form of social control and as a check on democratic development. The scapegoating of the poor plays an essential and integral part in this dual agenda-setting process.

In terms of public expenditures, AFDC payments have constituted a small percentage of total government spending generally and on social welfare programs specifically. In 1990, the federal share of AFDC costs was 0.8 percent of all federal spending and 1.6 percent of federal social welfare spending. The AFDC share from state and local revenue sources was in the same range. In 1988, non-federal AFDC payments amounted to 1.2 percent of state and local expenditures nationwide.

While the AFDC rolls have gone up somewhat since 1988, the percentage of federal tax dollars spent on AFDC has held steady at 0.8 percent. There also has not been much change in overall state and local expenditures. In 1993, the federal share of AFDC benefit payments was 12.2 billion dollars, while the amount expended by all state and local governments was 10.1 billion dollars. The total amount of 22.3 billion dollars paid out in 1993 was slightly less than the amount paid out (in equivalent 1993 dollars as adjusted for inflation) in the peak years of 1976 and 1977, when AFDC constituted 1.4 percent of total federal expenditures and 2.1 to 2.2 percent of total state and local expenditures.

The bottom line is that over the last two decades there has been a decline in the percentage of public dollars expended on AFDC benefit payments. Providing public support for poor families is not an issue of affordability but of collective willingness. The concerns ultimately are about vision and ideology.

The present focus on welfare reform targets individuals who still bear

50. Id.
51. See supra note 17.
53. HANDLER, supra note 2, at 45.
54. MARMOR ET AL., supra note 48, at 85.
the badges of the undeserving poor, but it has important spillover effects for social welfare measures broadly. The campaign for welfare reform in the 1990s is not just an attempt to reverse developments over the last thirty years. It takes aim as well at the role of government generally in providing social and economic support for its citizenry. A useful example is the enactment of block grants for needy families, a major consequence of which is the ending of AFDC as a statutory entitlement.\textsuperscript{55} No longer will income assistance programs for poor families be funded through an open-ended budget allocation, which guarantees that public funds will be provided at full levels of support for whoever is eligible. Instead, there will be a fixed or closed-ended budget allocation, and states for budgetary reasons alone will have authority to cut back individual grant amounts or deny assistance entirely to a needy family.

The concept of a statutory entitlement encompasses both stigmatized programs, such as AFDC, and so-called insurance programs, such as social security for the elderly. An attack on AFDC as an entitlement is also a stalking horse for a potential assault on the statutory and budgetary underpinnings of other New Deal social welfare programs. My point is not that we are apt to see a block granting of social security insurance programs to be administered by the states, but that an important aspect of a campaign for welfare reform is preparing and disciplining the public to expect much less from government. The unpopularity of AFDC has provided an excuse for discrediting governmental intervention generally. In short, the continual scapegoating of the poor as part of welfare reform has consequences not only for AFDC families but for the development of social welfare programs overall. Putting down AFDC and AFDC recipients is an appealing foothold for a neoconservative agenda that seeks to undo much more of the New Deal than would otherwise garner broad electoral support.

An emphasis on welfare reform, where the dominant focus is on the individual behavior of recipients, drains support for and diverts attention from the complex task of developing and implementing social welfare measures that are responsive to changing social and economic needs. Given the history of Anglo-American poor relief, there is nothing surprising about relying on moralistic appeals. What I want to explain is how and why these appeals continue to be so effective.

In the next subsection, I address what I mean by scapegoating the poor, which I see as occurring in three distinct but related ways. In the

\textsuperscript{55} The block grant legislation not only repeals the AFDC program but also explicitly adds as part of its purpose clause in new Social Security Act section 401(b) the following language: "No individual entitlement—this Part shall not be interpreted to entitle any individual or family to assistance under any state program funded under this Part." Personal Responsibility Act of 1996, supra note 1, tit. I, § 103(a).
subsequent subsection, I discuss how the overlapping and complicated policy areas which have comprised AFDC policy invite a simplified symbolic response rather than long term policy solutions. In the last subsection within this part, I turn to what I have referred to as the subtexts of welfare reform.

C. Three Ways to Scapegoat the Poor

The first and archetypal method for scapegoating the poor is to blame them for their own poverty. This method of scapegoating relies heavily on labels and socially constructed concepts to differentiate the poor as undeserving. There are both crude and sophisticated versions for denoting being poor as mainly an individual failing. William Graham Sumner, the 19th century Social Darwinist, considered poverty the mark of inferior, non-productive beings. He wrote: “Under the names of the poor and the weak, the negligent, shiftless, inefficient, silly, and imprudent are fastened upon the industrious and prudent as a responsibility and a duty.” The crude versions emphasize personally intrinsic factors, such as heredity and genetics. An example would be to assert the poor are different because they are born that way. The sophisticated versions, in contrast, take into account environmental factors but only to a limited extent. The proposed remedies for poverty are not directed at underlying structural factors within the society but at changing the specific circumstances of the poor themselves, who are viewed as deviant. The reasons for being poor are associated primarily with dysfunctional behavioral patterns. The poor are stigmatized and blamed for their own poverty not because of biological defects but because of how they live and with whom they are identified. The various “culture of poverty” theses now dominant in public policy discussions largely embody this perspective.

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56. The favored term today is the “underclass.” See supra note 44.
57. William Graham Sumner, What Social Classes Owe to Each Other (1883), cited in tenBroek, Two Nations, supra note 28, at 354. Lest one think that Sumner’s views are too arcane for the 20th century, one need only consult the 1981 best-seller George Gilder, Wealth and Poverty (1981). Michael Katz describes Gilder’s views as follows: “Gilder celebrates both great wealth and inequality, for they embody not only the just rewards of success, but more important, the leaven for raising the living standards of all, including the poor. Poverty results from indolence, cynicism, and the demoralizing impact of public policy.” Michael B. Katz, The Undeserving Poor: From the War on Poverty to the War on Welfare 144-145 (1989).
59. See William Ryan, Blaming the Victim 7 (1971).
60. The idea of a culture of poverty originates in the ethnographic studies of the anthropologist Oscar Lewis. See, e.g., Oscar Lewis, La Vida: A Puerto Rican Family in the Culture of Poverty—San Juan and New York (1968). What started out as a
Welfare reform policies, such as time-limited assistance, limiting support for illegitimate children born to teenagers, and mandatory work programs, all presume that the main reason for welfare dependency is a deviant lifestyle which needs to be corrected. This presumption, cast in behavioral terms, continues to reflect, like earlier assumptions about the poor, a characterological theory of poverty. A weak minority is singled out as responsible for its own dire predicament, and morally condemned. One is poor because one lacks certain virtues, such as a sense of self-reliance, either because one was born deficient or has failed to develop as socially expected. Under either scenario, the result is that structural conditions, such as a lack of jobs or racial prejudice, are downplayed or ignored as causes of poverty, and public debate is vastly simplified. With respect to the establishment of public policies for welfare families, scapegoating the poor leads to a single-minded focus on the need for personal recipient responsibility. Insufficient attention is given to complicated questions concerning the exercise of collective public responsibility on multiple economic and social fronts.

A second way to scapegoat poor women and children is to emphasize their supposed deviance not only as a theory for why they are impoverished but to affirm or restore traditional majoritarian values. Welfare recipients are showcased as negative examples of what will happen to us if we do not conform. The main norms being inculcated and reinforced concern the importance of education, the work ethic, conventional family structure, personal responsibility and non-dependence, and avoiding illicit activities. Public aid recipients are portrayed as poorly educated, not wanting to work, living in female-headed households with too many illegitimate children, trapped by their dependency on welfare, and more likely than not drug or

cultural description of poverty quickly took on a political meaning. Michael Harrington used the concept as a way to call attention in the early 1960s to the continuing existence of poverty in the United States and the need to help people who were poor for reasons beyond their control. MICHAEL HARRINGTON, THE OTHER AMERICA (1962). A few years later, Daniel Patrick Moynihan used a comparable idea—a cycle of poverty—to call attention to the importance of family structure in the perpetuation of poverty. DANIEL P. MOYNIHAN, U.S. DEPT. OF LABOR, The Negro Family: The Case for National Action (1965). Moynihan viewed with alarm that, according to his figures, 25 percent of black families were headed by females and 25 percent of black births were illegitimate. Id. at 6 & 8. While Moynihan emphasized the debilitating effects of racial prejudice on black opportunities for advancement collectively, the overwhelming thrust of his report was to attribute a rise in welfare dependency among black families to their matriarchal structure, which he considered a pathology. Id. at i & 29. It followed that ending welfare dependency required making changes in black family structure.

