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## The Burden of History Haunts Current Welfare Reform

Mary Ann Mason\*

Professor Aaronson suggests that, as a nation, we do not have an articulated set of social rights and that our current confusion about welfare, specifically AFDC,<sup>1</sup> illustrates this deficiency.<sup>2</sup> He recommends that we develop a political vocabulary which speaks in terms of the common good, not group interests, and addresses the notion of universal rights and responsibilities.<sup>3</sup> He notes that European countries manifest a much stronger commitment to the common good, as expressed in a wide range of universal entitlements.<sup>4</sup>

I suggest that we must look to the whole of American history to understand the limits of our political culture, why we have not followed Europe in developing a commitment to social welfare, and why we are unlikely to do so in the future. Our history has unique themes that separate us from Europe. An exploration of these themes can help us understand why we do not have a well articulated concept of social rights and why our current debate on welfare reform is so firmly fixed on unwed mothers—more specifically, African American unwed mothers. I suggest that deep irrational chords in the American psyche are tapped when dealing with AFDC. These irrational chords can be traced to four separate, but intertwined, historical themes: first, the unique character of the American trade union movement; second, our political and social tradition of dealing

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\* Ms. Mason, J.D., Ph.D., is an associate professor of law and social welfare at the School of Social Welfare, University of California, Berkeley.

1. Aid to Families With Dependent Children. Social Security Act of 1935, tit. IV, § 401, 49 Stat. 627 (current version at 42 U.S.C. §§ 601-617) (1994) (repealed by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, 110 Stat. 2105 (1996), which becomes effective July 1, 1997).

2. Mark N. Aaronson, *Scapegoating the Poor*, 7 HASTINGS WOMEN'S L.J. 213, 218 (1996).

3. *Id.* at 218.

4. *Id.* at 251.

with illegitimacy; third, racism; and finally, our historical attitudes toward children.

Social rights talk has never been popular in America. The American trade union movement was largely shaped by the pragmatic craft unionism of the American Federation of Labor and not the visionary socialist movement that drove European trade unions.<sup>5</sup> Samuel Gompers, the undisputed leader of the early trade union movement, was a special interest pragmatist. He demanded bread and butter gains for his craft union members and was completely uninterested in redistributing wealth or challenging class structure, as compared to his European counterparts who fomented revolution in nearly all European countries.<sup>6</sup> America's trade union workers were for the most part not interested in eliminating the wealthy because every worker believed that one day his son or daughter could become rich.<sup>7</sup> Europeans, long limited by a rigid class structure and restricted opportunities, did not believe in this possibility.<sup>8</sup> Consistent with their faith in upward mobility, neither Gompers nor his followers were soft on the poor.<sup>9</sup> They bought the capitalist vision that the poor were poor because they were weak and probably biologically inferior.<sup>10</sup>

Therefore, while European countries, beginning in the 1920s and stretching into the post-World War II era, rapidly developed social welfare states with universal entitlements, America, even under the New Deal, took only the smallest of steps by introducing Social Security. Our government did not offer universal medical care or a basic level of guaranteed economic security. Even Social Security was presented as a scheme for the working man to make contributions for himself and his family against old age or a rainy day; it was not viewed as an entitlement for the undeserving poor.<sup>11</sup> The only mothers who received Social Security benefits for the aid of dependent children were widows of working men.<sup>12</sup>

The second relevant historical theme, which serves as an important subtext of the current debates on AFDC, is the American attitude toward illegitimacy. We are largely a nation of immigrants. Young people, both young men and young women, often immigrated to America by themselves, without parents or close families to supervise them. Beginning with the founding of the Chesapeake colonies in the 17th century, many children and

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5. CARL N. DEGLER, *OUT OF OUR PAST* 263 (1970).

6. *Id.* at 268-70.

7. *See id.* at 265.

8. *Id.* at 270-72.

9. RICHARD HOFSTADTER, *SOCIAL DARWINISM IN AMERICAN THOUGHT* 13 (1948).

10. *Id.* at 14.

