

GWENDOLYN MINK

**WELFARE'S
END**



Cornell University Press

ITHACA AND LONDON

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Preface

In 1993, as I was completing a book on Progressive Era and New Deal social policy innovations affecting women, Bill Clinton was preparing his plan to end welfare. My historical research and analysis of mother-directed policy had prepared me to tackle contemporary welfare issues, but it was my political despair at President Clinton's calculated deployment of welfare reform against poor single mothers that spurred me to shift my scholarly attention from the mistakes made by welfare's early twentieth-century proponents to the outrages perpetrated by its late twentieth-century foes. As this book began to take shape in my mind, the Republicans rode to power in Congress with promises to end welfare even more swiftly and brutally than Bill Clinton had planned. My scholarly and political lives fully fused, I spent much of the next two years battling Republican welfare reform.

As a steering committee member (and later co-chair) of the Women's Committee of One Hundred, I worked closely and daily with feminist scholars and activists in a campaign to derail the Republican initiative. From the Committee's founder, Eva Feder Kittay; from my sister co-chairs, Guida West and

Ruth Brandwein; from steering committee members who gave up hours to discuss policy and strategy in conference calls; from committee members with whom I joined to lobby senators and representatives; and from my mother, arguably our staunchest supporter in Congress—from all these women I learned much about welfare, about politics, and about commitment in the face of adversity.

Our campaign against the Republican welfare initiative focused my attention on the relationship between welfare rights and women's equality. Our failure to make reliable allies of the five white Democratic women in the Senate and of most white Democratic women in the House of Representatives also reminded me that feminists do not always act in the interests of other women. Out of these concerns—with welfare and equality, and with welfare reform and feminism—emerged my resolve first to illuminate the unique inequalities endured by poor single mothers in welfare law and then to suggest what welfare justice could look like if we made poor single mothers' equality as citizens and as women our priority.

Although most of its members will no doubt find many of my ideas wacky, impractical, or just plain wrong, the Women's Committee of One Hundred is part of this book, for I have benefited enormously from being one of them. My mother, Patsy Takemoto Mink, is also part of this book, not only because she read and commented on every word (or so it seemed) but also because her own legislative struggles to stop the Republican wrecking ball profoundly influenced my assessments of policy and political possibilities. I also owe special thanks to Laura Efurd, on whom I could always depend for a clear answer to my confusing questions about the status of legislation or about cryptic statutory provisions.

Seminal conversations with Dana Frank and Anne Kornhauser emboldened my thinking about welfare and inequality. As friends and interlocutors, they were indispensable to the

early development of this book. Kereth Frankel Klein's legal research and Jessica Delgado's policy sleuthing yielded invaluable tools for this analysis. Jessica's assistance made Chapter 2 relatively easy to write. Keri's made Chapter 3 more difficult than I had anticipated, but also more fun.

Eileen Boris and Felicia Kornbluh bravely agreed to review the manuscript, piece by piece, for Cornell University Press. They vetted each chapter swiftly and thoroughly—so thoroughly I sometimes wondered whether I could possibly accommodate everything they had to say. I absorbed as much of their brilliant and erudite feedback as I could manage; and while they of course do not bear any responsibility for the final product, I am sure that *Welfare's End* is a better book because of their contributions to it.

Out of the goodness of their hearts, Theodore J. Lowi and Wally Goldfrank read each chapter as I wrote it. I have come to rely on Wally's unfiltered editorial criticism and on his pithy insights, as well as on his honesty when something I've written "doesn't sing." I have entered a state of permanent indebtedness to Ted, whose unstinting reviews of each chapter gave me lots to think about and lots to revise. More than my chief critic, he generously offered alternative language and more precise formulations when words failed me. His cautious praise, meanwhile, kept me optimistic, but humble. He, too, is in this book; in fact, his early enthusiasm for its core arguments gave me the confidence to begin writing it, and his sustained interest fueled me to press on.

At Cornell University Press, Peter Agree gets all the credit for enabling me to write another book. His arrangement with reviewers, his sense of just how often and how far to nudge me toward completion, and his timely recommendations of mostly felicitous fiction were all part of the excellent working conditions he provides for his authors. Meanwhile, Terry McKiernan's gifts of skill and wit made the journey from manu-

script to book painless, even when the manuscript literally lost its way.

Research grants from the Committee on Research and from the Social Sciences Division of the University of California at Santa Cruz enabled me to write this book expeditiously.