The culture of poverty, as understood today, closely adheres to the kinds of concerns raised by Moynihan. This is especially evident in the characterizing of the poor as an underclass. See GANS, supra note 44. Harrington's use of the concept is now only historically interesting. For a fuller analysis of the culture of poverty as a political idea, see KATZ, supra, note 57, at 16-52, 195-235.
alcohol addicted and engaged in cheating the system.

While these accusations may have some factual basis as partial descriptions of the social circumstances of a certain percentage of poor families, their main purpose is symbolic. In demeaning the poor, the images conveyed signify moral lessons for the general public: There but for hard work and traditional family values go my kin and I. Scapegoating welfare recipients sends a message about a family’s fate when the parents do not conform to mainstream norms. Even though blaming the poor for lacking certain virtues is a weak explanation for the root causes of poverty, it nonetheless sends a strong warning that the consequence of not performing in accordance with dominant cultural values is poverty. With welfare reform, what is in play is a strategy of social control and discipline not just for the poor but for all of us.61 As Handler puts it: “The poor are held hostage to make sure that the rest of us behave.”62

The third way that welfare reform scapegoats poor women and children is to make them a target group in a “displacement of conflicts political strategy.” As developed by Schattschneider, such a strategy describes how issues come to be defined or suppressed as matters of public policy.63 It is an approach to analyzing how power is exercised in the setting of long and short term political agendas.

Building on Schattschneider’s work, Bachrach and Baratz identify what they call the two faces of power.64 The first face pertains to the degree and effectiveness of participation in public decision-making. The second face of power directs attention to the pivotal importance of controlling the decision-making agenda itself in terms of the nature, scope and definition of the subjects to be addressed. In summing up their position, Bachrach and Baratz state:

Of course power is exercised when A participates in the making of decisions that affect B. Power is also exercised when A devotes his energies to creating or reinforcing social and political values and institutional practices that limit the scope of the political process to public consideration of only those issues which are comparatively innocuous to A.65

61. Backer, in his analysis of the Clinton and initial House welfare reform measures, strongly emphasized their attention to both modifying recipient behavior and imposing social conformity. He particularly pointed to proposed provisions concerning family size, parental support obligations, and the identification of the incidence of crime and drug or alcohol addiction with single parent households. Backer, supra note 37, at 385-395.
63. See supra note 13.
65. Id. at 7.
It is the second face of power that is most telling about the fundamental beliefs or ideology of a society and, therefore, what and how issues are apt to be raised politically and who are likely to be the major beneficiaries or losers when specific decisions are made.66

The issues on which welfare reform is silent are probably more important than the issues actually addressed. Underlying contemporary welfare reform proposals is a highly constrained view of the causes of poverty and a targeting of the poor in order to displace other societal anxieties and concerns. Both factors are important in scapegoating the poor.

A constrained view not only distracts from structural causes of poverty, it also leads to an unjustified emphasis, and certainly an over-emphasis, on the AFDC program itself as a reason for poverty’s continuation. Giving aid indiscriminately is blamed for the dependency of the poor. The result is a war on welfare rather than on poverty.67

Using welfare reform to displace societal anxieties operates somewhat differently. The poor are singled out for punitive attention not so much because they are seen as deviant, but, rather, because they are perceived to be like everyone else. Popular resentment occurs because welfare recipients are thought to be receiving unwarranted benefits and opportunities at the expense of others. Any special attention which they get is seen as a sign of undeserved favoritism. The scapegoating which takes place in welfare reform is not without its internal contradictions.

A striking feature of welfare reform as a displacement of conflicts political strategy is the use of implicit but unstated appeals to mass anxieties and dissipations that have few other respectable outlets. For example, getting tough on welfare recipients becomes a substitution for expressions of discomfort about broad changes in social and economic relationships, such as male reaction to and resentment about the increasing independence of women within the family and the economy. This phenomenon, which is emblematic of several different cultural prejudices, will be discussed in the subsection on the subtexts of welfare reform. The

66. Some writers emphasize a third face of power, which describes how subordinated persons internalize the sources of their own oppression through their acknowledgement of dominant norms and expectations and the suppression and discounting of their own interests and power. See Steven Lukes, Power: A RADICAL VIEW (1974); Lucie E. White, To Learn and Teach: Lessons from Driefontein on Lawyering and Power, 1988 Wis. L. Rev. 699, 747-754 (1988). Rather than seeing this phenomenon as a distinct conception of power, I see it as part of a political socialization process, which furthers the acceptance and perpetuation of majoritarian values and institutional practices, and which is a characteristic of the second face of power. Though their life styles may be viewed as deviant, poor people to a large extent share the same values and aspirations as everybody else. See, e.g., Austin Sarat, ‘. . . The Law Is All Over’: Power, Resistance and the Legal Consciousness of the Welfare Poor, 2 Yale J.L. & Human. 343 (1990).

67. See Katz, supra note 56.
point here is that scapegoating the poor as part of welfare reform does not just victimize recipients. Welfare reform also is a code for other expressions of majoritarian hostility and regret. The mobilization of bias that occurs is multi-faceted.

In sum, scapegoating of the welfare poor serves three different but mutually reinforcing purposes. First, in time-honored fashion, AFDC recipients are held personally responsible for their own poverty, a significant effect of which is to distract attention from structural causes of poverty over which they have no direct control. Second, poor women and children are held out as deviants in order to reinforce dominant values and to keep the rest of society in line. And third, the welfare poor are blamed not only because they are on welfare but because of what they signify to others about unsettling social and economic events and trends generally and as a way of simplifying troubling issues of public policy.

D. Political Opportunism and the Avoidance of Policy Complexity

As a programmatic solution, AFDC policy has not been solely about alleviating poverty or, even more narrowly, providing subsistence support for poor families. Its specific provisions reflect broad policy concerns and constitute a response not to a single issue but to a conjunction of issues raised by several overlapping and critical policy areas. Because the public policies implicated are complex and ambiguous, most people are not in a position to fully comprehend them and are apt to respond to simplified proposals. The political situation, consequently, is especially ripe for the use of symbolism that distracts and distorts. The multi-dimensional use of scapegoating in welfare reform is a response to a popular desire for simplified solutions regarding complicated public policy questions about poverty. The appeal of welfare reform is not in the specific measures proposed but in how various images resonate with the general public.

Support programs for poor families implicate and involve four broad policy concerns. I refer to these as family policy, work policy, income transfer policy, and moral policy. Family policy concerns who will be recognized as part of a family, what kinds of relationships and functions within the family are supported, what is expected of the family as a social unit, and what happens when there are family breakdowns. Work policy has two dimensions. On the one hand, it pertains to provisions and practices regarding the importance of work, what is considered compensable work, and who should be expected to work. On the other hand, work policy concerns the extent to and the ways in which the government

68. See EDELMAN, supra note 9.
intervenes in the economy to retain, create, stimulate and regulate employment. Income transfer policy involves approaches taken to provide financial support for persons who are not able to earn or obtain a sufficient income on their own, within constraints imposed by real or perceived fiscal limits regarding such payments. Moral policy concerns the role of government in upholding conventional morality and in furthering moral aspirations.69 Within and among these policy spheres, there are numerous pulls and tugs in opposing directions, such as conflicting and changing attitudes about the roles of women as mothers and breadwinners.

