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The Criminalization of Welfare: A Historical and Contemporary Analysis of Social Control for the Crime of Poverty

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Chapter 4

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Poverty in the United States, and the historical treatment of poor persons through public relief, has often been understood through three important conditions: the definition of legitimate work, norms of what constitutes a family, and access to assistance. For example, in the early days of the modern social welfare system, created during the Great Depression of the 1930s and 1940s, relief for the poor was extended in the absence of a breadwinner to support families and was considered supplemental to other family- and community-based support systems. Historically, public policy regarding the poor has been based on the source of the problem, but even then, government assistance has been conditional and restrictive.

This article has two general goals. The first aim is to discuss an outline of punitive and restrictive measures developed over the history of social welfare policy in the United States. Beginning with the New Deal's "Aid to Dependent Children" and continuing through the current welfare policies under the "Temporary Aid for Needy Families" program, broad connections between social control and welfare are explored. Second, an expanded discussion of this most recent public welfare program in the United States will examine its connections to the criminal justice system, which controls certain work and family patterns.

Modern Social Welfare in the United States

In October 1929, the United States experienced the start of a severe depression that would eventually destabilize families, the economy, and overall social order. In response, the federal government created social insurance and welfare programs to target escalating unemployment, destitution of the elderly, and social unrest. In response to the "Great Depression," President Roosevelt fostered a "New Deal" to bolster the economy by creating employment opportunities and by taking a new and significant role in the provision of social welfare. Upon signing the Social Security Act of 1935 into law, President Roosevelt stated:

> We can never insure one hundred percent of the population against one hundred percent of the hazards and vicissitudes of life, but we have tried to frame a law which will give some measure of protection to the average citizen and to his family against the loss of a job and against poverty-ridden old age.[1]

Practically, the New Deal created a distinction between the deserving and 'undeserving' poor based on how family breadwinners were connected to work and the labor market. Relief for the deserving poor was designated for families whose male breadwinner lost their employment in organized trades or companies most beneficial to the overall economy, typically in large manufacturing and industrial companies. The undeserving poor, whether employed in lesser agricultural positions, as domestic servants, or self-employed, were not included in the social insurance programs, and often had a hard time making ends meet. Unemployed, these persons were often destitute. Unemployment insurance covered families whose breadwinners were often white men, where the marginal undeserving poor were, more often than not, African-American men and women. Poor married mothers, regardless of race, entered low-wage, often servant-like labor in private homes, farms, or small factories when they needed extra income to make ends meet; this labor became vital as their husbands became unemployed, they exhausted their benefits, or their wages were insufficient to meet family needs.[2]

The ADC program made relief available for the care of dependent children, not their mothers, and was restricted for mother-only, *fatherless* families; the first eligibility test for ADC was the absence of a male breadwinner. Single-mothers were continually judged by local welfare administrators to determine the conditions for the receipt of aid. Restrictions such as residency requirements and man-in-the-house rules, as well as suitable home policies that limited aid due to out-of-wedlock births, reinforced the oppressed position of

non-breadwinners and uninsured laborers. Such policies not only strictly controlled mothers through eligibility requirements, but they also gave welfare administrators the ability to define what constituted a "normal" family.[3] Because most moral restrictions targeted the living situations common to African-American families, states found ways to systemically deny ADC to black women and their children. The normative family model, with a dedicated male breadwinner and female homemaker, was unobtainable for poor and lower-class families regardless of marital status and race. As a policy, ADC represented the institutionalization of public paternalism.[4]

Moreover, if a job was available, ADC reinforced work as the first line of defense for poor women and the needs of their families.[5] The entrance of married women into paid labor exposed how the normative family model was outside of the grasp of poor mothers and their ability to make ends meet. By minimizing dependency through employment, local welfare systems could ensure that assistance went to those homes best suited for proper socialization of the next generation.[6] Simultaneously, by limiting relief for certain families, the welfare system sustained a low-wage, marginal labor force to support economic development.[7]

The New Deal, therefore, created a distinction in relief based on the status of the family breadwinner and promoted a particular family structure composed of a male in the public workforce and a female as a private family caregiver. Most important, the federal government supported this normative family model by sanctioning relief and aid, while making work in marginalized labor markets the best form of welfare for families living outside of this ideal.[8] Welfare in the 1930s and 1940s was politically and socially unpopular, and families receiving assistance were hindered by social stigmas that treated public relief recipients as second-class citizens. Most families would have rather worked and subsisted on their own, a trait still shared by contemporary welfare recipients.[9] Yet, even as the economy came out of the depression and more families found it easier to subsist independently, access to jobs and welfare relief was used as a social control mechanism to connect poor families with adequate means for consumption.[10]

