what the police think their interests may be, and with little concern for the rights of individuals.

The defects of the Supreme Court doctrine are made patent here and in the writings of Mr. Chief Justice Traynor and Judge Friendly to which reference has already been made.[18] The merits of the Schaefer proposal are well set out in this small volume, for all those whose minds are not closed to examine and weigh. I am among those who like Mr. Justice Schaefer's answer. Perhaps, however, I should choose another path than the constitutional amendment, at least to begin with. Congress, too, was given authority to interpret and implement the substantive clauses of the fourteenth amendment. The Court has recognized this power and, indeed, in one instance has accepted Congressional interpretation with an alacrity and submissiveness that was almost unbecoming.[19] I should advocate, therefore, that the Schaefer proposal be embodied in legislation enacted by Congress pursuant to its fourteenth amendment powers. If and when the Supreme Court is confronted with such legislation, we shall, perhaps, have answers to questions even more fundamental than those so admirably treated in this book.

PHILIP B. KURLAND*

18 See notes 1 & 2, *supra.*

19 See Bickel, *The Voting Rights Cases,* 1966 SUP. CT. REV. 79.

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**Aid to Dependent Children.** WINIFRED BELL. New York and London: Columbia University Press, 1965. Pp. xvi, 248. $6.50.

Of all the federally-aided public assistance programs, Aid to Families with Dependent Children (AFDC), formerly called Aid to Dependent Children, is the most notorious and least understood, the most costly yet the least adequate in grants. Some observers who witnessed the passage of its predecessors, state Mother's Pension laws, forecast controversy and ill effects from a program that provided cash payment, rather than the then-customary provision of aid-in-kind or in institutions—poor farms, orphanages, and the like. One critic, the well-known social worker, Mary Richmond, regarded Mother's Pensions as a backward step; they were providing "public funds not to widows only, mark you, but to private families, funds to the families of those who have deserted and are going to desert."[1] Yet another raised the basic

1 NATIONAL CONFERENCE OF CHARITIES AND CORRECTIONS, PROCEEDINGS 492 (1912).

issue: whether it is a "dangerous experiment [to try] to solve social problems by merely giving money."[2] Anyone who doubts that the issue persists today is advised to consider the response of civil rights groups to the *Moynihan Report.* And anyone who sees the issue as peculiar to our race-relations-conscious age will gain a new perspective from Dr. Bell's account of *Aid to Dependent Children.*[3]

AFDC was one of the original public assistance titles in the Social Security Act of 1935. Plainly, it was an afterthought so far as Congress was concerned. Legislative energies had centered on the complicated business of establishing a national social insurance system and a tax-offset scheme to stimulate the states to mount their own programs of unemployment compensation. What little attention public assistance received was directed to Old Age Assistance, a practical means of assuring income for the aged while the insurance system matured.

AFDC was enacted as a grant-in-aid to the states to buttress existing programs under Mother's Pension laws and to stimulate wider adoption of these measures.[4] Then, as now, great variation in extent of coverage was evident. "Worthy" widows' children were universally included, but in some states those of the "unworthy" were excluded, and in others children of non-widows were ineligible, irrespective of the worthiness of their mothers.[5] Prior to Mother's Pension laws, too many children were taken from their natural families because of poverty, not for lack of a satisfactory caretaker. A new philosophy was first given voice at the 1912 White House Conference on Dependent Children: "Home life is the highest and finest product of civilization . . . the great moulding force of mind and character. Children should not be deprived of it except for urgent and compelling reasons . . . . No child should be deprived of his family by reason of poverty alone."[6]

Many early Mother's Pension laws reflected a bargain struck between opponents of unrestricted money payments—who feared the loss of control over the indolent, intemperate poor, which would result from subsidizing home life as a substitute for orphanage or almshouse care —and the opponents of needless separation of children from worthy and struggling parents.

And yet the bargain had a price, whose full measure is attempted

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2 *Id.* at 490 (Charles F. Weller).

3 For convenience Miss Bell refers throughout to the old title of both the program and administering agency: ADC and Bureau of Public Assistance, since 1962 AFDC and Bureau of Family Services (a unit within the Welfare Administration of HEW).