A campaign for welfare reform only begins with popular interest in countering the presumed negative, moral effects on the poor of programs set up for their support. Much attention is paid, for example, to measures aimed at regulating the sexual behavior of unmarried, teenage mothers,70 at coercing individuals who can work to take jobs;71 and at prosecuting welfare cheats, recurrently imagined and portrayed as the “Black welfare queen.”72 But in morally condemning the poor in an attempt to control their social behavior, welfare reform serves political functions that extend well beyond the poor themselves. The overarching objectives are to reinforce and, where necessary, restore culturally dominant power relationships through both the affirmation of traditional social norms and the manipulation of historically volatile social divisions and deep-rooted ideological beliefs. Poor women and children are available, like pawns in a chess game, to be sacrificed in the interest of upholding and protecting whatever overriding objectives are perceived as most at stake by those in power.

The enactment of a welfare block grant is a good example of this political power dynamic. Block grants give the states additional administrative leeway to set the terms for providing and restricting assistance. The arguments in their support largely herald the benefits of increased state

69. In speaking of moral aspirations, I have in mind how a political order facilitates or inhibits the development of human motivation along the lines classically framed by Abraham Maslow, the humanistic psychologist, when he classified human needs as being hierarchical and cumulative. At the lowest end, there are physiological needs, such as food, shelter, clothes, and sex. Next there are safety needs, which include protection from bodily harm, a sense of public order, and a modicum of financial security. The third level of needs refers to the importance of affectionate relationships and feelings of love and belonging. The fourth level concerns the needs for esteem regarding both one’s own sense of achievement and competence and one’s reputation and standing with others. Finally, the highest state of personality development is what Maslow called self-actualization, where individuals strive to become everything that they are capable of becoming. ABRAMAM MASLOW, MOTIVATION AND PERSONALITY 80-106 (1954), summarized in ROBERT M. BASTRESS AND JOSEPH D. HARBAUGH, INTERVIEWING, COUNSELING, AND NEGOTIATING 285-286 (1990).
70. See supra note 39.
71. See supra note 40.
72. See supra text at notes 46-48.
innovation and local control. Yet, beginning in the 1980s with the Reagan administration, continuing during the Bush years, and actually increasing in the last few years under Clinton, the states have been granted numerous waivers of federal law to add restrictions and conditions on eligibility.\textsuperscript{73} In effect, a major redelegation to the states in welfare administration already has taken place. This is not to say, however, that block granting is politically inconsequential. In shifting programmatic responsibility back to the states, it is very likely to substantially undo what few political and legal gains have been achieved in the status of poor families since the New Deal.

First, the establishment of welfare block grants firmly reverses the halting course toward the nationalization of welfare programs for poor families. In the United States, nationalization is virtually a requirement for destigmatizing the receipt of public assistance, though it is not a guarantee of destigmatization.\textsuperscript{74} Block granting ends AFDC as a joint federal-state program and gives the states relatively unlimited discretion to determine eligibility conditions, to set benefit amounts, and to regulate moral behavior.

Second, block granting intensifies pressures for cost containment policies and practices. The open-ended nature of AFDC funding had been at odds with the minimization of public expenditures that has been a paramount interest in the structuring of welfare programs since the Elizabethan poor laws.\textsuperscript{75} The counter-consideration to cost containment is the impact of income transfer payments on the reduction of poverty. Because block granting means closed-ended federal budgeting, the political pressures on the states, who will have increased fiscal responsibilities, to play to widely-felt moral qualms about welfare and to cut back on public expenditures will be even stronger than at present. The inevitable effect of block granting in the short run will be greater poverty. Taking into account

\textsuperscript{73} See Handler, supra note 2, at 89-109. Handler reports that between 1992 and the end of 1994, forty states had requested waivers, and the federal government had granted twenty-five of the applications. \textit{Id.} at 90. Although the original purpose for granting waivers, the authorization for which dates back to 1962, was to increase services to poor families as limited demonstration projects, the waivers have been used since the Reagan administration on a statewide basis mainly to reduce welfare costs and to impose additional eligibility requirements, for instance, mandatory school attendance and grade requirements for teenagers. \textit{Id.} at 95-99. States operating under waivers will be able to continue to administer their programs in accordance with the waiver terms even if the provisions are inconsistent with the new block grant legislation. Personal Responsibility Act of 1996, \textit{supra} note 1, tit. I, § 103(a), adding new Social Security Act section 415.

\textsuperscript{74} See supra note 7.

\textsuperscript{75} In describing the operation of Elizabethan poor laws, tenBroek writes: "The special legal provisions were designed not to solve the causes and problems of destitution but to minimize the cost to the public of maintaining the destitute. They were accordingly concomitants of the central concept and the great achievement of the poor law—the assumption of public responsibility for the support of the poor—and of the necessity it entailed of keeping public expenditures down." TenBroek, \textit{supra} note 6, 16 \textit{Stan. L. Rev.} at 286.
various differences in block grant legislation before Congress in late 1995, the federal Office of Management and Budget calculated that all the proposals would have increased the number of families living below the poverty level, with estimates ranging from 600,000 to one million more people left destitute than would have been the case under current law.  

Third, block granting marks the demise of AFDC as a statutory right or entitlement. The ability of welfare recipients to protect themselves legally will be substantially, if not totally, impaired. Opportunities to challenge welfare decision-making in court and even within administrative agencies will be much more constrained. Poor families dependent on public support once again will have to struggle with second-class legal status, de jure as well as de facto.  

Passing the buck back to the states is not a promising approach for redressing the problems raised by the present AFDC program. Much more explicit attention needs to be spent on developing proposals that specifically and directly address the various policy areas implicated. Focusing on the poor alone as a subject for public policy making invites the continuation of the simplistic, moral condemnation historically endemic to Anglo-American relief giving. A broader based perspective on poverty and income support policies needs to be taken. Universal programs may not be efficient in terms of targeting public fiscal resources on individuals in greatest need, but they avoid the kind of scapegoating of the poor that characterizes means-tested programs.  

76. OFFICE OF MANAGEMENT AND BUDGET, POTENTIAL POVERTY AND DISTRIBUTIONAL EFFECTS OF WELFARE REFORM BILLS AND BALANCED BUDGET PLANS 10 (Nov. 9, 1995) (document on file with the author).  


Although the constitutionalizing of a right to welfare was not successful, the treatment of AFDC benefits as a statutory right or entitlement had become institutionalized and had had a substantial effect legally and practically. The pivotal Supreme Court decision was Goldberg v. Kelly, 397 U.S. 254 (1970), where the Court rejected the right/privilege distinction as a basis upon which to determine the procedural due process rights of welfare recipients. For an insightful accounting of the drafting of the Goldberg decision, see DAVIS, supra note 18, at 99-118. Goldberg is an opinion of landmark importance. See, e.g., Symposium, The Legacy of Goldberg v. Kelly, 56 BROOK. L. REV. (1990). Nonetheless, the advent of block granting will end the federal statutory entitlement status of AFDC as one of the analytic underpinnings of Goldberg and would put in question its continuing viability as establishing the minimum procedural safeguards required prior to terminating or reducing benefits for poor families.  

78. In this Symposium, Steve Sugarman notes how Social Security survivor benefits provide income support for minor children and their caretaker mothers with none of the political and moral trepidation associated with AFDC. Stephen D. Sugarman, Welfare
In recent decades, the tough policies and practices of welfare reform have not been effective in markedly curbing public assistance expenditures over the long run.\textsuperscript{79} They have had, however, an adverse effect on the practical opportunities in public deliberation for raising alternative proposals. Among the underlying public policy issues that should be considered are how to make sensible, front-end, across-the-board investments now that would provide structural support and responsive social services for families raising children; that would retain and generate sufficient, living-wage jobs for the employable; that would make available non-demeaning income assistance when employment is not feasible or desirable; and that would promote real prospects for all individuals to strive to reach their full potential. None of these policy concerns, which are certainly far from easy to resolve, are really part of the current debate.