11. DEGLER, *supra* note 5, at 388.

12. *See* JUNE AXINN & HERMAN LEVIN, *SOCIAL WELFARE: A HISTORY OF THE AMERICAN RESPONSE TO NEED* 144 (1992).

young teens immigrated as indentured servants.<sup>13</sup> The young girls usually were put to service in someone's home where they were vulnerable to sexual exploitation.<sup>14</sup> Severe laws were promulgated to punish women and men who engaged in sexual activity outside of marriage, activity that became obvious with the birth of a baby.<sup>15</sup> We may think of Hester Prynne in the *Scarlet Letter* and associate New England Puritans with irrational anti-sex proclivities, but illegitimacy was regulated or punished just as severely, if not more so, in the non-Puritan southern colonies.<sup>16</sup> Babies born out-of-wedlock were considered *filius nulus*, child of no family, and neither the mother nor the father had a right to custody.<sup>17</sup> These babies were usually taken away from their mothers by the town's law officials and given to *worthy* families.<sup>18</sup> In addition, mothers, and less often fathers, were whipped and fined for their transgressions. Social and legal persecution of illegitimacy persisted, along with the continuing waves of unchaperoned teenage immigrants.<sup>19</sup> Until the nineteenth century, an unwed mother had no legal right to request custody.<sup>20</sup> Even when recognized by law, custody was granted only where the mother could demonstrate that she was able to support her child.<sup>21</sup> It was not until the 1960s, did America, under the auspices of AFDC, decide to support the right of an unwed mother to keep her child.<sup>22</sup>

In fact, until recently, America's policies for controlling illegitimacy were extremely successful. While it is difficult to obtain accurate historical figures regarding out-of-wedlock births, during one of the greatest waves of immigration in 1915, the percentage of children born out of wedlock was estimated at 1.8%.<sup>23</sup> Our current rate approaches thirty percent<sup>24</sup> and represents a breakdown of tight historical social control. The American public perceives the fact that most mothers on AFDC are unwed when their

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13. RICHARD B. MORRIS, *GOVERNMENT AND LABOR IN EARLY AMERICA* 391 (1946).

14. See MARY ANN MASON, *FROM FATHER'S PROPERTY TO CHILDREN'S RIGHTS: A HISTORY OF CHILD CUSTODY IN AMERICA* 27 (1994).

15. *Id.* at 27-28.

16. *Id.* at 26.

17. *Id.* at 24.

18. *Id.*

19. *Id.* at 68.

20. *Id.* at 24.

21. *Id.* at 72.

22. *Id.* at 148.

23. EMMA O. LUNDBERG & KATHARINE F. LENROOT, *CHILDREN'S BUREAU, U.S. DEP'T OF LABOR, PUB. NO. 66, ILLEGITIMACY AS A CHILD WELFARE PROBLEM* 26 (1920).

24. Margaret L. Udansky, *Ideas and Trends: Single Motherhood: Stereotypes vs. Statistics*, N.Y. TIMES, Feb. 11, 1996 at A4 (referring to the January 1996 National Center for Health Statistics at the U.S. Department of Health and Human Services). See also *Prepared Rising Illegitimacy, Poverty, and Dependence in American Society*, FED. NEWS SERVICE, Mar. 12, 1996, available in LEXIS, Nexis, FEDNEW File.

baby is born to be a national crisis. This fact also raises old fears stemming from this immigrant nation's anxiety about uncontrolled sexuality.

The third historical theme that underlies the current debate on AFDC is racism. Many Americans equate welfare with paying black women to have babies, and in fact, a high percentage of AFDC mothers are African American.<sup>25</sup> This fact strikes a deep and bitter chord in America's shared historical experience. It harkens back to the slavery apologists in the nineteenth century who argued that their African slaves must be taken care of, for they could not survive outside the protected confines of slavery. It evokes the legend of slave-breeding where the exploitation of women slaves increased the wealth of planters.<sup>26</sup> As a nation, we have never come to terms with our dark history of slavery and the entrenched racism it has produced.<sup>27</sup> It prompts the usually unspoken attitudes that are the subtext of the debates on AFDC. The way in which racism permeates our current political debate is a deep and compelling problem — to explore it deserves a whole forum unto itself. For now, let us just point out that historically embedded racism plays a critical role in our welfare debates; a role that is often neither acknowledged nor even understood by the participants.

Finally, we come to children, on whom much of the explicit text of the welfare debate focuses. American sentimentality regarding children is recent, primarily a twentieth century phenomenon.<sup>28</sup> Until the second half of the nineteenth century, children were treated by society primarily as economic assets.<sup>29</sup> Children could work, and this was a labor hungry nation. Individual parents may have loved their children, but they put them to work. There was a no-nonsense attitude about redistributing to others the labor of children whose parents could not support them.<sup>30</sup>

In the colonial era, communities apprenticed poor children and even infants of parents who could not afford their care.<sup>31</sup> They were indentured by contract to a master, usually a farmer, who maintained them in exchange for their future services. Later they were "placed-out" — taken from the streets of eastern cities and sent to far away western farms, for example.<sup>32</sup> Thus, it is not surprising that America has a weaker tradition of orphanages compared to Europe, for we were more likely to put our children to work.