4 Pp. 20-27.

5 SOCIAL SECURITY BOARD, SOCIAL SECURITY IN AMERICA 235-36 (1937).

6 P. 4.

by the author of this book. For prejudice against "outdoor" cash relief —against the kind of money payment programs we know so well today —remained strong. A special showing had been required to support outdoor relief: the helplessness of age, infirmity or immaturity. And in the case of children the probable course of their development had been weighed into the scales. Insisting on a suitable home as a condition to expending public funds was seen, in the several states which inserted suitable home requirements, to offer "reasonable assurance that children will have a home which will . . . make possible a moral, physical and mental development."[7] When widows were the sole caretakers entitled to receive these funds, the task of separating fit from unfit mothers was a simpler one. The more liberal the eligibility requirements, however, the more difficult the application of a suitable home policy, for in more liberal jurisdictions officials necessarily had to consider the fitness of homes of deserted wives and unwed mothers, two classes vulnerable to attack on the basis of status, as well as to make individual determinations of suitability.

This burden now weighs especially heavily in AFDC in light of its broadened coverage. From grants to children only, the scope of program has widened to take in, first, a single caretaker and then both parents.[8] The increase in AFDC recipients, therefore, is the product of increasing liberality of eligibility standards as well as economic and demographic factors. The characteristics of AFDC recipients have changed, revealing a caseload heavily composed of deserted wives and unmarried mothers.[9] The multi-problem family has appeared, and with it has dawned the apprehension that its procreation in successive generations has been abetted through the funds of AFDC.[10]

One cause is strikingly apparent—the change in social insurance. When, in 1939, survivors and dependents of wage earners were added to the Old Age Insurance program and qualifications for coverage cut way down, most "worthy" widows moved from AFDC into the insurance program. The move was warmly applauded. Survivorship had long been seen as a predictable risk suitable for social insurance. The nation liked the objectivity of this approach: Away with the means test; entitlement now claims the day! These poor were thus de-stigma-

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7 P. 7.

8 64 Stat. 551 (1950), 42 U.S.C. § 606 (1964) (federal matching for the mother or other needy caretaker-relative); 76 Stat. 186 (1962), 42 U.S.C. § 607 (1964) (federal matching for both parents where one is unemployed).

9 Perkins, *AFDC in Review, 1936-62*, 1 WELFARE IN REVIEW 1 (1962).

10 See generally STEINER, SOCIAL INSECURITY: THE POLITICS OF WELFARE (1966), for a broad and detailed survey of the politics and problems of public assistance.

tized—in part, of course, because all who qualify for social insurance are entitled to it without the necessity of proving need.[11]

But groups remain for whom social insurance is unavailable or insufficient; the persistent growth of public assistance attests to this. In a triple-decker public welfare system, social insurance is the first line of defense and general assistance the last; the federal categorical aids fall in between. Dr. Bell's objective is to "explore . . . [the determinants of] relationships among communities, public aid programs and poor families."[12] Rather than attempt a global survey of AFDC since its inception, she emphasizes a single, crucial policy—that of "suitable home"—to find its function and its consequences.

Dr. Bell's book is a frontal assault on the suitable-home policy; it is not, as its title implies, a comprehensive survey of the many facets of this federal-state public assistance program. She relates her purpose to shifting opinions of the causes of poverty:

> Public welfare policies reflect at least two conflicting assumptions about the causes of poverty. Some assume that it is self-willed by its immoral, irresponsible, undisciplined, or incompetent victims. Conversely, others reflect the assumption that poverty is socially determined and so narrows the range of alternatives and so isolates families from the mainstream of American life and values that parental conformity and competence cannot be realistically expected until there are major adaptations in the opportunity structure. Clearly the public provisions for financial assistance and social services at different times and places will depend upon the prevalent view regarding the causal attribution of poverty. This is nowhere better illustrated than in an examination of "suitable home" policies.[13]

The central problem, as she sees it, remains one which had plagued promotors of the Mother's Pension laws—distinguishing the morally fit from the unfit in the course of administering public assistance. As her analysis reveals, the suitable-home policy has been employed to cut the costs of AFDC by restricting its availability to preferred families. Understandably, its application has differed, both among the states with such policies on the books, and within the same state from one era to the next. The permissive character of federal legislation, heavy

11 This factor, rather than the idea of "right" derived from contributions, becomes increasingly important as departure from the contributory principle is extended. See generally Burns, *Social Security in Evolution: Toward What?*, 39 SOCIAL SERVICE REVIEW 129 (1965).