The political appeal of welfare reform is in how it is understood by the public-at-large. A meaningful discussion of what it will and will not actually accomplish is somewhat beside the point.\textsuperscript{80} That AFDC has


There is a double dilemma in grafting on to existing social insurance programs new subgroups of beneficiaries. In the first place, the individuals left out are apt to be the most stigmatized among the poor and, consequently, are likely to find themselves even more vulnerable to moralistic and punitive attacks than in the past. Secondly, in absorbing new, less favored subgroups, the social insurance programs risk opening themselves up to new challenges and a possible fragmentation of the broad consensus for their support. Nonetheless, like the original framers of the social security system, I favor the gradual withering away of the need for means-tested programs by focusing on direct solutions to problems of economic growth and a lack of full employment and to the expansion of social insurance programs. See William H. Simon, \textit{Rights and Redistribution in the Welfare System}, 38 Stan. L. Rev. 1431, 1439 (1986). Nothing in the history of Anglo-American public relief giving suggests that programs associated with the undeserving poor ever avoid the consequences of moral stigmatization. In reducing the scope of the categorization, one hopes that over time there may be enough reduction in the numbers of individuals affected to reduce political interest in exploiting, for symbolic and alleged fiscal reasons, those who remain stigmatized as the welfare poor.

\textsuperscript{79} See supra text accompanying notes 42-43 & 49-54.

\textsuperscript{80} Senator Daniel Patrick Moynihan, who for more than thirty years has been a central, sometimes controversial, participant in national efforts to change the welfare system, was this time around mainly a bystander. One can only presume that he found there was no room for serious analysis and consequential debate. By no stretch of the imagination can Moynihan be described as a sentimental liberal. See supra notes 25 & 60. He called the Senate's 1995 version of welfare reform, which was the least punitive of the pending proposals, "an obscene act of social regression." \textit{G.O.P. May Revive a Welfare Plan, supra} note 37, at C22. Regarding the enactment of the Personal Responsibility Act of 1996, he stated, "In our haste to enact this bill—any bill—before the November elections, we have
involved overlapping policy areas means that we have a confusing policy terrain, with competing and potentially inconsistent objectives. The situation has been ripe for political opportunism on a grand scale. The multi-faceted and complex nature of AFDC policy invites not only a false simplification but also sets the stage for opening a pandora's box of unexamined prejudices and fears.

E. The Subtexts of Welfare Reform

Welfare reform is an effective political strategy largely because it taps into a number of deeply institutionalized ideological beliefs and cultural divisions. The convergence of these various factors in a single issue gives politicians multiple grounds for garnering public support. There is not much of an electoral risk in running against the welfare poor. By contrast, there is much to be gained by calling for get tough policies. The underlying values and concerns, which tend to converge when AFDC policy itself has been the identified problem, are so dominant that competing ideas concerning the persistence of poverty and its consequences and remedies have only grudging room at the political table even when public policy debate is relatively open.

Six underlying cultural factors chiefly account for the strong appeal of welfare reform as a political issue. Three come from what one might term the respectable side of American political culture. Two of these are longstanding tenets of American liberal ideology which are institutionally pervasive both in the Constitution and public sentiment: a deep belief in the primacy of the individual; and a profound distrust of government. The third factor is an accompanying, weak sense of class consciousness as a form of self-identity, which tends to minimize political discussions of class differences. While these three cultural attributes are not necessarily negative, they have significant consequences for the framing and resolution

chosen to ignore what little we do know about the subject of poverty. . . . The conference report before us is not ‘welfare reform,’ it is ‘welfare repeal.’ It is the first step in dismantling the social contract that has been in place in the United States since at least the 1930’s.” Excerpts from Debate in the Senate on the Welfare Measure, N.Y. TIMES, Aug. 2, 1996, at A10.

Several days after President Clinton signed the new welfare reform bill into law, the New York Times reported on the virtual impossibility of finding enough jobs for adult welfare recipients in the social contract that has been in place in the United States since at least the 1930's. Excerpts from Debate in the Senate on the Welfare Measure, N.Y. TIMES, Aug. 2, 1996, at A10.

Several days after President Clinton signed the new welfare reform bill into law, the New York Times reported on the virtual impossibility of finding enough jobs for adult welfare recipients in the major cities where most of them live, within the time frames set by the law. Alan Finder, Welfare Clients Outnumber Jobs They Might Fill, N.Y. TIMES, Aug. 25, 1996, at A1, A10. For example, in light of the present rate of growth of jobs in New York City, “if every job gained by the local economy were given to a New Yorker now on welfare, it would take 21 years for all 470,000 adults to be absorbed into the economy.” Id. at A10. Not only are too few new jobs generated, absent a massive job creation effort by the government, but there are also serious mismatches in skills levels required and the job readiness and skills of many recipients.
of public policies, and who benefits from them.

Three other cultural factors reflect what I view as the underside of American political culture: racism, nativism and patriarchy. While these structures of belief still affect public debate and are of substantial consequence, they are, at this point in our history, highly suspect morally. The candid expression of such beliefs can be either embarrassing or galvanizing depending on the audience. Accordingly, a politically safe invocation of these beliefs now usually requires a subterfuge. Before addressing the impact of such prejudicial beliefs on welfare policy and practices, I offer a few comments concerning American liberalism.

1. THE AMERICAN LIBERAL TRADITION

The mainstream of American politics is ideologically fairly narrow. For much of our history, our political thought has been dominated by two versions of liberalism. The first is a largely 19th century version, which we call conservatism or now neoconservatism, and which presumes that the relatively unrestricted interplay of market and social forces best promotes individual opportunities within a society. The second is a largely 20th century version, though it dates back to 19th century progressivism. This version of liberalism is mainly associated with the New Deal and is characterized by selective governmental regulation and intervention to curb or overcome the effects of economic and social inequities for various groups of individuals. While there are other ideological strains within American politics, they have been relatively minor chords. These would include civic republicanism, populism, and socialism. They have had their moments and have affected at times the identification of policy concerns, but they mainly have been expressions of dissent and have not enjoyed enduring mass support.

A. The Primacy of the Individual

American individualism in the AFDC context is important because it provides a broad philosophical foundation for what has been referred to as a characterological theory of poverty. The origins of American individualism lie in the 17th century writings of Hobbes and Locke. C. B. Macpherson has emphasized what he calls the “possessive quality” to this conception of individualism, by which he means that the individual is seen “as essentially the proprietor of his own person or capacities, owing nothing to society for them.” Individuals, in short, are seen as primarily responsible for their own fates. Hence, being poor is presumptively an

individual moral failing. The operative social and economic assumption is that anyone in America can pick herself up by her own bootstraps and succeed if only she would try. Nineteenth century liberalism largely ignored how structural conditions beyond an individual’s control could seriously affect his or her life chances. New Deal liberalism, while partially acknowledging these constraints, never recognized them to a sufficient degree.

This practiced obliviousness to structural conditions is especially notable in the development of social welfare policies where great value is placed on the work ethic as a defining American virtue. Within the framework of American individualism, one demonstrates one’s worth by working outside the home for financial compensation. The critical distinction between social insurance programs for the deserving poor and welfare programs for the undeserving poor is the presumed attachment or lack of attachment to the work force of the intended beneficiaries. In the United States, having a job is essential for both economic survival and as a sign of political merit. Except for the very wealthy, one’s ability to participate fully in society and one’s acknowledgement as a full participant worthy of receiving reciprocal benefits as a societal member very much depend on one’s employment status, either presently or as recognized in the past.

B. Distrust of Government

Distrust of government takes two principle forms in the debate over welfare. The most obvious is a heightened aversion to spending tax dollars in support of others in the form of transfer payments. The other is the assumption that it is easier to keep an eye on a government that is close at hand. Local and state governments, however, have notably fewer resources than the federal government. Welfare programs which are unpopular at the federal level are likely to be more, not less controversial, when subject only to state and local decision-making. With block granting, for example, the almost certain result in most places will be an increase in restrictive and regressive welfare policies and practices.\(^83\)

C. Lack of Class Consciousness

The third cultural factor, a pervasive lack of class consciousness, has persisted hand-and-glove with our liberal ideology. Most Americans, including blue collar and unionized workers, identify themselves as middle class. We have not had the legacy of feudalism and its formal class structure to overcome. We have had an open frontier, in reality during our formative years and as a psychological metaphor since, as an incentive for exercising initiative and seizing opportunities regardless of background.

