An African American Welfare State

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Abstract Histories of the American welfare state have been white histories, in part because scholars have presumed that welfare state institutions are benevolent and exist to assist those in need. But if we take seriously work that instead focuses upon the degree to which welfare state regimes affect citizens’ freedom to survive apart from dependence on the labor market or upon a male breadwinner, along with scholarship that highlights the malign functions of relief, then explicitly repressive institutions become legitimately within the purview of welfare state analysis. This article makes the formative case that slavery, Jim Crow, and the prison might be considered welfare state institutions, given their impact upon the material well-being of so many Americans. Because these institutions have most affected blacks, we might have reason to distinguish between a white welfare state and an African American welfare state, and reject the notion that we can coherently speak of the welfare state.

The history of the American welfare state has been a white history. In most books charting the birth and development of social welfare in the United States, African Americans don’t make their first appearance until the Progressive Era, and then they are a sidebar to the story of American urban industrialization. They are largely absent again until discussion of the Social Security Act of 1935 (SSA), when the focus turns to the manner in which Congressional Democrats shaped the SSA to their racist and economic ends by excluding agricultural and domestic workers from it, workers who were disproportionately black and located in the South. Not until discussion of Aid to Families with Dependent Children (AFDC) and then the “welfare backlash” of the 1980s and 1990s do we again find African Americans incorporated in any substantive way into the narrative, and then it is largely as objects of white and elite animus.

To use one crude measure, in the index of Michael Katz’s In the Shadow of the Poorhouse, which is among the most widely admired histories of American poverty and welfare (and rightly so), the first entry for “blacks” is on page 181, where they appear in a two-page discussion about housing, school segregation, and race riots (there is no listing for African Americans). The only other entries reference a handful of pages on blacks and the New Deal, the War on Poverty, and AFDC—all together seven pages in a text with 334, or 2% of the total. Walter Trattner’s From Poor Law to Welfare State does better, offering references to minister George Whitfield’s early efforts to bring slaves into his fold with free education programs (or, less charitably put, with efforts at indoctrination); discrimination
against blacks in the early years of the anti-tuberculosis campaigns; black infant mortality; African Americans and the formative juvenile justice system; and then references to the New Deal, urban riots in the 1960s, and the civil rights movement, giving us indexed references to 29 out of 395 pages, 7% of the total. Bruce Jansson’s *The Reluctant Welfare State* incorporates references to African Americans and Colonial poor relief, black codes, lynchings, discrimination in education and in the courts, Head Start, AIDS in cities, and more, for 34 of 454 pages, also 7%. Given the centrality of race to American political and social policy history, we might reasonably claim that African American experience has been, at best, under-represented.

This may be an unfair complaint, of course, since such histories must inevitably pass lightly over many events and issues, each of which might merit its own book-length treatment, and we could hunt through the index of any book and object to the relative emphasis on one topic over another. However, even in analyses specifically focused on the history of race and welfare the narrative rarely begins before the New Deal, and it is exclusion that is the focus: African Americans are characters in someone else’s story, bit players in a sub-plot, not protagonists. Yet their experience with the welfare state is more than merely different than whites’, and it cannot be understood only in reference to discrimination and their exclusion from “mainstream” programs. Just as feminist critics of comparative welfare state scholarship have urged scholars to problematize gender and find ways of “making women visible in welfare states,” so too in American welfare state histories do we need to make African Americans more visible, and not subsume them within “universal” analyses.

Part of the explanation for why African American experience has been marginalized in welfare state history may be definitional. The welfare state has

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historically been understood to be a congeries of ameliorative government programs, evaluated by calculating total national expenditures as a percentage of gross domestic product (GDP). As Harold Wilensky defines it, “the essence of the welfare state is government-protected minimum standards of income, nutrition, health and safety, education, and housing assured to every citizen as a social right, not as charity.” More recently, thanks to the work of Gøsta Esping-Andersen, we have complicated our definition of the welfare state and undertaken cross-national analysis by evaluating the degree to which various states decommodify labor: the extent to which they permit citizens to survive without dependence upon the labor market. Subsequent feminist analyses have added defamilialization: the extent to which a regime permits one to exist outside of dependence upon a (male) breadwinner, or its effect upon one’s “capacity to form autonomous households.” These now-standard frameworks thus evaluate welfare states by the manner in which state action affects one’s ability to refuse work or marriage, and citizens’ freedom to allocate their dependence among the institutions of the state, the market, and the family.