A major change to the U.S. welfare system came in 1962 when ADC was expanded to the Aid for Families with Dependent Children (ADFC) program. As a catalyst to this change, in 1959, the federal government established an index of poverty in order to count the number of poor individuals and families and ensure proper relief expenditures.[11] By determining an adequate, but minimal, food budget for families of different sizes, this poverty measure, for the first time, created a statistical portrait of the poor. Moreover, this information allowed the federal government, social scientists, and citizens of the conditions for poor families from city-centers to rural Appalachia.[12] Consequently, the federal government determined that mothers and children were in need of relief, and the 1962 amendments incorporated the changing demographics of the needy by balancing a new approach to ending poverty with political tactics to lessen public criticism.[13]

Expanded relief under AFDC also targeted what was considered "proper" moral, family, and work expectations for marginalized families unable to meet their consumption needs, especially those headed by single-mothers who faced dire situations for subsistence. By targeting families, these amendments encouraged "proper" marriage and family formation, and, in exchange for benefits, included formal and voluntary work programs for adult recipients. Coinciding with increasingly vocal citizens' movements for economic equality, AFDC also represented the first move by the federal government to address civil rights challenges to historically institutionalized racism.[14]

Previously, for example, black fathers unable to find jobs and provide support often deserted their families to make them eligible for assistance, a situation that promoted the view of black families as unstable and insolvent.[15] Now with AFDC, the focus shifted to the increase in never-married African-American single-mother families on public assistance. As assistance rolls increased by adding numbers of the undeserving poor, and public welfare expenditures escalated, by the late 1960s, mounting backlash by the public challenged the expanding coverage of the welfare state. Welfare was seen as income redistribution which resulted in conflict between welfare families and the broader working and middle classes who provided for themselves by participating in the labor market.[16] In response, the federal government slowly began to alter how recipients became eligible for relief. For example, in the late 1960s, the Johnson administration's War on Poverty linked expanded public assistance with increased access to employment. Moreover, when the economy began to slow in the early 1970s, President Nixon's administration introduced work requirements under the Work Incentives Program (WIN) linking low-wage work with relief. The U.S. economy stalled significantly through the 1970s, perpetuating criticism of governmental aid programs as inefficient and unproductive. AFDC received much of this scrutiny as more families sought relief as jobs were increasingly harder to come by. Many people considered cash assistance wasteful, and due to a highly publicized welfare fraud case in 1978, recipients were redefined as "welfare queens" who would rather not work, but live off the contributions of others.[17]

The 1980s, and the election of Ronald Reagan, exacerbated the era of welfare cuts and development of more punitive social control measures. First, in 1981, funding for AFDC was cut and eligibility requirements were made more stringent, and by the late 1980s, the amount of assistance for families were reduced in favor of work requirements for both the deserving and undeserving poor.[18] The passage of the Family Support Act in 1988 further amended AFDC by replacing WIN with the Jobs Opportunities and Basic Skills Training (JOBS) program. JOBS required welfare recipients to participate in education, training, and job search activities as a condition of receiving AFDC.[19]

Likewise, the structure of families also contributed to the increase in public disfavor for poverty programs. In the 1930s and 1940s, under ADC, single-mother families were more likely the consequence of the death or desertion of male breadwinners, conditions that brought more favorable sentiments from the general public. However, under AFDC, due to changing demographics and labor market conditions, most single-mother families from the mid-1970s to the present are formed out of divorced couples or out-of-wedlock births, situations that counter the normative family and carry much less favor both publically and politically. Government officials, including President Reagan, policymakers, think-tanks, research institutions, and the news media, contradicted substantial research and "seized on changes in family structure and urban poverty to construct an unflattering and unsubstantiated portrait of the nation's poor," and cultivated the image of fraudulent welfare recipients as a "crucible of waste."[20]

A more punitive criminal justice system emerged in the 1970s and 1980s. In combination with the backlash against social welfare programs and perceptions of welfare fraud by an undeserving poor population, conditions for the convergence to control welfare and crime were set.[21] For example, the institutionalization of the "War on Drugs" and implicitly targeted sanctioning provisions, like mandatory minimums and determinant sentencing, the federal government sought to target the poor, especially the urban underclass.[22] These perceptions of an immoral culture fostered in environments of crime and welfare dependency resulted in, from 1970 through 1995, the five-fold increase in the number of non-white inmates in federal prisons and tripling in the number of inmates convicted of drug offenses.[23]

Welfare Reform: Ending Welfare as We Know It

In 1996, after decades of fading political and public support for welfare programs, President Clinton endorsed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) by stating that, "this legislation provides an historic opportunity to end welfare as we know it and transform our broken welfare system by promoting the fundamental values of work, responsibility, and family."[24]