\(^83\). See supra text accompanying note 75.
Furthermore, in part because America industrialized relatively late in the 19th century well after its commitment to democratic institutions, it has not had a strong labor union based political party. Indeed, the American Federation of Labor in its formative years espoused a form of trade unionism that emphasized voluntarism and was hostile to governmental intervention in social policy. The result has been a form of American exceptionalism compared to Western European nations, which has meant that the working class has not been as major a force as elsewhere in promoting public social welfare measures and advancing social rights.

The downplaying of class as a barrier to advancement does not mean that we do not have classes in America. It means, rather, that class identifications do not have the same kind of political hold on allegiances that they have had in Europe. They are less likely to trump other ascriptive characterizations, the major role of organized labor in the old New Deal Democratic Party coalition notwithstanding. Because class is a weak check on other cultural divisions, politicians are more easily able to fashion cross-class alliances that focus on social rather than economic issues. Welfare reform has become a potent political concept in large part because it frames social welfare policy in ways that underscore social divisions within the society, target the poor as socially deviant, and downplay the effects of economic structure as causes of poverty.

2. RACISM

Among the social divisions which try our national soul, racial prejudices play an especially critical role. Race has been and remains the great divide in America. Especially since the war on poverty in the 1960s, AFDC has been popularly identified as a program for African Americans. The actual racial composition of the AFDC rolls has mattered very little. What is significant is that cutbacks in public assistance have had a much greater overall impact on black families than white families. In the late 1980s, 15.5 percent of the 9.9 million black households received AFDC as compared to

84. It was not until just before 1880 that the United States' economy moved away from over fifty percent reliance on primary production—agriculture, fishing and forestry. REINHARD BENDIX, WORK AND AUTHORITY IN INDUSTRY 254 (1956). By this time, the lack of class consciousness was widespread in America, and social policy questions tied to industrialization were seen in highly consensual terms as being relatively unresponsive to actual class divisions and interests.


87. See supra note 2.
2 percent of all white households.88

Race as a factor in the receipt of public benefits is a recurring feature of American social welfare policy and practice. In determining who was eligible for state-provided mothers' pension benefits, the antecedent to federally assisted Aid to Dependent Children (later AFDC), welfare workers usually limited coverage to "gilt-edged widows" of worthy character and reputation. Almost all the beneficiary families were white.89 A statistical breakdown in 1931 of 46,597 families—half the families then receiving mothers' aid—revealed 96 percent were white, 3 percent black, and 1 percent other.90

Thirty years later, in part as a response to growing minority participation on the AFDC rolls, counties and states launched a number of sweeping efforts to exclude mainly non-white children and their mothers from receiving public assistance. In Louisiana in the summer of 1960, state and local welfare authorities dropped approximately 6,300 families from the AFDC rolls allegedly because of the "presumptive unsuitability of the home," which meant for the most part that officials suspected there was an illegitimate child in the household.91 Elsewhere throughout the nation in the early 1960s, there was a spate of midnight raids aimed at detecting the presence of unreported adult males in the households of predominantly black recipients.92

Now, slightly more than thirty years after the last of the midnight raids, much of the white majority perceives the entire AFDC program as providing undeserved support to a predominantly black constituency. In a recent study of welfare in America, focusing on the period since the war on poverty, Jill Quadagno makes a very convincing case for the proposition that the single most important "motor for change, the governing force from the nation's founding to the present," in the development of social welfare policy has been "the politics of racial inequality."93 A coded message of racism is undeniably significant, as much now as ever, as a key factor in the scapegoating of the poor that is part and parcel of welfare reform.94

88. EDSALL, supra note 86, at 162.
90. WINIFRED BELL, AID TO DEPENDENT CHILDREN 9 (1965).
91. Id. at 137-138.
94. For an analysis of social policies and universal rights, which emphasizes race but also stresses the complex relations of gender, race and economic class, see ZILLAH R. EISENSTEIN, THE COLOR OF GENDER: REIMAGING DEMOCRACY (1994).
In attempting to fashion a national plurality, the contemporary Republican Party has little to lose in clamping down on AFDC because its electoral base includes relatively few black voters. In contrast, Democrats often find themselves in a bind because they both want to hold on to minority black voter support and attract majoritarian white voters. To oppose welfare reform is to further identify Democrats and their party with programs seen as disproportionately benefiting African Americans. For Democrats, a risk of not supporting welfare reform is the further disaffection and lack of support of white voters. An appeal to welfare reform is to play a race card, one which appeases a white majority to the detriment of black Americans.

3. NATIVISM

Nativism is another factor from the underside of American political culture that contributes to the political appeal of welfare reform. One of the central contradictions of American political history is that although we are a nation of immigrants, each new large group of immigrants has confronted wide-scale stigmatization and prejudice from the groups which preceded them. In the 1830s and 1840s, alien newcomers were considered the prime sources of pauperism.95 Toward the end of the century, Jacob Riis’ descriptions of life in urban slums differ little from some of the culture of poverty descriptions of the 1960s and assumptions of the 1990s.96 Indeed, supporting poor immigrant women and children, especially if legitimacy was an issue, has been morally problematic throughout our history.97

For the last several decades, AFDC is not only identified as serving principally African Americans but also newcomers from Latin America and Asia. Figures reported in the 1994 Greenbook of the U.S. Congress indicate that somewhat less than 25 percent of the AFDC population is from

95. Handler, supra note 2, at 18.
96. See, e.g., Jacob A. Riis, How the Other Half Lives (1890).
97. See Mary Ann Mason, The Burdens of History Haunt Current Welfare Reform, 7 Hastings Women’s L.J. (*** cite 1996). This is not to say, however, that there have not been differences drawn based on the region of origin. Although racial minorities received only a tiny proportion of mothers’ aid, immigrant women and children during the early part of the 20th century were a substantial part of the recipient population in northern cities. Linda Gordon reports, as an example, that in Chicago in 1911, “German immigrants were 7 percent of the population and got 20 percent of the mothers’ pensions; Irish Americans were 3 percent and got 22 percent; Italian Americans, 2 percent, got 8 percent; Polish Americans, 6 percent, got 14 percent.” Gordon, supra note 4, at 48. While there does appear to be a pattern that Southern and Eastern European families, as more recent newcomers, were somewhat underrepresented, they fared much better than Latino families. Gordon’s research indicates that in Los Angeles, “Mexicans were excluded from the mothers’ aid program on the grounds that their inferior background made it too likely that they would abuse it.” Id.
Latino and Asian backgrounds. While this number includes more than recent immigrants and refugees, it supports a picture of a program disproportionately populated by individuals who are not native-born Americans or from European nations with whom white Americans have a greater affinity.

The resurgence of xenophobia in the 1990s feeds on concerns about illegal immigration. To receive AFDC, however, except under very limited circumstances, one has to be a citizen or a lawful resident. Nonetheless, there are spillover effects even when the receipt of public assistance by undocumented newcomers is not really an issue. Not surprisingly, the enacted welfare reform bill has a definite nativist bent and broadly prohibits most legal immigrants and refugees from receiving public assistance cash benefits.