12 P. vi.

13 P. vi.

reliance on local financing, and moralistic fashions of the past are factors to which inadequate coverage of Mother's Pensions and early AFDC programs have been attributed. But even now, with mandatory statewide coverage, dominant federal financing, and eligibility conditions which prima facie include unwed mothers and deserted families, as well as others whom states had previously excluded,[14] the gap between the population at risk and the AFDC caseload persists. AFDC, in the author's words, remains an "elite" program in several states.

Her conclusion is supported, moreover, despite the apparent irrelevance of a suitable-home policy as a technique for controlling the size and composition of an assistance caseload. The policy's explicit purpose is protective. It is defensible as a logical extension of juvenile court philosophy, representing social concern about a child's development. Yet legislative purpose is only the starting point for administrative practice, and the latent functions of policy may well belie publicly proclaimed goals. Expressing her indebtedness to Robert Merton's formulations of manifest and latent function, Dr. Bell attempts to determine the full range of consequences of the suitable-home policy and its "functional equivalents."[15] In my opinion, she does this job well.

She thoroughly reviews jurisdictions which have heavily relied on a suitability policy to close, or to declare initially ineligible, assistance cases. Classifying states according to their use of this policy, whether to justify outright refusal of any type of assistance,[16] to disqualify for AFDC,[17] or to exert leverage to bring about "voluntary placement" of children from presumptively undesirable homes,[18] the author traces application of the policy through official and other authoritative reports. Consequences in contradiction of explicit purpose are documented over and over, regardless of the precise form of the policy that appears in a given state. The popular argument favoring a suitability requirement as a child protective policy is undercut by her demonstration of the lack of further state action to protect the children subject to the hazardous conditions which unsuitable homes create. Referrals to the courts did not increase; services were not extended to parents to render them more capable of meeting community stan-

14 A review of pre-1935 state Mother's Pension Laws is available in SOCIAL SECURITY BOARD, SOCIAL SECURITY IN AMERICA 233-49 (1937). *Compare* state plan requirements and eligibility criteria set forth in Social Security Act of 1935, title IV, 49 Stat. 627 (1935), as amended, 42 U.S.C. § 601-09 (Supp. I, 1965).

15 Pp. vii-viii.

16 Ch. VII.

17 Ch. VIII.

18 Ch. VIII.

dards of child care; and income payments (which might at least have provided children food and shelter) frequently ceased, leaving families to self-help or, less often, the inferior aid of general assistance.[19]

The practices varied among the states and over the periods her study covers. Moreover, suitable-home requirements were not always stringently applied; rather, they were adapted to the broader purposes of AFDC within each jurisdiction. Where provision of a decent level of financial aid was the state's primary goal in AFDC, and the state moved to maximize its claims to federal matching funds with concomitant commitment of substantial local funds, the existence of a suitability policy on the statute books was no deterrent. But where general opposition to this income maintenance program was expressed or where controversy existed over the wisdom of supporting children so that mothers with young ones at home had an alternative to employment, the policy provided leverage to control the program's size and composition. In several southern states, for example, Negro children tended to be represented on the rolls in numbers disproportionately small.[20] In the northern states the policy was used selectively when caseloads rose in large cities and increasing numbers claimed eligibility because of desertion or illegitimacy.[21] Dr. Bell makes it clear that the source of stimulation for restrictive policy could vary, and the attitudes expressed on race and immorality differ. Yet in all the states committed to a suitable-home policy, "parental morality was the primary and almost exclusive concern."[22]

