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REVISIONIST HISTORY AND THE CONTRADICTIONS OF THE NEOLIBERAL WELFARE STATE

Sanford F. Schram

FELICE BATLAN, *WOMEN AND JUSTICE FOR THE POOR: A HISTORY OF LEGAL AID, 1863-1945* (CAMBRIDGE UNIVERSITY PRESS 2015). Pp. 250. HARDCOVER \$98.00. PAPERBACK \$33.99.

EVA BERTRAM, *THE WORKFARE STATE: PUBLIC ASSISTANCE POLITICS FROM THE NEW DEAL TO THE NEW DEMOCRATS* (UNIVERSITY OF PENNSYLVANIA PRESS 2015). Pp. 336. HARDCOVER \$75.00.

The welfare state as we know it was never quite what it was idealized to be, and now even that ideal is under assault. Today, a neoliberal political economy has eroded important features of the liberal welfare state. The welfare state ideal was in many ways the crowning achievement of liberal political economy as theory. And that ideal informed progressive policy change. From the Progressive Era of the late nineteenth century and early twentieth century, to the New Deal of President Franklin Delano Roosevelt during the Great Depression, through to President Lyndon Baines Johnson's Great Society of 1960s, periodic advances were made to expand the government's efforts to address issues of poverty and inequality. As a result, citizens were to be accorded not just civil and political rights but also social and economic entitlements. Citizens were given what theorists like T. H. Marshall called "social citizenship." In this way, the state would provide a bulwark against the workings of a capitalist system that could prove to be arbitrary and capricious in its treatment of ordinary people. As conceived in theory, it became ascendant citizens ought to be able to rely on the state for assistance as needed in order to help them address economic misfortunes and social marginalization.

This welfare state in practice, however, was never perfect. It was founded on class, race and gender biases that favored white, male workers who headed two-parent families. It served in many ways to buttress the existing capitalist political economy, founded as it was in alliance with the traditional family and the market economy. It reflected the class, race and gender biases of that family-market-state triad Hegel

emphasized as crucial for sustaining civilized society. Nonetheless, the actually existing welfare state served as the basis for creating a partial, if not entirely fully inclusionary, social citizenship. And over time, its biases were subject to revision to reduce the unfair advantages accorded white male workers.

However, with the changing economy of recent decades, where the economy is dramatically affected by the changes associated with globalization, technological change and other disruptive developments, a new neoliberal state has arisen. Neoliberalism is variously defined but at its core it posits a changed relationship between the state and the market. Neoliberalism blurs the boundary between the market and the state, brings market actors into the state as key decision-makers, and marketizes state operations to get them to operate more along lines consistent with market rationality so as to better buttress markets rather than the ordinary people affected by them. The liberal welfare state, which had been pushed for most forcefully first by progressives and then New Dealers, sheltered citizens from the vagaries of the domestic economy (even as it was structured in ways that reinforced the biases of the family-state-market system). The neoliberal state however now disciplines citizens to be market compliant in order to ensure domestic markets operate more efficiently to be more globally competitive. Times have changed and the welfare state has changed with them, for worse more so than better, especially for poor, low-income women—specifically single women of color with children.

Yet, it turns out the story is a bit more complicated. The welfare state in practice has always been vexed with biases that reinforced class, race and gender privilege. Further, the welfare state is not socialism; it never was an alternative to capitalism. Instead, it is an institution that has emerged within capitalist societies to ameliorate the worst effects of capitalism, but also to condition aid so as to promote participation in capitalist markets and to promote acting in ways consonant with market logic. In this sense, the social welfare state has always provided aid while imposing social control and vice versa. Social welfare programs in a capitalist society offer to provide aid as needed but also to promote behavior consonant with living under capitalism.¹ Social welfare, as Frances Fox Piven and Richard Cloward famously noted in their classic book *Regulating the Poor*, works at cross-purposes, alternating over time as political and economic conditions necessitated the providing of social assistance while imposing social control.² In this way, the poor can be made compliant and induced to go along with the imperatives of the existing political economy.³

The two books under review in this essay both reflect this more nuanced perspective on the contradictions of the liberal welfare state. Each in its own way shows the contradictions in liberal welfare state developments: legal aid for the poor (women and children) and cash assistance (for single mother headed families). In the process, these books do important work in furthering the revisionist interpretation that the welfare state was not some liberal utopian initiative that we lost and must get back to

1. *See generally* FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* (1971).

2. *Id.*

3. *Id.*

but instead was an alloyed good which we need to improve upon as we find ways to move beyond the excessively capitalist neoliberalized state that has emerged over the last 30 years.