Using these approaches, it is clear why the availability and generosity of such things as unemployment and disability insurance, cash relief, food stamps, old age pensions, and health care have commanded our attention. They have clear palliative functions, and their generosity correlates directly with individual power to refuse work. But it is less clear why we have excluded other institutions. Most scholarship has proceeded from the assumption that welfare state institutions are benevolent, that at their core they are efforts to help those in need. But as the history of AFDC and Temporary Assistance to Needy Families (TANF) shows clearly, American relief has also functioned to regulate the sexual, reproductive, and labor market behavior of vulnerable populations. In fact, Frances Fox Piven and Richard Cloward have long argued that the principal functions of relief are to regulate the low-wage labor supply and to placate disruptive poor and unemployed people. Given this, we should consider programs that serve to commodify labor (those that reduce choice) and not just those that decommodify it (those that increase it) when evaluating the reach of the welfare state. Slavery, its successors (sharecropping, tenancy, convict labor), and the prison have been as important throughout American history in the lives of (poor) African Americans as have, say, Social Security, homeless shelters, or Medicaid. By excluding them because they are malign in intent, we make all but inevitable a distorted view

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of the history of the American welfare state. Instead, if we expand the scope of traditional welfare state analysis and examine these institutions alongside the more familiar ones, we can see that the “liberal” regimes in Esping-Andersen’s liberal-conservative-social democratic typology do not work only to minimize decommodification; in the US case, policy goes further and actively commodifies labor by compelling it from certain classes of citizens. Given that these more repressive institutions have disproportionately impacted upon black Americans (thanks in large measure to a federal system that has consistently created opportunities for discrimination and exploitation by states and localities), there may be cause to distinguish between a white welfare state (the benevolent if incomplete one which has predominated in our analyses) and an African American welfare state, one that has been dominated by institutions of repression and control.

Slavery and the Welfare State

American welfare state histories have not included slavery within their purview, and from the perspective of white America, this makes sense. But for most African Americans, during its lifetime slavery defined their encounters with state power, fundamentally affecting their ability to secure food, shelter, health care, and work for themselves and their families. The denial of the right to work must surely be seen as important a state activity as programs (like child care, occupational health and safety laws, job training programs, or tax subsidies) that enable or encourage it. If we include slavery, the story of the American welfare state takes on a different shape, one in which its labor-regulating functions dwarf its more positive, charitable identity.

I am not the first to suggest that there is a relationship between involuntary servitude and the welfare state. It was slavery, claimed one of its fiercest proponents, George Fitzhugh, that obviated the need for any more pernicious (in his view) program of public welfare—slavery was welfare program enough.

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8I am merely arguing over definitions, some might say—the Welfare State has been understood as a national-level public response to nineteenth-century industrialization, elaborated upon and expanded in the post-World War II, post-industrial period. Following directly from Esping-Andersen, I am proposing that we now expand our purview to include any institutions that have measurable effects upon one’s ability to relocate dependence. If our only concern is understanding policy formation, the “old” definition may be appropriate. But this seems of limited use unless we also undertake an evaluation of the lived experiences of people in need and inquire into how their well-being has been affected by government activity over time. Decommodification and defamilialization may be imperfect as dependent variables (given that historically people have not sought to exist apart from dependence upon the labor market or the family), but they offer more analytic leverage and more insight than explanations only of policy change. See also Stephen Pimpare, “Toward a New Welfare History,” Journal of Policy History 19:2 (2007), pp. 234–252.