The Louisiana crisis called the policy to national attention. A 1960 law barred payment to "a child living with its mother if the mother has had an illegitimate child after receiving assistance . . . ."[23] Checks were subsequently discontinued to 5,991 families with 22,501 children. Ninety-five percent of these children were Negro. In most families the fathers were "elsewhere"; the offending adults were mothers, whose illegitimate children were evidence of the unsuitability of their homes. Adverse publicity put pressure on the federal agency to examine the Louisiana program for conformity with "state plan" requirements and determine whether federal matching should be refused. In January, 1961, the decision of the Social Security Commissioner was an-

19 General assistance is both less comprehensive, as a rule, of items making up the standard budget and less generous in grant amounts; it is also subject to controls eliminated or restricted under the federal categorical aids (*e.g.*, payment in kind). See pp. 115-17.

20 Pp. 34, 181-83.

21 Pp. 111-17.

22 P. 179.

23 P. 179.

nounced: no basis for a finding of nonconformity could be supported despite suspicion as to Louisiana's purposes:

> In the face of the many precedents and analogies established . . . in the administration of the Social Security Act, no practical alternative was left . . . but to conclude that on the balance, in the absence of any [federal] requirement prohibiting states to use "suitable-home" as an eligibility factor, the imposition of [such a] . . . requirement standing alone, does not constitute a circumstance which calls for disapproval of a state plan . . . even though the result might be . . . to deny subsistence needs to children while they still remain in an environment found to be unsuitable.[24]

The charge to the federal agency was unmistakable. The following day, Secretary Flemming announced a new suitable-home ruling to which states must conform if federal matching were sought. States no longer could deny assistance on suitability grounds so long as the child remained in the home. Subsequently, Congress acted to legitimate the ruling and extend AFDC to children in foster homes under specified conditions.[25] And one year later federal policy was further modified by legislation permitting denial of AFDC to families with unsuitable homes "if provision is otherwise made . . . for adequate care and assistance" for the children.[26] A Michigan-proposed compromise, this amendment has permitted transfer of unsuitable-home families to general assistance, thereby allowing states to maintain a distinctive character among AFDC recipients without the risk of losing federal funds for those remaining on that program.

Here Dr. Bell's account concludes, save for some final observations and recommendations. She has sifted the material, no mean task in the field of welfare administration, and rescued it from obscurity and superficial treatment. In a field too sparing with detailed analysis and too chary of the printed word, Dr. Bell has conscientiously produced a wealth of facts on a crucial policy. She has, moreover, usefully ordered and interpreted this material. Perhaps, in stating methodology, she claims too much when she asserts "the pragmatism of the twentieth century has produced investigative models that avoid the pitfalls of subjectivity and speculation,"[27] but her contention that attending to "the end products of action" affords new insights into "the nature of

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24 P. 146.

25 42 U.S.C. § 608 (1964).

26 42 U.S.C. § 604(b) (1964).

27 Pp. vi-vii.

the action and its significance for individuals, groups, and the social system"[28] is supported by the study.

And yet I must express some reservations. One or two are quibbles: The references are uneven. Statutory citations are sometimes omitted, and the source materials (*e.g.*, in the chapter on Louisiana) are not as fully reprinted as is required for a comprehensive grasp of the issues. There are instances of misinterpretations. The Handbook of Public Assistance Administration, for example, merely provides the states with interpretations of federal policy. The entire document neither warrants nor requires publication in the Federal Register, as she suggests, although I heartily agree it needs more visibility and more efficient circulation.[29] The "Service" Amendments of 1962, to which some passing criticism is given,[30] are treated superficially. Their awesome potential in conjunction with the policy of suitable home deserves more attention, for these amendments, in effect, assure the evaluation of every AFDC family's problems and, by virtue of the indivisibility of service function from budgetary decisions, expand the welfare worker's powers over personal conduct beyond the range that previously existed.[31]

But my most serious reservations concern what is omitted. The author fully appreciates the adaptability of the suitable-home policy to minimize income maintenance burdens within a state and to serve as a social sanction against particular adults, but she fails to place it in perspective as only one of several strategies to achieve these ends. Thoughtful confrontation of the total range of problems in public assistance is essential to policy reform. The suitable-home requirement is but one of many ways by which states have sought to control their overall financial burdens of assistance. It is simply one strategy for screening and controlling aid to needy populations that are politically vulnerable. The remedies she advances for curing the suitable-home syndrome of AFDC too closely resemble Lydia Pinkham's potion for producing a transient sensation of cure.