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25. Sue Kirchhoff, *Welfare Mothers to be Poorer, Have More Children*, REUTERS, Mar. 2, 1995, available in LEXIS, Nexis Library, REUNA File. See also Ramon McLeod, *Two-Thirds of AFDC Moms Unmarried at First Childbirth*, S.F. CHRON., Mar. 3, 1995, at D3.

26. See J.G. RANDALL & DAVID DONALD, CIVIL WAR AND RECONSTRUCTION 394-95 (1969).

27. See, e.g., W.D. JORDAN, WHITE OVER BLACK (1968).

28. MASON, *supra* note 14, at 86.

29. *Id.* at 3.

30. *Id.* at 33.

31. *Id.* at 33.

32. *Id.* at 78.

Only when agricultural labor became less essential and the working population moved from farms to factories did America develop a sentimental attitude toward our children. Factories were filled with immigrant workers who ultimately joined unions to drive out child labor.

The concept of "the best interests of the child" appeared only in the second half of the nineteenth century as their labor value decreased. At first, this interest emerged in the context of private law disputes between divorcing couples.<sup>33</sup> Toward the end of the nineteenth century, mothers as nurturers, rather than fathers as supervisors of labor, became accepted as the natural custodians of children in the event of divorce.<sup>34</sup>

For poor children, the government did not fully acknowledge the importance of a mother's nurturing until even later. It was not until 1911, with the introduction of mothers' pensions, that state governments began committing themselves to supporting poor mothers and children rather than separating them.<sup>35</sup> However, this support was limited to widows, who, as opposed to unwed or divorced mothers, society considered deserving of such support.<sup>36</sup> The 1935 Social Security law continued to reflect this attitude. It was not until the 1960s that Social Security, under the auspices of the subprogram AFDC, began to routinely include unwed and divorced mothers as recipients of government aid.<sup>37</sup>

How does an awareness of these unique historical themes contribute to the resolution of current heated disputes regarding the future of welfare? Does history shed any light on the present or provide a guide for the future? To my mind, history can help illuminate future paths in large part by exposing the restrictions on our perceptions that have been fixed by the past.

### Conclusion

Professor Aaronson calls for a reconsideration of the common good.<sup>38</sup> He would like for us, as a culture, to consider universal social rights and not restrict the discussion of entitlements to the context of poverty.<sup>39</sup> His ideas are admirable and certainly raise the level of current political discourse. These ideas, however, do not stand much chance in affecting the reality outside symposiums. It is not just our current political climate that limits the discussion suggested by Professor Aaronson; it is our shared

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33. *Id.* at 51.

34. *Id.* at 50.

35. *Id.* at 92.

36. *Id.* at 93.

37. AXINN & LEVIN, *supra* note 12, at 244.

38. Aaronson, *supra* note 2, at 218.

39. *Id.* at 252.

historical experience that leaves little room for talk about the common good or social entitlements.

The universal social rights to be pursued in our country should be those of children. Americans lately have come to think of children sentimentally and have come to embrace this conviction strongly. Concern for children may be the only common ground in our current debate. The most successful rhetoric in this latest round of welfare talks focuses on the needs of children. We may disapprove of their unwed mothers and harbor racist thoughts about the cause of their need, but no one wants to see children starve.

This may, in fact, be a time in our history, as traditional families are eroding, when the popular political vocabulary can embrace the notion of children's social rights. A commitment to rights such as the protective rights of a decent environment for children and their families, universal health care, higher education, and a serious effort toward achieving equality of opportunity could extend entitlements far beyond the skimpy bounds of current welfare coverage. In this effort, we would receive strong moral support from the international community, a forum where all advanced industrialized nations, except the United States, have endorsed the United Nations Convention on the Rights of Children.<sup>40</sup>

It is no coincidence that the one social entitlement recognized as constitutionally based is the right to education,<sup>41</sup> a right exercised only by children. Entitlements for children are acceptable to an extent that universal social rights for adults are not. As a nation, we by-passed that historical moment when sharing the wealth and establishing a fair society based on universal entitlements might have been possible, as it was in Europe. The best and only strategy which has a chance of winning in the future, is to bid for universal entitlements for children and in the course of doing so, provide benefits for their families as well.

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40. THE HANDBOOK OF CHILDREN'S RIGHTS 163 (Bob Franklin ed. 1995).

41. Plyer v. Doe, 457 U.S. 202 (1982).