9We should count the Freedmen’s Bureau among institutions of the African American welfare state. In the interest of space, this paper sets aside discussion of that more benevolent institution, which brought relief to a significant number of poor southerners (white and black), if only for a time. Yet it may also have helped establish an entirely separate public welfare system for African Americans, ultimately limiting their ability to benefit from the broader programs of the welfare state then in existence and from those yet to come. See Ira C. Colby, “The Freedman’s Bureau: From Social Welfare to Segregation,” Phylon 46:3 (1985), pp. 219–230.
he asserted, and it worked so well that it could and should solve the subsistence problems of poor whites as well. Fitzhugh went so far as to argue that: “Our Southern slavery has become a benign and protective institution, and our negroes are confessedly better off than any free laboring population in the world.” In this view, slavery was a beneficent and efficient program of public relief, one which merely required work in exchange for aid. That’s a criterion that anti-welfare advocates continue to argue should govern government assistance, it is worth noting. There is a consistency here, for American welfare programs have always concerned themselves with labor-market effects. The poorhouse sought always to refuse admission to “able-bodied” men, and to make certain that any aid they offered was inferior to what could be attained through the poorest-paid labor. Social Security provided cash to retirees, of course, but in doing so encouraged older, presumably less productive workers to leave the labor market, making room for younger, more productive (and perhaps more compliant) ones. Regulations which forbade the presence of males in the homes of female AFDC recipients functioned, at least in part, to ensure that poor men did not have access to welfare benefits, and were therefore forced to turn to the low-wage labor market.

It should be uncontroversial to assert that the southern systems of stat-sponsored servitude had material effects upon those subject to its rule. More controversially, we might further observe that, as Fitzhugh suggests, some slaves fared better even than poor whites struggling to survive outside the system—some slaves ate more calories, worked fewer hours, and had better, newer clothes than did their poor white brethren. This is not, I want to emphasize, to suggest that there might be a beneficial aspect to slavery. As Harriet Jacobs, a slave who eventually escaped, put it: “I would ten thousand times rather that my child should be the half-starved paupers of Ireland than to be the most pampered among the slaves of America.” Economist Amartya Sen more recently said it this way:

African American slaves in the pre-Civil War South may have had pecuniary incomes as large as (or even larger) than those of wage laborers elsewhere and may even have lived longer than the urban workers in the North, there was still a fundamental deprivation in the fact of slavery itself (no matter what incomes or utilities it might or might not have generated). The loss of freedom in the absence of employment choice and in the tyrannical form of work can itself be a major deprivation.

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12 Piven and Cloward, op. cit.
14 Ibid., p. 122.
This is consonant with Sen’s proposal that we redefine poverty as lack of freedom, or capability deprivation, in which freedom is the “capacity of people to live the kinds of lives they value – and have reason to value.” This has increasingly become the manner in which global poverty is evaluated, and focuses attention upon how well Americans have managed to survive and thrive, and how that has differed for different groups, in different places, at various times throughout our history. For Sen, “development requires the removal of major sources of unfreedom: poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or overactivity of repressive states.” If we are to evaluate the extent of and possibilities for decommodification or defamilialization in the antebellum American south, or the possibility for freedom in Sen’s sense, then we have no choice but to examine slavery.

With the notable exception of a growing body of work by Elna Green and colleagues, social welfare historians have paid scant attention to the history of poverty and welfare in the American south. While there is more to this neglected history than just slavery, what makes poor relief in the South distinct from relief elsewhere was what made most everything in the South different—slavery, which was inextricably linked not only to the immiseration of blacks, but also to white poverty and to southern programs of white welfare. White poverty in the South was in some measure a consequence of slavery, as blacks provided abundant, cheap labor, skilled and unskilled; in this way, the end of slavery was a boon to poor whites as well as to enslaved blacks. One journalist, visiting Virginia, voiced a common observation that poor whites were “certainly as debased and degraded as the poor negroes.”

Further, the history of American servitude itself includes poor whites. In the seventeenth century white indentured servants comprised as much as 75–85% of all immigrants who went to the colonies south of New York; and while charges of widespread kidnapping from Britain and Ireland may have been overstated, many of these men and women were coerced by recruiting agents, incarcerated and chained, then packed into ships in large numbers for transport. It was sometimes a way of ridding towns of beggars and drunkards; healthy children able to work were stolen away from their homes (the word kidnapping comes

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16 Ibid., introduction. This comports with Manning Marable’s understanding of “underdevelopment.” See Manning Marable, How Capitalism Underdeveloped Black America, updated ed. (Cambridge, MA: South End Press, 2000 [1983]).