4. PATRIARCHY

While racism and nativism are major factors underlying the politically-motivated stigmatization of poor women and children, it is a deep ambivalence about the increasing autonomy of women that probably most accounts for the especially regressive nature of the present welfare reform proposals. AFDC policy implicates expressions of patriarchal authority and norms because it has directly raised issues about the independence of women in their own households and their connections to and roles within the work force. The context is one of personal psychological significance as well as of mass political psychology.
The advancements in women's rights this century have not been without contradiction, resentment and backlash. One example is the emphasis on family values initiated by the New Right but now broadly trumpeted. The conventional two-parent family with dad at work and mom at home with the kids is presumed to be the norm.\footnote{102} The hope is that if more families were conventionally intact, many of our societal problems would be eased or would disappear. The counter-model, or threat, is the supposedly dysfunctional female-headed AFDC family. The unwarranted and overly broad presumption is that women alone are unlikely to raise healthy children with good values.

What is the welfare reform response? Poor women with even very young children at home are required to work and are expected still to be good mothers, yet the availability of child care, support services and jobs is usually problematic at best.\footnote{103} Mothers seeking public assistance also are required to identify partners for child support, even though this may place them at physical risk and may jeopardize their ability to form long term relationships.\footnote{104} In short, the proposed solution to the dysfunctional welfare family is a set of double binds.

There is here a strange conversion of the original ambitions of some middle class feminists “to have it all” into coercive policies directed at poor women. Welfare reform sets up poor women to fail. It also signals to all women that they can't have it all. What's more, women have to follow

\begin{footnotes}
\item[102] While this characterization is not an accurate representation of how many families now live, it has long endured as the model for men and women alike. White women social workers played the critical role in the establishment of mothers' aid programs, which were the programmatic foundation for AFDC legislation as part of the New Deal. Though a number of them were single or childless and all worked as professionals, they proposed policies that reflected the primary role of women as mothers and unpaid domestic laborers. \textit{Gordon, supra} note 4, at 37-110. The main social and economic presumption was the “family wage,” which Linda Gordon describes as “the sex/gender/family system that prescribes earning as the sole responsibility of husbands and unpaid domestic labor as the only proper long-term occupation for women.” \textit{Id.} at 53. \textit{See also, Mink, supra} note 89, at 151-173.

\item[103] Under the enacted temporary assistance block grant program, only a single parent with a child under the age of six will be excused from meeting work requirements, provided that she can prove she meets the state’s test for the unavailability of child care. Otherwise, the sanction is a reduction or termination of assistance. \textit{Personal Responsibility Act of 1996, supra} note 1, tit. I, § 103(a), adding new Social Security Act section 407(e). \textit{See also Handler, supra} note 2, at 113-129.

\item[104] The applicable provision in the new legislation, similar to previous AFDC provisions, is new Social Security Act section 408(a)(2). \textit{Personal Responsibility Act of 1996, supra} note 1, tit. I, § 103(a). There are also revised and strengthened provisions regarding state collection of child support. \textit{Id.}, tit. III.
\end{footnotes}
choices defined by others, not their own, in making the compromises. It would appear that at a profound psychological level, much of welfare reform’s appeal is that it taps into societal discomfort at changing female roles and aspirations generally—feelings held by some women as well as men.

5. A Powerful Symbolic Convergence

The ideological and related institutional factors which underlie the debate about welfare, what I term subtexts of welfare reform, bring to the fore a number of different themes that run deep in American political culture. One can discuss endlessly which is especially critical and decisive, to what degree, and under what circumstances. My point is that it is their convergence that makes welfare reform such a powerful symbolic issue. The underlying meanings ascribed to welfare reform by different individuals simply overwhelm public discourse. The concerns that really count are not about designing a rational social welfare program but are about the images and myths invoked. The present agenda for welfare reform, at one and the same time, involves reasserting patriarchal norms, manipulating racist and nativist anxieties and fears, suppressing the significance of class identification, discrediting government’s role in remedying social and economic disparities, and affirming a false sense of individual opportunities that never sufficiently acknowledges structural impediments or the place of chance. In short, the scapegoating of the poor that is central to welfare reform is a complex phenomenon that relies on and emanates from a number of different, deeply embedded, cultural predilections.

The effect is to turn anti-poverty policy into an essentially social, rather than a predominantly economic, issue. For neoconservatives, this development is especially attractive because it serves to downplay differences in class interest and contributes to the establishment of cross-class alliances. In terms of both election day and long-term political organizing, the impact of welfare reform is to undercut efforts to form coalitions among non-wealthy individuals from different backgrounds. It also has the effect of distracting attention from the influence exercised by America’s powerful corporate interests, especially over micro- and macroeconomic decisions affecting employment opportunities.

The resulting constriction on public discourse means that opportunities to define and resolve social welfare policy issues in a progressive fashion become virtually non-existent. At this point, the mobilization of political bias is so effective that even liberals and neoliberals like Senators Ted Kennedy and Patrick Moynihan are left on the sidelines. Additionally, the few generous aspects of the Clinton Administration’s proposals, such as increased funding for child care and employment services, have been
significantly cut back. President Clinton initiated the latest round of welfare reform, but he lost control of its terms almost immediately.

III. CONCLUSION: MILES TO GO BEFORE WE SLEEP

A. Trapped in the Past

For much of our history, the fashioning of public assistance requirements and benefit levels has been closely tied to labor market controls. Welfare recipients were forced to work not only to minimize public expenditures for their support and as a remedy for the moral failings associated with poverty but also to assure the availability of a disciplined work force to meet changing labor market needs. Historically, the principal labor market objectives were to have available, on reserve, the least able and skilled as workers for periods of high employment and, during less optimal periods, to compel whoever could work to take whatever regular employment existed no matter what the terms.

105. The work, training and child care portions of the original Clinton proposals were to cost an estimated additional $8-9 billion over five years compared to then current federal funding levels. GREENBERG, The Temporary Federal Assistance Block Grant, supra note 37, at 14. The enacted bill provides no additional special funding for job training and development. While Congress has authorized from $1.967 billion in fiscal year 1997 to $2.717 billion in fiscal year 2002 in federal funding for child care (Personal Responsibility Act of 1996, supra note 1, tit. VI, sec. 603), for many states the amount of federal dollars actually available for child care over six years is, notwithstanding some reports to the contrary, likely to be less than what would have been available under current law. Broad claims of increased funding for child care are based on comparisons to previously vetoed welfare reform legislation. CLASP, A Summary of Key Child Care Provisions of H.R. 3734 (1996), at 2 (copy on file with the author).

The Clinton proposals largely reflected the ideas of David Ellwood and Mary Jo Bane, who, prior to joining the Clinton Administration as assistant secretaries in the Department of Health and Human Services, argued for changing the "culture of welfare from 'eligibility-compliance' to 'self-sufficiency.'" Cited in HANDLER, supra note 2, at 144. See MARY JO BANE & DAVID ELLWOOD, WELFARE REALITIES: FROM RHETORIC TO REFORM (1994); see also DAVID ELLWOOD, POOR SUPPORT (1988).

After leaving office at the end of 1995, Ellwood has emphasized poor timing in his own analysis of what went wrong in the presentation of the Clinton proposals. In particular, he singled out delaying the introduction of welfare reform measures in favor of the administration's equally ill-fated health reform proposals and the surprising Republican congressional triumphs in Fall 1994. David T. Ellwood, When Bad Things Happen to Good Policies, AMERICAN PROSPECT (May-June 1996), at 22-29. Ellwood does acknowledge the possible effects of underlying cultural issues: "Worse yet, the issues of race and class lie just below the surface, occasionally producing ugly stereotypes, often clouding the political dialogue." Id. at 29. He fails to appreciate sufficiently, however, the defining importance of such cultural issues and the critical significance of welfare reform as a symbolic political issue.