GWENDOLYN MINK

Santa Cruz, California

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Welfare as a Condition of Women's Equality

During the second decade of the twentieth century, progressive women activists invented welfare to provide mothers and their children a means to survive when breadwinning fathers either died or abandoned their families. During the 1930s, the local mothers' pension programs of the Progressive Era became part of the emerging national welfare state. The idea behind welfare was to relieve poor single mothers of the necessity of wage-earning so that they might engage in the full-time care of their children. Over the years, welfare came to be viewed less as an alternative to wages than as a safety net for mothers when wages were not available to them. Changes in the idea of welfare reflected changes in our assessments of mothers who are poor and single. Poor single mothers have always been judged by welfare policy, and developments in welfare policy have always either enhanced or undermined their rights, security, and ability to care for their children. Yet, beginning with Bill Clinton's famous 1992 campaign pledge to end welfare and throughout four years of debate about how to do it, hardly a soul worried about the

impact of such a momentous change on poor single mothers as mothers and as citizens.

Some feminist activists labored to bring attention to how ending welfare would affect poor mothers' lives and rights. But among policy makers, even the usual champions of gender equality erased mothers from the debate. Most Democratic liberals in Congress who fought to save welfare did so for the sake of children, not mothers. They worried that ending the federal guarantee of economic assistance to poor families would plunge millions of children into poverty, making "cruelty to children an instrument of social policy."¹ But they cared little that new welfare provisions would pressure poor single mothers to surrender their civil rights as a condition of economic assistance. Much less did they care that rescinding the statutory entitlement to income security would punish poor single mothers for bearing and caring for children by compelling them to work outside the home.

Though Democrats balked at the most stringent Republican initiatives, such as a proposed three-month lifetime limit on food stamp eligibility for adults without dependents, the welfare debate revealed more grounds for consensus than for conflict. Both parties championed wage work and marriage as alternatives to welfare, promising to limit the period of welfare eligibility strictly, to penalize illegitimacy, and to require mothers to establish connections to men and the labor market. Both parties pegged their reforms not to the vast majority of recipients (75 percent) who use welfare for short periods, but to the minority (25 percent) of allegedly chronic recipients who need assistance for longer stretches of time. Both parties equated welfare use with welfare abuse, justifying increasingly punitive "reforms."

In the Senate, this bipartisan consensus produced an 87–12 vote to end the welfare guarantee and to encumber recipients with intrusive stipulations when welfare reform was first con-

sidered in 1995. Despite its Republican sponsorship and despite the Office of Management and Budget's prediction that the measure would throw a million more children into poverty, all but eleven Democratic senators supported the welfare bill. During the 1996 debate in the House of Representatives, Democrats demonstrated the strength of the bipartisan consensus when they offered a party proposal (the Castle-Tanner substitute) that endorsed some of the most radical Republican welfare principles. Recanting their 1995 pledge to defend the welfare entitlement, House Democrats vowed to repeal it for individuals and to replace it with block grants to states.² In addition, the Democratic measure denied benefits to children born to mothers receiving welfare and imposed paternity, child support, and paternal visitation rules on all recipient mothers.

Notwithstanding the Democratic Party's long association with civil rights and civil liberties, its alternative to Republican welfare reform proposed policies that would invade poor mothers' reproductive, conjugal, and family privacy rights.³ Moreover, notwithstanding the Democratic Party's feminist sympathies, its alternative proposed to return poor single mothers to patriarchal dependency on their children's biological fathers. One hundred fifty-nine House Democrats voted for this baleful assault on the rights of poor mothers, including Democrats who call themselves feminists: the Democratic co-chair of the Congressional Women's Caucus (Nita Lowey, D-New York), the former Democratic co-chair of the Caucus (Patricia Schroeder, D-Colorado), the only woman in the Democratic leadership (Barbara Kennelly, D-Connecticut), twenty-three of twenty-eight other Democratic women, and two past presidents of the liberal Americans for Democratic Action (Barney Frank, D-Massachusetts, and John Lewis, D-Georgia). As one congressional feminist admitted of her colleagues, when it comes to welfare "nobody cares about women."