Felice Batlan's incisive and concisely written book takes us back to the early part of this history—actually beginning before the Progressive Era of the late nineteenth and early twentieth centuries—to look at how women, especially women with children, came to be recognized as deserving of rights under the law and deserving of counsel when they could not afford it.⁴ She studies the challenges, victories and defeats associated with the development of legal aid, surveying the years 1863 to 1945.⁵ Batlan traces the origins of legal aid for the poor to the late nineteenth century and the heroic efforts of leaders of women's organizations who saw the need for legal assistance for women and their children as part of the larger progressive reform agenda. In cities such as New York, Philadelphia, Chicago and Boston in particular, but elsewhere as well, upper and middle-class women reformers pushed to aid women subject to domestic violence, destitution and other challenges. As is often the case with women's efforts when they prove noteworthy for their effectiveness, their initial successes led to men assuming positions of leadership and taking the cause to another level. In the process, again, in a familiar pattern in the history of reformism, pressures to professionalize the effort led it away from its grassroots, away from its close ties to social work and away from related efforts to provide needed care for the clients at risk of suffering the worst effects of their mistreatment, often at the hands of intimate partners. In the process of telling this story, Batlan offers an important corrective to the dominant male-identified history of legal aid so as to highlight the centrality of female heroes who first animated the movement as activists and then provided critical leadership often in the role of legal professionals.⁶

Yet, Batlan's story is a nuanced one that points to a theme in today's revisionism regarding the history of the welfare state. She writes:

Legal aid also could be conservative: legal aid organizations often disciplined workers to fit into a capitalist, wage-based economy, and some of them put tremendous pressure on men to become steady breadwinners. Additionally, many organizations refused to handle divorce case and failed to see wife beating as a serious problem. Instead, they worked to uphold the prerogatives of husbands. Such organizations were also hesitant to take the claims of domestic servants, thereby shielding the labor practices of elites. At moments, legal aid providers openly expressed a profound dislike for and distrust of their clients. They might deplore urban poverty, but few organizations before the 1960s used the law to promote structural reforms that might eliminate either poverty or white supremacy. Instead, legal aid organizations were often founded in response to poor people's political and labor activities and represented an attempt to placate workers and elide class conflict.⁷

4. *See generally* FELICE BATLAN, *WOMEN AND JUSTICE FOR THE POOR: A HISTORY OF LEGAL AID, 1863-1945* (2015).

5. *Id.*

6. *Id.*

7. *Id.* at 13.

In the process of revising the dominant narrative on the origins and development of legal aid in the United States from the late nineteenth century until the end of World War II, Batlan shows that legal aid was a women's movement that offered social as well as legal assistance often provided effectively by female non-lawyers. However, with its successes came its domestication, its professionalization, and its inevitable cooptation by mostly male lawyers (led by men like Reginald Herbert Smith) who ended up helping people in ways that could also be profoundly conservative.⁸ Legal assistance came to be structured with the embedded biases of the emerging liberal welfare state. It helped people access basic rights to cope with their dire circumstance but in ways that imposed social control even as it promoted social welfare. As Batlan aptly notes, eventually "[e]lite lawyers (Charles Evan Hughes is a prominent example) could support legal aid because it posed no economic threat to them."⁹

Jane Addams, as the leader of women's activism for much of this period, came to understand early on the contradictions of aiding the poor. Her first book, *Democracy and Social Ethics*, begins with a critique of the patronizing approach of the elite women in charitable societies. "Friendly visitors" thought their calling was to teach the poor how to be like them.¹⁰ Minnie Low (the "Jewish Jane Addams" as some referred to her) would help develop the legal aid movement in ways that sought to resist the paternalism implicit in the contradictions of social assistance.¹¹ Yet, compromises were inevitable if legal aid were to be seen as part of the emerging reform movement that institutionalized assistance in the welfare state. Ruth Miner, as the only female lawyer on the executive committee of the National Association of Legal Aid Organizations, did good work in pushing the need to take divorce cases, but this was well short of helping women in poverty address their most fundamental needs.¹² Over time, the concept of "social necessity" proved too malleable and legal aid was limited in the extent it could stand up for women living in poverty. Legal aid continued to struggle with pressures to disassociate itself from social work, social welfare and fights for social justice. Batlan notes that these tensions continued in the 1960s when legal aid became an important national initiative as part of the Johnson Administration's War on Poverty.¹³ We might add that these contradictions persist today, as legal aid units around the country are muzzled by court decisions limiting their political participation and relegating them to taking client cases on a limited number of fronts concerning evictions in housing court, juvenile cases in family court, child welfare cases before administrators and sundry other situations. Legal aid does good work but it does that good work within the limits of the existing socio-economic order and the class-race-gender system as it has evolved. It ends up helping impose social control even as it seeks to provide social assistance.