106. See PIVEN & CLOWARD, supra note 18, at 3-42, 123-180.
107. See tenBroek, supra note 6, at 270-279; HANDLER, supra note 2, at 10-20.
108. The basic proposition, which was one of the assumptions initially underlying the Elizabethan poor laws, has been that welfare as a means of support has to be less attractive
Meager benefits and harsh conditions were designed to terrorize both those who had no alternative but public relief and others who, employed in menial jobs at low wages and long hours, otherwise might have requested welfare assistance. 109

In structuring work requirements for AFDC recipients, today, there is a twofold economic dilemma: first, there are not sufficient job prospects for the welfare poor absent substantial governmental intervention; and, second, in the face of widespread private and public sector downsizing and a global labor market, national worker discipline overall hardly depends on the abysmal nature of welfare programs to deter individuals from not taking or not holding on to whatever jobs are available. Given changes in the economy over the last quarter of a century, the only residual economic function of public relief as a possible labor market control of any meaningful significance is in the shrinking agricultural sector of the economy, where there are somewhat predictable needs for seasonal workers. There are, nonetheless, continually expressed concerns that the compounding of government benefits for cash assistance, food stamps, housing subsidies, and so on, creates an economic disincentive for people to work rather than to apply for and stay on welfare. 110 Other than anecdotes, there is, however, no strong evidence that individuals are deterred in any significant numbers from seeking and maintaining employment because of the availability of welfare benefits. 111 Indeed, work at a minimum wage job in most of the country is ordinarily more profitable than receiving welfare. 112 The problem is that single-parent households have a hard time making ends meet whether their income comes from low paid jobs or AFDC. 113

than opportunities for employment. In 1834, the English Poor Law Commissioners framed this proposition in particularly forceful terms in what has become known as the principle of "less eligibility." They stated: "The first and most essential of all conditions, a principle which we find universally admitted, even by those whose practice is at variance with it, is that his [the relief recipient's] situation on the whole shall not be made really or apparently so eligible [i.e., desirable] as the situation of the independent laborer of the lowest class." THE REPORT FROM HIS MAJESTY'S COMMISSIONERS FOR INQUIRING INTO THE ADMINISTRATION AND PRACTICAL OPERATION OF THE POOR LAWS, 1834, at 228, quoted in PIVEN & CLOWARD, supra note 18, at 35.

109. See PIVEN & CLOWARD, supra note 18, at 32-38.
110. In the 1980s, Charles Murray's LOSING GROUND, supra note 6, was especially influential in blaming welfare programs for the perpetuation of poverty. For a concise critique of Murray's position, see KATZ, supra note 57, at 151-156.
111. See KATZ, supra note 57, at 151-156.
112. Id. at 154.
113. Recent research suggests that the task of comparing work to welfare is significantly complicated by the reality that welfare mothers, to a greater extent than previously appreciated, may have unreported sources of income from under-the-table or part-time jobs, absent fathers, and relatives and friends. See Kathryn Edin & Christopher Jencks, Reforming Welfare, in CHRISTOPHER JENCKS, RETHINKING SOCIAL POLICY 208 (1992).
In 1988, Congress enacted the Family Support Act (FSA),\textsuperscript{114} which was marketed as taking AFDC in a revolutionary new direction. Cash assistance would be conditioned on work effort, and beneficiaries would be entitled to job training and job placement.\textsuperscript{115} Although the FSA passed with little opposition and represented a compromise between liberals and conservatives, the funds needed to implement its provisions have not been forthcoming.\textsuperscript{116} The magnitude of the front-end investment required to provide education, job training, child care and other social services to make employment truly feasible for many of the welfare poor is much beyond what any governmental body, under constant pressure to cut and surely not to raise taxes, is now willing to spend. Moreover, the kinds of expenditures contemplated do not take into account the additional governmental effort needed (but not really addressed in the FSA) to generate additional private sector jobs and to pay for new public sector jobs as part of a full-employment strategy, so that having sufficient work opportunities for all employable welfare recipients would not be just wishful thinking. In a word, the FSA symbolically, but not practically, put work at the center of the AFDC program.

The bottom line is that as America is about to enter the 21st century, the attention paid to limited government, ideologically, takes priority over the lip service given the work ethic, with no real acknowledgement of the impact that our profound distrust of government has on individual opportunity.\textsuperscript{117} If there ever is to be an effective anti-poverty strategy for poor women and children and an end to “welfare as we know it,” there has to be a substantial shift in our underlying political culture. Gwendolyn Mink writes, “Real welfare reform entails rooting out the premises, presuppositions, and stigma that drive welfare policy—not modifying the behavior and restricting the choices of mothers who need welfare.”\textsuperscript{118} For meaningful change to occur in social welfare policy, more support has to exist for an expansive role of government that is mindful of our traditional

\textsuperscript{115} For analyses of the terms and likely effects of the Family Support Act, see MARMOR ET AL., supra note 49, at 82-83, 119-124, 231-237; HANDLER, supra note 2, at 29, 76-81. FSA’s other major emphasis was on increasing efforts to collect child support from absent fathers. MARMOR ET AL., supra note 49, at 118-119.
\textsuperscript{117} In considering the early days of the New Deal as well as the contemporary political climate, Marmor et al., make a similar point: “The lesson of all attempts to assure full employment in the United States has been that the logic of the work ethic trumps the logic of limited government only in emergencies, even if economic opportunity is thereby limited.” MARMOR ET AL. supra note 49, at 44.
\textsuperscript{118} MINK, supra note 89, at 190.
liberties and the need for checks on arbitrary decision-making and the institutional aggrandizement of power, but that also takes into account the sources of unfairness within the economy and society. If we seriously want to facilitate individual opportunities in an increasingly interdependent world economy and global society, we have to overcome our long, historical tendency to downplay or look past economic and societal causes of oppression.

The current welfare reform debate both builds on our traditional ideological biases and exacerbates present cultural divisions. There is no question that within the confines of recent AFDC policy discussions, there has been no room to present proposals which take into account structural conditions in a responsive and responsible fashion. The policy agenda had been set, and there was no place at the table for progressives. The best one could have hoped for was that there would have been a legislative stalemate and nothing would have happened.

B. On Social Citizenship

Turning to longer term political developments, welfare reform is a major step backward in the continuing effort to expand opportunities for full participation by all Americans in the economic, social and cultural life of the nation. Our democratic aspirations notwithstanding, we continue to be a country divided by inequalities in wealth and status and by prejudice. American exceptionalism has meant that we have been slower to develop a modern social welfare state than our Western European cousins. While not all has been rosy with respect to those developments elsewhere, we still have much to learn and to adapt to our particular circumstances.

The extent of poverty and the magnitude of problems confronting poor families are likely to get much worse in the United States over the next few decades. We need to look to the day when there is sufficient constituent support for increased governmental intervention and public funding regarding a whole host of concerns. These matters include the following: a renewed commitment to public education; an increase in support for child care; the further development of basic health care and affordable housing programs; the expansion of relatively non-demeaning income assistance programs, like social security, unemployment insurance, and the Earned Income Tax Credit (EITC);119 and the development of constructive

119. The expansion of the EITC under the Clinton Administration is a major development in income transfer policy. While there were threats to limit the benefits of the EITC as part of pending welfare reform measures, the changes previously enacted by Congress at the behest of the Clinton Administration have represented an important expansion in financial support for working welfare recipients and other low income wage earners. HANDLER, supra note 2, at 141-144.
approaches for intervening in a market economy in order to stimulate the creation and retention of living wage jobs. The answers to our present dissatisfactions with AFDC lie in the development of mainly universal programs and policies that make a targeted program for the poor, like AFDC, largely unnecessary.¹²⁰

In taking this long view, I want to suggest the importance of rethinking now what has been called social citizenship.¹²¹ Discussion at this level, while unlikely to have a practical political impact immediately, might well contribute to the underlying changes in political culture which will have to take place before we are in a position to make a serious, new effort at fighting poverty. Taking into account contemporary concerns about collective and personal responsibility as well as rights development, Maurice Roche defines social citizenship as follows: "'social citizenship' refers to those rights and duties of citizenship concerned with the welfare of people as citizens, taking 'welfare' in a broad sense to include such things as work, education, health and quality of life.'"¹²²

Roche's analysis builds on and adapts the ideas of T. H. Marshall¹²³ in light of both developments and criticisms regarding social welfare programs in England, Western Europe and the United States over the last fifty years. This article is not the place to examine at length the notion of social citizenship or Roche's trenchant analysis of social welfare state developments since the immediate post-World War II period. The idea of social citizenship, however, provides a framework for raising issues about the nature of social rights, a concept which still fits only awkwardly in the American political and legal vocabulary, and personal and social responsibilities, which the left in the past has too often not sufficiently addressed.