With this vote, Democratic liberals and feminists banished

the welfare entitlement to history and abandoned welfare mothers to the Republicans' welfare police state. The Republican chair of the House Committee on Education and the Workforce gloated: "There is good news to announce on the floor of the House today. The good news basically is that all of those who have, over the last thirty some years, generated an unworkable welfare program, have now come to the floor and admitted that it does not work."⁴ In the final hours of debate in both houses, the difference between Democrats and Republicans boiled down to whether states could use federal welfare money to provide vouchers for diapers and other government-approved goods to children whose families are removed from welfare after five years—hardly an issue of fundamental principle.⁵ Democrats argued that children should not have to pay for their mothers' sins, that welfare reform should "be tough on parents, not tough on kids." As Senator John Breaux of Louisiana, author of the voucher amendment in the Senate, put it, "We should not be punishing the children for what the parents have not done correctly."⁶ In contrast, Republicans fought to withhold palliatives for children they feared would undermine their message to mothers. But the two parties agreed that welfare reform should be tough on mothers and that the end of welfare should be the reform of poor women. President Clinton sealed the consensus when he signed the welfare bill—with vouchers—into law.

The broad support for disciplinary welfare reform is rooted in the view that mothers' poverty flows from moral failing. Both Democrats and Republicans emphasized the wrongs of mothers—their "unwillingness to work," their failure to marry (or stay married), their irresponsible sexuality and childbearing. Accordingly, the legislative debate about welfare was a contest among moral prescriptions, rather than a conflict between perspectives either on the role and responsibilities of

government or on the rights and responsibilities of women. It was a genuine contest for a while. Democrats assigned priority to work-ethical stipulations backed by funding for child care and job training; during the first round of debate in 1995, Democrats accused Republicans of being "weak on work" and called for more severe work requirements and time limits. Republicans, meanwhile, stressed marital family life backed by work requirements and cold-turkey sanctions; they charged Democrats with being soft on "family values" and fought Democratic efforts to broaden hardship exceptions (as with vouchers) to the new welfare rules. But these differences did not subvert the bipartisan concordance against poor mothers' rights and poor families' economic security.

About half the Senate Democrats and the majority of House Democrats voted against the Republicans' Personal Responsibility and Work Opportunity Act (PRA) on final passage. This partisan vote masks the strength and durability of the bipartisan war against mothers who need welfare. The PRA may have been Republican legislation, but the pledge to end welfare was a Democratic president's inspiration. The PRA may have been the crown jewel of the Republican pledge to enact the Contract with America, but it was less a change in policy than a culmination of thirty years of bipartisan efforts to subdue poor mothers' welfare rights.

As we shall see, since 1967 both Democrats and Republicans have insisted that fathers return at least to financial, if not marital, family headship. For mothers who decline association with their children's fathers, both parties have prescribed work outside the home. Embracing the logic of welfare reform since 1967—and nationalizing many of the state-level reforms accomplished through presidential waiver⁷ since 1988—the Personal Responsibility Act makes poor single mothers' decisions for them, substituting moral prescription for economic mitiga-

tion of their poverty. Moreover, the Act withdraws rights from recipients, thereby restoring the moral regime that sifted, sorted, and ruled welfare applicants and recipients until the late 1960s.⁸ Rights trampled by the welfare law include fundamental constitutional rights to make one's own decisions about marriage, about family life, and about procreation.⁹ Also endangered is poor mothers' vocational freedom, that is, their Thirteenth Amendment freedom from coerced labor.¹⁰

Thirty years of welfare politics and welfare reform presaged many of the provisions of the Republicans' PRA, including the repeal of the welfare entitlement. The repeal of the welfare entitlement means that poor mothers have lost governmental assurance that their desperate economic circumstances will not deteriorate into abject destitution. Now they and their children no longer have a legally enforceable claim to benefits: in its statement of purposes, the PRA explicitly disclaims an entitlement for individuals. What's more, the new policy both invites and requires states to condition benefits not on need alone but also on moral conformity.