PRWORA reinvented the U.S. welfare system by replacing AFDC with the Temporary Aid for Needy Families (TANF) program.[25] TANF ended categorical federal assistance by creating block grants for states to design and implement welfare services within the new federal guidelines. By taking the federal government out of direct relief, the block grants allowed states to tailor their programs within locally specific social, political, and economic conditions. For example, TANF imposed on families life-time limits for aid of no more than 60 months and offered states the opportunity to set shorter time-limits, an opportunity taken advantage of by several states.[26]

TANF also redefined how a family could access aid. For example, TANF includes a family cap, limiting assistance to mothers who have children out of wedlock while receiving assistance. In addition, as a provision of aid, able-bodied recipients were forced to work or attend school or job training programs. The preference for states was labor power and "work-first" rules, which often pulled recipients out of support programs. By favoring low-wage employment over education and training, work-first measures put recipients in direct competition with working and middle-class laborers for jobs that needed few skills. These actions did little to build or supplement the recipients' job skills or economic capital, and flooded the labor market with workers, thus pushing wages lower.[27]

Finally, PRWORA penalized states if specific time-limits were missed or work or training benchmarks were not met. In response, states developed harsh roll-reduction mechanisms to bar some people from relief all together, shrink the number of current recipients, and increase those at-least marginally employed.[28] In effect, TANF built a welfare system in which recipients are thrust into inadequate low-wage labor markets, subjected to punitive state adaptations of welfare programs, and receive minimal, typically inadequate, support services. Welfare became *workfare*, where means of subsistence and consumption were left to the self-sufficiency and responsibility of families.

Amendments passed by the President George W. Bush administration established mechanisms to connecting personal responsibility and norms of family formation through marriage promotion and responsible fatherhood initiatives. In addition to work-first measures, TANF's development continued the normative ideal that marriage and a certain family structure is the best antidote to poverty. For example, while original TANF block-grants could be used in-part for marriage promotion activities, these new amendments mandated that states incorporate marriage promotion programming into their welfare services, including means to prepare men for family formation.[29] Sanctions were introduced if states did not create such programs to endorse the formation of traditional families, even when not in the best interest of the individual members.[30] Some experts argued that such promotions compelled poor single mothers to choose between poverty, along with concerns about their ability to adequately providing for their children, and the decision of a suitable partner and family structure.[31]

Predictably, the specific provisions and conditions of TANF imposed by the federal government on states fall to the recipients themselves, as block-grants and additional funds are conditioned by states' efforts to reduce the number of families receiving aid. The penalties for states not meeting federal programmatic thresholds have generated punitive sanctions—the criminalization of welfare—for families who fail to comply with these proper norms.

TANF and Criminal Justice: Declaring War on the Poor

In 1994, two years prior to the passage of TANF, President Clinton signed the Violent Crime Control and Law Enforcement Act.[32] This bill increased funding for federal prisons, broadened the list of offenses eligible for capital punishment, mandated life in prison for three violent or drug trafficking crimes, developed stiffer penalties for drug crimes committed by gang members, and lowered the age to 13 for which juveniles could be prosecuted for particular serious violent crimes. These policies built on the social control mechanisms of the preceding decades which resulted in the growth of non-white federal inmates, especially those convicted of drug offenses.[33] In addition, preceding the work-first mandate of TANF, the 1994 law prohibits awarding of Pell Grants for higher education to prisoners, restricting access to education and training for productive skills within the labor market, important resources for successful rehabilitation.[34]

Both contemporary welfare and criminal justice policies aim to control populations that fall out of normative patterns, converging on their use of punitive, determinant processing for offenders. The emergence of corrective sanctions, expressive justice, and the politicization of welfare fraud or cheating as criminal issues, have blurred the lines between relief and retribution.[35] As one expert asserted, current welfare policies were designed to punish the poor, particularly those who receive welfare, and to create a system to keep low-wage workers attached to the labor force."[36]

Patterns in the Criminalization of Welfare

The research related to the connections between TANF and the criminal justice system highlights three points: the use of sanctions and punishment as a deterrent, the stigmatization of poverty and crime; and use of welfare eligibility as a means of crime control.[37]

For example, administrative hurdles set out by the federal government allowed state and local officials to meet caseload reduction mandates through a process known as *diversion*. Failure to comply with the complicated system of rules, laws, and procedures meant that families were often in violation of welfare-to-work requirements. This not only allowed states to terminate families' aid, but in effect diversion translated into a system of disincentives and formal punishments. For example, because the process of receiving welfare required numerous steps, including numerous forms to be completed, background checks, and formal and informal interviews, many eligible families simply became discouraged with the process and did not complete the process.[38]