¹²⁰. What is needed is a comprehensive strategy that acknowledges an expanded role for government but also enlists the participation of the private sector, including the business community, labor, and non-profit social service organizations and charitable foundations. As Peter Edelman observes, there is no "silver bullet solution to poverty." Edelman, supra note 17, at 1755.


¹²². ROCHE, supra note 121, at 3.

¹²³. See supra note 12.
Social citizenship is a critical idea because in focusing on the promise of democratic citizenship and how to promote opportunities for all people to become full participants in a society, it acknowledges the importance of both structural conditions and personal character in realizing life chances.

The starting point is with Marshall’s classification of rights as civil rights, political rights and social rights. Civil rights are those rights necessary for individual freedom. They recognize who and what has a protected status within the society and economy. They include what we call civil liberties and other substantive entitlements, such as the right to own property. In addition, civil rights encompass various procedural safeguards which permit an individual to “assert all one’s rights on terms of equality with others and by due process of law.”

Political rights pertain to the creation of opportunities for participation in public affairs, for example, the right to vote and to hold public office. They delineate who is to have access to the exercise of political power, and the extent to which governmental processes are open to the claims and aspirations of different individuals. Social rights address issues of social equity and economic security. The right to a public education or the entitlement to Social Security is a social right. In contrast to civil rights which seek to curb the arbitrariness of governmental actions, and political rights which define accessibility to governmental processes, social rights aim at providing measures of insurance against the uncertainties of society and the economy.

The arguments made in the 1960s and 1970s in support of welfare rights were grounded in a different analytic framework. Those arguments relied more on standard American legal reasoning by analogy to extend traditional concepts of property to modern forms of governmental largess, such as licensing and public benefit entitlements. The seminal article was Charles Reich’s *The New Property*.

A government benefit is, however, not the same thing as owning a piece of real property or even a copyright. It invokes a different type of relationship. Traditional property interests as civil rights establish protected areas of activity, where individuals are free to initiate action and make claims often in spite of rather than with the support of the state. In contrast, entitlement to public relief, as a social right, requires governmental

action—often fairly substantial programmatic action and funding—in its very establishment of a claim. Ideologically, the cultural basis for support is very different. Civil rights, though universal in formulation, mainly benefit the socially aggressive since they require self-instigation and adroit command of private resources. For social rights, there has to be a widespread sense of how everyone might benefit from an enriched public sector and from a government which takes initiative to redress social and economic inequities. Such a perspective remains an inchoate part of American political culture and comes to the fore only in times of exceptional urgency. During most periods, scapegoating the poor continues to be a highly expedient method for discounting and ignoring the differential effects of social and economic opportunities and impediments upon all of us.

Though the idea of social rights, legally and politically, does not fall easily within our liberal tradition, there are existing programmatic bases for the development of social rights, which already enjoy meaningful public support. Social Security for the elderly as a statutory entitlement still has broad popular appeal, even given present efforts to cut back on the scope of entitlements generally. The right to an elementary and secondary public education also has a firm place in our political culture, even though the financial support provided in too many places has become niggardly. Indeed, support for education in the abstract runs so deep that courts have come very close to fully recognizing the right to an elementary and secondary education as a constitutionally recognized fundamental interest.126

Rights are important, not just conceptually as a sign of institutional recognition of fundamental entitlements, but because of what happens in their enforcement. Bill Simon points out that ultimately the enforcement of rights involves the effectiveness of appeals to the state. He notes: “Appeals to right occur only when activities and goals conflict; their function is to determine whose side the state will take.”127 A right is an important resource to be used against competing interests and claims. We have a long tradition of recognizing and enforcing civil rights, but only a very weak tradition regarding social rights. That has to change both with respect to underlying political culture and in legal doctrine.

If we truly want to make headway regarding social rights, we cannot sidestep the question of what are the reasonable accompanying responsibilities. Almost all rights have a reciprocal dimension to them. We acknowledge and protect a right to property in recognition of private initiative in economic development. We give individuals the right to vote, but it has no

127. Simon, supra note 125, at 29.
effect unless one uses it. We provide children with a right to a public education, and we compel them to attend school.

Social rights expand the role of the state, and in doing so they often expand the reciprocal obligations of the citizenry. We have to come up with new ideas that do not deny these obligations but reasonably limit and channel them. Accordingly, we have to confront directly issues such as care for others and ourselves. For instance, in our society as in most cultures, the family is a crucial social unit. We should not give support to the myth that progressives believe all is permissible. Irresponsible parental behavior is a serious problem. It is not, however, a problem confined to a specific class. We need policies that facilitate parental care and support for children, and we need policies that sensibly address what happens and what might be done when there are family breakdowns. To give another example, we also need to make more of such political developments as the ecology movement and the sense of shared social duty to care for the environment, through both public policies and personal actions, such as recycling, which do appear to have broad popular support. The responsibilities which need to be emphasized require us to recognize and act on our mutual duties to one another for our collective well-being without becoming mired in moralistic assumptions about personal blame.

Most developments regarding social rights and duties will be the result of legislation. But constitutional developments also will have a role to play, though finding formal constitutional grounding for developing ideas about social rights and responsibilities will be unusually challenging. Over the next decade, I anticipate that mining prospects under state constitutions rather than the federal Constitution will likely be the most productive alternative.

Article 1, Section 1 of the California Constitution states: “All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.” I want to call attention, just briefly, to the last phrase—“pursuing and obtaining safety, happiness and privacy.” “Privacy” as an explicit right was added to the California Constitution in 1972 and has been much litigated, particularly with respect to the opportunities to obtain abor-

129. My Hastings colleague, former Justice Joseph Grodin of the California Supreme Court, reminded me of the terms of this provision in casual discussion during the drafting of this article.
tions.\textsuperscript{130} It is what I have called a civil right because it sets limits on when and how the state interferes in the lives and choices of individuals. Safety is probably a reference to the core role of the state, in Hobbesian and Lockean terms, to provide basic civil security. But, what does "happiness" suggest? It has not really been much litigated.

For Hobbes and Locke, our liberal philosophical forebears, happiness was mainly the absence of pain—a not too promising concept. As an alternative, I would like to think that the intended meaning goes back to Aristotle and the classic Greeks, where happiness meant flourishment. In modern psychological terms, we might think about not only how to meet our fundamental subsistence needs but also opportunities for self-actualization—opportunities for all of us to realize our full potential in accordance with our special, individual talents.\textsuperscript{131} While I have no reason to believe that happiness will be given concrete constitutional meaning soon or ever, it does raise an intriguing possibility for how to give guidance to the resolution of conflicts among competing family, work, income and moral policies that for so long have bedeviled our attempts to address problems of poverty and the needs of poor families.

Ronald Reagan put his fingers on the pulse of America and set the country on a direction of undoing the New Deal and progressive 20th century liberalism. Dissenting academics and activists have not yet found the way to put us back on track as a nation committed to promoting for all people optimal opportunities to flourish and to contribute to our collective well-being. Out of our liberal political tradition, we need to come up with concepts and approaches that help us address the common good in terms which can be heard as common sense by a broad spectrum of the population.

No one should be cast into or left in the wilderness. Our fates inevitably are intertwined. Welfare reform this time around poses a formidable challenge for all of us and for our future political development. Merely checking its excesses will not suffice.

\textsuperscript{130} American Academy of Pediatrics v. Lungren, 12 Cal. 4th 1007 (1996); Committee to Defend Reproductive Rights v. Myers, 29 Cal. 3d 252 (1981). The current analytic framework used by the California Supreme Court to determine violations of the right of privacy was adopted in Hill v. National Collegiate Athletic Ass'n, 7 Cal. 4th 1 (1994).

\textsuperscript{131} See supra note 69.