The change in welfare policy disables women's citizenship. Some feminists fought welfare reform for this reason. Calling attention to "welfare as a women's issue," we argued that "a war against poor women is a war against all women."¹¹ While this was a strategically useful rallying cry, it failed to rally many women, or feminists. The war against poor women was just that: a war specifically against poor women, and one in which many middle-class women participated on the anti-welfare side. Four of five Democratic women in the Senate voted *for* the PRA when it first came before the Senate in the summer of 1995. Only five of thirty-one Democratic women in the House opposed the Democratic welfare proposal that stripped poor mothers and children of an income security entitlement, coerced poor mothers into relations with biological fathers, and

required single mothers to work both inside and outside the home. Across the country, a NOW–Legal Defense and Education Fund appeal for funds to support an economic justice litigator aroused so much hate mail that the organization stopped doing direct mail on the welfare issue.¹² A white and middle-class solipsism enforced a general feminist silence about the stakes of welfare provisions for poor women, and that silence gave permission to policymakers to treat punitive welfare reform as a no-lose situation. Welfare reform did not bear directly on the lives of most white, middle-class feminists, and so they did not mobilize their networks and raise their voices as they have in defending abortion rights or protesting domestic violence. When they did enter the debate, many middle-class feminists prescribed child support and wage work as alternatives to welfare. This echoed policymakers' claims that "real" welfare reform is to be found in the patriarchal family economy and in mothers' work outside the home.

Still, despite disagreements about welfare among women and feminists, there is some truth to the claim that welfare reform affects us all. Poor single mothers are most immediately and most brutally harmed by the Personal Responsibility Act, of course, but many of the law's incursions against their rights and protections potentially injure all women: for example, as Congress impairs the reproductive rights of poor women by paying states to reduce nonmarital births, it erodes the privileged constitutional status of reproductive rights as fundamental to all women's equality. Mandatory paternity establishment provisions likewise carry perils for all birth mothers, whether or not they are poor. Although the PRA requires disclosure of procreative relations from welfare mothers only, policymakers have proposed requiring mothers to identify biological fathers outside the welfare context: for example, President Clinton's 1994 welfare bill sought the establishment of

paternity for *all* non-marital hospital births. Further, although poor single mothers are most directly endangered by the elimination of welfare's income entitlement, all mothers surrender equality in gender relations when government withdraws their safety net—their last-gasp means for economic independence from men. For these sorts of reasons, women's gender equality pivots on poor single mothers' rights, whether or not all women need to use those rights at any given time. Equality *among* women also pivots on poor single mothers' rights, for welfare law stratifies rights to the detriment of poor single mothers alone. Welfare law subverts women's equality not only by placing women's gender rights on a slippery downhill slope, but also by hardening hierarchies among women.

The subject of this book is the relationship between welfare rights and women's equality. I will examine the rights compromised or revoked by the PRA, considering how these losses burden poor single mothers' citizenship, and speculating whether the rights under challenge will prove strong enough to defend poor single mothers from the law's worst political effects. The PRA promises to end "welfare dependency" by returning mothers to economic relationships with fathers and, where those relationships fail, by speeding mothers into the labor market. I will argue that these prescriptions are ill-conceived and harmful, disabling poor single mothers' equality as citizens, as women and as mothers.

Poor single mothers' equality with men as well as with other women depends not on "making fathers pay" or on making mothers work, but on paying for the work mothers *do*—as caregivers for their children. Without social provision for caregiving, all mothers who work inside the home are deprived of equal citizenship, for they alone are not paid for their labor. Without earnings, women who work full- or part-time as their

children's care-givers are ideologically unequal in a political culture that prizes income-producing work as the currency of virtue. They are also unequal at law: worth less when juries assess economic damages to them in tort claims, and worth less to juries awarding civil damages in wrongful death claims. Moreover, care-giving mothers do not have marital freedom: lacking the means to exit marriages, they lack the freedom to choose to stay in them. Mothers who do dare to exit or avoid marriage do not enjoy vocational liberty: unpaid for their work in the home, single mothers are forced either by law or by economic circumstance to choose wages over children.

Welfare and Citizenship

Citizenship is the web of relationships between the individual and the state, relationships that incur both rights and obligations. In our constitutional democracy, the basic rights of citizenship are political. Citizenship confers such political rights as suffrage and such obligations as jury duty. These rights and obligations are not directly reciprocal: the right to vote does not oblige us to do so, for example, any more than the obligation to jury duty gives us the right to be selected to serve. Our strongest obligations are enforced by law: accordingly, men's duty to contribute to the national defense has been enforced by military conscription. But many of our obligations are wholly ethical: we enter into public service or participate in community life because we are supposed to, not because we are required to. Perhaps the most coherent enumeration of the ethical and legal obligations of citizenship is contained in the oath of naturalization—with which only immigrant citizens eventually become familiar.

If some of our obligations are codified in scattered statutes and others are simply implied by the political culture, or