18 Slaves and poor whites were united, perhaps, by much. “In America, free laborers worked about 280 to 290 days, and slaves between 280 and 310 days,” while “Philadelphia slaves apparently received about 1,800 to 2,400 calories a day at a time when the city workhouse may have provided 2,600.” But note that across North America, slaves worked some 2,800 hours per year, compared to, on average, 1,851 hours worked by Americans in 2002. See Morgan, op. cit., p. 113; Lawrence Mishel, Jared Bernstein and Sylvia Allegretto, The State of Working America 2004/2005 (Ithaca, NY: ILR Press/Cornell, 2005), Table 2.1, p. 113.

from the practice: *kid-nabbing*). For some of the most ill-used and deceived, their experience was little better, if better at all, than that of the African slaves who were also being sent to do the work of building a new colony. Perhaps as many as 80% “died before they obtained their freedom or became propertyless day laborers, vagrants, or denizens of the local almshouse after completing their indentures.”

Indeed, as Michael Goldfield argues, early in our Colonial history there was little distinction made on some plantations between white indentured servants and black slaves: slavery was oppressive for economic reasons, not for racial ones. Racial distinctions were then created and fostered to divide vulnerable workers against each other, to inhibit their ability to organize and effectively resist. Poor whites were thus eventually deemed superior to all blacks, even freedmen (by 1846 the public whipping of whites criminals was forbidden, lest the association with slaves be too great), but they were nonetheless understood to be incompetent and immoral.

Yet to distinguish only between slaves and non-slaves oversimplifies, for even among slaves there were distinctions—the black overseers were often to be found at the top of the caste (until they were replaced by white overseers, perhaps in response to Nat Turner’s rebellion). Carpenters, blacksmiths, and other highly skilled slaves joined the overseers at the top. Domestics came next, followed by the less-skilled workers (gardeners, coach drivers, etc.), and then the unskilled non-agricultural workers. Last were the field workers (none of this includes the free blacks in the South, who were more than 5% of the black population in 1860). Those at the top had mortality rates that were half the rates of those at the very bottom. Still, notes Theodore Hershberg, “the antebellum black community was extremely poor. The total wealth – that is, the combined value of real and personal property holdings – for three out of every five households in both 1838 and 1847 amounted to $60 or less.”

What makes this familiar history relevant to a discussion of the reach and power of American welfare is that we can identify differences in poverty depending upon the particular form that slavery took from locale to locale—this state-sanctioned and supported means of regulation and control, which included, of necessity, the provision of food, housing, and health care, was a key factor in explaining variations in well-being among African Americans, and an important factor in explaining the poverty of southern whites, too.

A dark, violence-laden confession made by murderer Edward Isham reveals, in extreme form, something of the life of a poor white southern man prior to the Civil War. Among the striking but not unusual features of Isham’s life is the

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constant search for work and the variety of occupations he held: he was variously a gold miner, a rail splitter, a tenant farmer, a fireman, railroad worker, livestock driver, ditch digger, and logger; he even spent time working for a free black farmer, and, more generally, maintained cordial relations with free blacks as with whites, winning him the enmity of those southern whites who feared just such relations. Like many of the Tramps of the later century, Isham’s mobility and instability was born of some necessity (though explaining the violence he caused wherever he went is harder to do). As Charles C. Bolton writes:

Slavery both stunted the growth of industrial wage positions and limited the need for white workers, as well as the wages paid to them, in the region . . . in order to take advantage of what were essentially short-term work opportunities, poor white laborers had to possess a wide range of marketable skills, and they had to be willing to relocate regularly. In short, they had to be extremely flexible.24

Further limiting their opportunities, white workers were less easy to control than blacks, making them less desirable. This became acute when white immigrants (especially the Irish) began arriving in larger numbers; they were feared and hated because they were replacing the “submissive, acclimated, non-voting Negro.”25 The poor white woman’s condition in the South was exacerbated by slavery as well—not only were her wages driven lower by the similar work done by even worse-off women in poorhouses, workhouses, and asylums, but she competed as well with the forced, flexible labor provided by the sorority of slaves.