A signal difficulty with federal-state grant-aided programs derives

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28 P. vii.

29 The Welfare Law Bulletin of February, 1967, announced that a revised version of the handbook, now in preparation, will be published in the Federal Register. N.Y.U., WELFARE LAW BULLETIN No. 7, p. 2 (1967).

30 Pp. 170-73.

31 Mencher, *Perspectives on Recent Welfare Legislation: Fore and Aft*, 8 SOCIAL WORK 59 (July 1963). These points are spelled out in considerable detail in Handler & Rosenheim, *Privacy in Welfare: Public Assistance and Juvenile Justice*, 31 LAW & CONTEMP. PROB. 377 (1966). See also the provisions for money-management counseling and protective-payment procedures; 272 Stat. 1048 (1958), 76 Stat. 188 (1962), 76 Stat. 189 (1962), 42 U.S.C. §§ 603(a), 605, 606 (1964).

from their federalist character. Public assistance of the categorical variety is not a national system. Though less parochial than general assistance, it still leaves the states substantial leeway to dictate eligibility and other standards and conditions of assistance. Moreover, the states possess a basic choice—whether or not to avail themselves of the federal funds which are conditioned on creation of the federally-authorized programs. While in the major categorical programs this choice is, practically speaking, foreclosed (all states now participate in AFDC and the three "adult" programs, Aid to the Aged, Blind, Disabled), less than half of the states have adopted newer variants of AFDC. Only 22 extend aid to families in which the cause of dependency is unemployment;[32] 24 avail themselves of AFDC-F, which permits federal matching to children outside the home in foster care.[33]

Not only do the states control this basic choice—*not* to provide federally-aided relief, a more adequate form of income maintenance than wholly local programs typically supply—but several options of a lesser order also belong to them. These options concern definition of eligibility as well as the level and ingredients of the grant to recipients. Thus, federal law may authorize AFDC grants to children still in school beyond their 18th birthdays—as it does[34]—but the states fail to extend their own age limits. Grant level is, and always has been since a battle with the southern states in 1935,[35] a matter for state determination. The result is the expected one: in the continental United States the variation in average grant for AFDC runs from a low of $7.90 per recipient in Mississippi to a high of $51.44 in New York.[36] And, of course, averages obscure important differences. Not only do the states vary as to grant levels per recipient, but also some impose ceilings on the grant, irrespective of family size and budgeted need, which affects the size of the average payment. Federal control over the items which go into budgetary calculation of a family's need is minimal. One state may include personal allowances and medical care in the budget, another may be more restrictive. Neither state plan requirements nor the federal handbook contain explicit standards as to items which must be included.[37]

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32 The listing is available in 4 WELFARE IN REVIEW 31 (1966).

33 *Id.* at 33.

34 79 Stat. 422 (1965), 42 U.S.C. 606(a)(2) (Supp. I, 1965).

35 WITTE, THE DEVELOPMENT OF THE SOCIAL SECURITY ACT 144-45 (1962).

36 4 WELFARE IN REVIEW 30 (1966).

37 The state plan requirements, as interpreted by HEW, specify that the standard of assistance and policies for determination of need be uniform throughout the state. See, *e.g.*, 79 Stat. 418 (1965), 42 U.S.C. § 602(a)(1), (3) (Supp. I, 1965); U.S. Bureau of Family Services, Dep't of HEW, Handbook of Public Assistance Administration, pt. 4,

But what clearly demonstrates that states occupy the role of dealer in the assistance game is their freedom to institute percentage cuts. Budgetary standards are meticulously prepared for every category. An elaborate process of pricing items produces a state's best estimate of subsistence living for the blind, disabled, aged, and families with dependent children. Then, if the public welfare agency's appropriation is deficient to cover all recipients, the official measure of need may be officially reduced to jibe with fiscal reality—usually by a lesser percent for adult recipients, and by greater proportions for those on AFDC.[38]