If recipients make it through the intake process, sanctions—the withdrawal of some or all cash or other benefits—function to punish non-compliance. However, researchers have found that the rules and regulations, which vary by state, are often misunderstood, withheld, or unwritten. Recipients may or may not know the "rules of the game," may find consecutive visits to the welfare office which result in inconsistent information being provided, or may discover that certain staff simply determine they are out of compliance without an adequate explanation.[39] For example, unclear rules for fulfilling the number of mandated work hours or missing a scheduled meeting with welfare case workers were grounds for termination of services. Moreover, some rules which control the autonomy of families create sanctions either through caps on relief regardless of the birth or new children or resisting marriage even in situations where the mother or her children could be at risk.[40]

Blurring the Line between Welfare and Crime

Formalizing sanctions for not complying with welfare rules and regulations has renewed the focus on recipients who are viewed as "welfare cheats" or who commit welfare fraud. When escalated to this level, the implication is that poverty and welfare can lead to crime, and thus the criminalization of welfare. The welfare system is increasingly used by states and localities as an extension of the criminal justice system.[41]

After 1996, for example, federal law allowed states to deny TANF benefits to any individual wanted by law enforcement officials due to parole violations or a felony warrant, or on probation from another governmental aid program. While these provisions may function to reduce the government's costs for providing aid to individuals with outstanding warrants, restricting benefits to needy families denies the "economic citizenship" of the poor.[42] Given that these rules remain applicable even after a felon completes their sentence, such treatment ensures the political, economic, social, and physical deprivation of those most in need.[43]

The moral and legal regulation of welfare populations has generated harsh institutional structures in the likeness of law enforcement and criminal proceedings. When AFDC was expanded in the 1960s, welfare workers and police together ensured the morality of the poor through "midnight raids" and "man-in-the-house" rules, provisions focused on controlling the proper lifestyle of women and their access to cash assistance. However, after 1996, the welfare system shifted this focus by increasingly allowing access to personal information by criminal justice system authorities. For instance, the utilization of welfare records by criminal investigators, biometric imaging and fingerprinting of welfare applicants, and mandatory criminal background checks at intake, neglect the privacy of poor families.[44]

Another way welfare relates to crime is through enhanced monitoring of welfare fraud. For example, PRWORA requires states to monitor recipient compliance with TANF assistance. Fraud, or cheating, can come in the form of falsifying application information, including one's identity, the wages of others in the household, or the presence and number of children. Fraud is also working in a legitimate job without correctly reporting this income or working for undocumented employers in efforts to ensure some subsistence by combining low wages and welfare assistance.[45]

Depending on the state, such persons can be pursued and charged criminally with fraud, whether or not they knew they were cheating the welfare system. Investigations into such actions have contributed to patterns of incarceration of TANF-eligible populations, where, as one expert noted, poor women of color who were receiving welfare and engaging in other forms of work constitute the fastest growing segment of the prison population.[46]

An additional point of convergence between the welfare and criminal justice systems is through the "War on Drugs." Rather than life-time bans for persons with a prior conviction of the use, possession, or the distribution of drugs, many states have attempted to rebrand the welfare office. While states have attempted to institute more randomized drug tests for current recipients, such efforts are argued to be a covert effort to reduce program participation levels, and to serve as a frontline of enforcement in the larger drug war.[47] In response to this trend, advocacy groups such as the American Civil Liberties Union and a myriad of policy analysis groups have challenged the legality of randomly drug testing welfare recipients.[48] Even as research has pointed out that the poor are no more likely to use illegal substances than the general population, the continual reformation of such proposals and emergence of pilot testing programs, suggests that public opinion about the relationship between poverty, welfare, and crime, remains a controversial topic that impacts public policy.[49]

Summary

Welfare and crime policy in the United States have produced a complicated system that can leave families more vulnerable than if imperfect welfare assistance was simply provided outright. The punitive welfare and criminal justice policies developed since the 1990s are distinguished by social control mechanisms that implicate the lives of those deemed undeserving of welfare relief.[50] By creating difficult hurdles during application procedures, sanctioning recipients for missing deadlines, the poor in general and welfare recipients in particular, are seen as contributing to the crime problem.[51]

Whether convicted through the criminal justice or the welfare system, high incarceration rates for men and women of color have contributed to diminished social, labor market, or private support for their families.[52] Such collateral consequences dramatically reduce job opportunities, even in the low-wage labor market, particularly for convicted felons, who may not be able to find adequate employment at all.[53]

In sum, while once an entitlement for needy persons to offer aid in the achievement of some level of subsistence, the modern welfare program appears to have become a system of social control, not social support. Such a system creates an incentive for some recipients to either engage in criminal activity in the absence of governmental assistance or establishes a system in which many recipients may find themselves facing criminal charges for welfare fraud.