Eva Bertram's book, *The Workfare State: Public Assistance Politics from the New Deal*

8. *Id.* at 135.

9. BATLAN, *supra* note 4, at 152.

10. *See Generally* JANE ADAMS, *DEMOCRACY AND SOCIAL ETHICS* (1902).

11. BATLAN, *supra* note 4, at 71.

12. *Id.* at 206.

13. BATLAN, *supra* note 4, at 215.

to the *New Democrats*, is also an important piece of revisionist history. It is well-written and extremely well-documented. Its thesis is that we need to question the simple story that we went from a war on poverty to a war on the poor. Bertram questions the assumption that we were once a liberal country that supported the poor with needed assistance to the poor only to switch to disciplining the poor to be market compliant.¹⁴ Instead, welfare, in the form of cash assistance to the poor, was always structured to not undermine work ethic. In fact, Democrats often were the most keen to make sure that welfare was not undermining the work principle, especially if that would contaminate the positive image of Social Security as providing benefits that had been earned. Bertram traces efforts from the New Deal on to contain welfare and make it operate to promote work rather than offer an alternative. The push away from welfare to what today is called “workfare” was a long time in coming and actually a bi-partisan effort (even if most vociferously led by Republicans, it originates in the efforts of Democrats concerned to show that welfare was consistent with the work principle).¹⁵

Bertram’s focus is on Aid to Families with Dependent Children (AFDC), which came to be the program most commonly associated with the term welfare. AFDC emerged from the Aid to Dependent Children program of the Social Security Act of 1935 and was seen at first to be a residual program. Roosevelt himself assumed it would pass away over time as jobs returned with what he hoped would be the soon-to-be end of the Great Depression. Yet, the Great Depression did not end anywhere as soon as people had hoped and welfare became a permanent feature of the system of social assistance that had emerged in its wake.¹⁶ Though small, the program represented an improvement over the Mothers’ Pensions that states had initiated at the outset of the twentieth century. States that took the federal funding were then mandated to set up assistance programs for every county, standardize levels of assistance and improve benefit levels (using money from the federal government).¹⁷ Still, AFDC had severe shortcomings. As with Mothers’ Pensions, welfare administrators generally discouraged people to apply—especially non-whites. AFDC was also mostly limited to mothers with children; families with a male parent were often deemed undeserving of assistance on the grounds that the man should be providing for the family. To police such standards, AFDC workers would check in to make sure there was not a male in the house and that the mother could provide a “suitable home.” Often, this led to African-American mothers being judged unworthy of benefits (especially in the South).¹⁸

AFDC was a relatively minor program for most of the first three decades of its existence. The federal government worked with the states that administered it to share its costs but also to limit who could get assistance (especially in the South where

14. EVA BERTRAM, *THE WORKFARE STATE: PUBLIC ASSISTANCE POLITICS FROM THE NEW DEAL TO THE NEW DEMOCRATS* 4 (2015).

15. *Id.*

16. *Id.* at 17.

17. *Id.* at 22.

18. *Id.* at 24-25.

racial discrimination in the implementation of the program and the provision of aid was rampant and even institutionalized).¹⁹ Protecting the reputation of Social Security was part of the equation. Significant change, however, came in the 1960s as the Welfare Rights Movement gained steam and barriers to obtaining cash assistance fell. With recipients occupying welfare offices, court cases struck down discriminatory practices.²⁰ More and more African Americans began receiving access to welfare. Richard Nixon and other political elites, seeking to stoke a white backlash for electoral gain, played up incipient perceptions of AFDC as a “black program” used by people hostile to white middle-class norms of work and family.²¹ Conservatives successfully introduced invasive restrictions—including requiring mothers to identify the father of their children and increasing unannounced inspections to enforce “man-in-the-house” rules—and many states froze benefit levels. If most eligible families were then receiving benefits, recipients confronted a welfare bureaucracy that dispensed increasingly meager assistance and often treated them poorly. By the mid-1970s, the economic crisis was squeezing government budgets (particularly in cities), adding pressure to slow the growth in welfare rolls. Restrictions on immigrants, especially undocumented immigrants, became common—led by states like California and New York—where migration from other states (and, to a lesser extent, abroad) stoked fears about people moving in just to get welfare benefits. In California, then-Governor Ronald Reagan popularized the term “welfare queen” to describe women with children who allegedly wanted to live off state-funded subsidies.²²

Reagan’s contribution to the anti-welfare cause was more discursive than substantive: as president, he secured more significant cuts to other social programs for the poor, particularly food stamps and housing assistance. Nonetheless, he had a keen interest in demonizing low-income families that relied on AFDC, and he signed legislation in 1981 that reduced beneficiaries’ ability to combine work and welfare.²³

Still, those clamoring for a vastly reduced welfare program—or its complete abolition, as Charles Murray’s influential 1984 book *Losing Ground* proposed²⁴—were left disappointed. The Family Support Act of 1988 encouraged work and offered job training, but did not require it.²⁵ In fact, the legislation led to increases in the number of welfare recipients (probably because many low-income parents desperately wanted help getting a decent-paying job).