I do not doubt the author knows all of this well, but I question that she has used her knowledge to best advantage when criticizing the federal bureauracy and advancing her recommendations. If, as she demonstrates so convincingly, a suitability requirement is one tactic to close the gap between the needs identified by state and federal agency and the resources under local control (the availability of which determines the amount of federal matching), then why will abolishing or limiting its use not trigger other strategies to keep the program within acceptable bounds? One can criticize the federal agency for "abrogating responsibility and leadership to the states,"[39] and yet that agency's position must be evaluated in relation to all the twists and turns by which the states have received the federal dollar with diminishing proportions of their own.

The underlying issue is not the application of a single, suitable-home policy. It is the wisdom of adherence to categorical approaches and to state and local schemes of income maintenance. If we desire equality of treatment among the nation's needy with respect to income (I purposely exclude services and other welfare aids), the federal grants to categories are poorly designed to achieve that end. Inherent in the

§ 3131 (effective 7/6/66). The Handbook further implements this requirement by identifying three permissible alternative methods for determination of need under the public assistance titles. *Ibid.* See also WHITE, SIMPLIFIED METHODS FOR DETERMINING NEEDS (1964). Nowhere is there explicit reference to mandatory inclusion of basic consumption items in the grant. The approach of HEW is, so to speak, procedural, not substantive, which raises fresh problems in high-grant states. In Illinois, *e.g.*, the AFDC budgets make provision not only for all basic consumption items as well as medical care and certain incidentals, but further provide budget differentials by age groups. Thus, a family of four with two teenage children receives a larger grant for food than a family of comparable size with two very young children. HEW, in justification of the newly promulgated version of § 3131, takes the following position: "Since a method without breaks by age groups is preferable, any standard including one or more age breaks cannot be approved unless the State submits special justification." U.S. Bureau of Family Services, *supra*.

38 S. Doc. No. 93, 86th Cong., 2d Sess. (1960). See also ADVISORY COUNCIL ON PUBLIC WELFARE, REPORT 16-19 (1966).

39 P. 175.

scheme is state discretion as to classes aided, standards established, and controls attempted over the personal conduct of recipients. The fact that federal limits are seen as necessary emphasizes the reality of state discretion. I would not gainsay the fruitfulness of further attempts to standardize administration among the states so as to maximize the area of uniformity between state programs which are significantly "national" in tax base and in important policies. Moreover, as Dr. Bell recommends, significant advances in coverage could be gained by "extend[ing] aid to all needy families with children irrespective of home conditions, family composition, or parental conduct and refus[ing] approval of all welfare policies which disproportionately exclude certain types of families on any ground whatsoever."[40]

Nevertheless, intractable pressures for diversity exist; they are generated by the structure.[41] The tortured history of the suitable-home policy attests to this, and the history of other strategies of state control reinforces this fundamental point.

It remains to face the choices—equality for what and at what standard; diversity for what?—and find the structures best adapted to the public's aims. *Aid to Dependent Children* points both a warning and a challenge. To produce a better program will not be easy, but failure to try would be cowardly and irresponsible.

MARGARET K. ROSENHEIM*

40 P. 195.

41 See, *e.g.*, pp. 150-51; STEINER, *op. cit. supra* note 10, *passim*.

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**Improving the State Legislature.** ILLINOIS COMMISSION ON THE ORGANIZATION OF THE GENERAL ASSEMBLY. Urbana: The University of Illinois Press, 1966. Pp. xiv, 146. $4.95 (clothbound), $2.95 (paperbound).

The meaning of words tends to become corroded over years of usage, especially when they are used in the political field. Thus, the term "state's rights" conjures up visions of Governor Faubus defying the Supreme Court of the United States (and the United States Constitution), or the South's lady governor trumpeting in parrot tones that no Congress will make no law that she doesn't like. Since the people have had no vocabulary for talking about the role of the state in the federal system, the real problems of the state animal have been examined only by the academicians, and then only infrequently. It has been much