In the 1990s, pressure from elites to scrap welfare continued to mount, especially among Republicans. The 1994 Contract with America—the policy document of the so-called Gingrich Revolution—called for dismantling welfare and replacing it with a welfare-to-work program.²⁶ For their part, Third Way “New Democrats” like

19. BERTRAM, *supra* note 14, at 25.

20. *Id.* at 41.

21. *Id.* at 71-72.

22. *Id.* at 134-135.

23. *Id.* at 137.

24. CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY 1950-1980* (1984).

25. BERTRAM, *supra* note 14, at 152.

26. *Id.* at 189.

Bill Clinton saw ending welfare as a way to establish their centrist bona fides and distance themselves from “tax-and-spend” liberalism. In August 1996, after vetoing two particularly draconian GOP versions, Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act that imposed time limits on the receipt of assistance, instituted strict work requirements, and ramped up financial penalties known as sanctions for failure to comply with welfare-to-work rules.²⁷ Quickly declared a success for massively reducing the numbers of recipients, in recent years it has come under growing criticism for leaving many families in need of assistance without the help they desperately need. “Disconnected mothers” who receive neither welfare nor wages have grown to be about a fifth of all poor mothers and the numbers of people living in deep poverty (below fifty percent of the poverty line) or worse “extreme” poverty (less than \$2.00 per person a day) have grown.

Bertram’s revisionism is an important intervention to this sad saga. Her scholarship here is focused on documenting three critical points. First, the shift to workfare was a long-term Democratic project that was designed to make welfare credible in an increasingly conservative environment. Its origins predate Clinton and his immediate predecessors. From the Social Security Act on, public assistance to the poor was at best reflective of a “thin” concept of entitlement that conditioned aid so that it was never provided if there was even the most remote chance the head of the family could be working. That preoccupation never went away and eventually reasserted itself with the passage of the 1996 welfare reform law. Second, given how they were institutionally positioned, especially in Congress, Southern Democratic leaders in particular played a pivotal role over the course of the history of the program in insisting on the supremacy of the work principle and successfully, if incrementally, over time getting changes in the policy to condition receipt of assistance so as to promote work. Third, the work principle as an overarching social norm grew in importance over time and came to be extended to women—including mothers and even single mothers. As a result feminists within the Democratic Party were as a result themselves placed in a vexed position, arguing for right of women to work as much as men but also wanting to support mothers in need. In this sense, equality feminism came into conflict with difference feminism. The push to have women treated equal to men conflicted with the insistence that society appreciate the different circumstances of women, especially when raising young children. As a result, this split was added to others in the Democratic Party: supporters of welfare versus those who emphasized work.

This is not to say that Nixon, Reagan and their Republican colleagues stood idly by while Democrats beat themselves up over the decades-long failures that led to welfare reform and its denouement. It is to say that it is a mistake to single out conservative detractors as the sole source of the eventual shift from welfare to workfare. Tensions in the Democratic Party helped pave the way to the social assistance disaster that now is unfolding before our eyes as growing numbers of women with children face destitution, homelessness, and a failure to thrive. Our nation turns its lonely eyes away from you, and it’s not just the Republicans who are practicing “benign neglect.”

27. *Id.* at 204-06.

In conclusion, both Batlan and Bertram offer the best kind of historical revisionism. Grounded in well-documented scholarship, they offer compelling narratives about what has been left out of the dominant story. They both do that by pointing to the central contradiction of the welfare state—that it operates in contrary ways to impose social control while providing social assistance. So it must be under capitalism and all the more so under its intensified variant we now have come to call neoliberalism. Both books also point the way forward: incremental change assimilating liberal reform to the conservative structure of our capitalist political economy which, if done strategically, can lay the groundwork for getting to a better place. What we need now is not more status-quo reinforcing incrementalism but instead a “radical incrementalism” that makes small changes that put in place the groundwork for more ambitious progressive change going forward. Radical incrementalism comes when we are willing to work with the contradictory welfare state but also challenge its biases to discipline the poor for society’s benefit. Once we start pressing against that bias, we can begin to move in more progressive directions. Both books provide the kind of compelling revisionist scholarship that shows how that bias is alive even inside social welfare reformism. Becoming aware of that bias creates the basis for beginning to resist it, counter it, and go beyond it. Given the contemporary conservative climate, now is a good time to start to learn to use revisionist history so we can work strategically to make the social welfare state more inclusive.