Life for poor southern whites during the war continued to be hard: some Union officers report of widespread starvation in the winter of 1864, and many southerners were to be found tramping throughout the region looking for food or, in vain, for work. They gathered at Union outposts in hopes of gaining sustenance or rooted through abandoned campsites. Just as black “contrabands” joined up with the North, so too did large numbers of poor whites, seeing the war as an opportunity for them to better their condition. One union soldier wrote that, “the poor, wretched refugees that come here . . . Old men and women, children of all ages, young women without clothing enough even for decency, come here daily for food.” Union commanders provided food and cash relief to poor southern whites, in part in an effort to sway them to their cause, sometimes raising funds through a tax on the richer inhabitants. As Stephen Ash reports, one union soldier wrote from Alabama in 1862: “We are getting a good many recruits from this country. All poor people, in fact that is the only kind that pretend to any Unionism here.” A soldier in Virginia similarly wrote that “there are two classes of white people in this country – the poor class and the wealthy aristocratic class. The poor ones are very bitter against the others; [they] charge them with bringing on the war, and are always willing to show where the rich ones have hid their grain, fodder, horses, &c.”26

This is not to say that whites in the South were of the same mind, of course. More typically, racial hatred and the knowledge, perhaps only dimly felt, that

26 Ash, op. cit.
a class of slaves was the only thing keeping them from being the lowest caste (conferring upon even them what W. E. B. DuBois called the “psychological wage” of white supremacy) could overcome their economic self-interest and redirect their animosity toward poor blacks instead of better-off whites. Nor is the claim here that poor whites had it as bad as slaves or that we have exaggerated the brutality and inhumanity of slavery; it is instead to show that absent an examination of the architecture of the slavery system, the early poverty of American blacks and whites alike cannot be understood. This is the “other face” of the American welfare state and among its first manifestations: a national program of regulation and “relief” that long pre-dates the New Deal. While it was designed to regulate and control African Americans, it affected the health and well-being of all marginal populations in the South. This is a poverty created and fostered by government itself.

Jim Crow and the Black New Deal

The end to slavery did not end the state-sanctioned and systematic exploitation and abuse of African Americans, of course, and while such practices were part of no formal, national institution, it might nonetheless be productive to think of Jim Crow as a welfare state non-system, one which continued to control African Americans and affect their ability to allocate their dependence or, in Sen’s terms, to “lead the kind of lives they value.” As C. Vann Woodward noted, throughout the ex-slave narratives collected during the Great Depression one can find what seems like genuine nostalgia for slavery. As he observes, some of this may be accounted for by noting the historical moment in which these personal histories were collected; during the Depression one might fondly remember a time when life, if less free, was more stable and predictable and when food was more plentiful. And the narratives collectively portray a diverse world of experience: “A paradise and a hell on earth, food in plenty and daily starvation, no punishment at all and brutal beatings for no reason at all, tender care and gruesome tortures, loving family ties and forced breedings, gentle masters and sadistic monsters.”

Still, we should not overestimate the impact that the abolition of slavery had upon the daily lives of many African Americans, as 1912 testimony from “A Negro Nurse,” reveals: “the condition of this vast host of poor colored people is just as bad as, if not worse than, it was during the days of slavery. Tho today we are enjoying nominal freedom, we are literally slaves.” She described her daily routine, her compulsory residence at the home of her employer, his unwanted sexual advances, being permitted to visit her children once weekly (but not to stay overnight), forced to work at whatever household or caregiving task was demanded of her, all for $10 a month, $4 of which was required to pay the rent on her own house: “You might as well say that I’m on duty all the time – from sunrise to sunset every day in the week. I am the slave, body and soul, of this family.” She complained about the lack of unions, and that if there were to be walkouts

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there would be no shortage of others ready to step in and take their places. “The truth is, we have to work for little or nothing or become vagrants! And that, of course, in this State would mean that we would be arrested, tried, and dispatched to the ‘State [Poor] Farm,’ where we would surely have to work for nothing or be beaten with many stripes!”

For many children, too, the conditions that governed their lives changed little after slavery had been “abolished.” In Mississippi, laws were enacted that allowed the state to bound out black orphans and the children of paupers, in some cases explicitly giving preference for their placement to their former masters.

Many former slaves even remained on the same land as tenant farmers. Tenants fell roughly into two categories: share-renters owned their own equipment and paid 25% or 30% of their gain to the landlord; share-croppers owned little or nothing and paid the landlord one half, or more, of their crop. Croppers were generally more common than renters and much more vulnerable, since they were at the mercy of their landlords, forced to pay whatever price he set for equipment and often forced to purchase their food and other supplies from his store. Many tenants at the end of each year would find themselves in debt to their landlord for food, equipment, and for medical care (in one study, 75% of all croppers’ debt was medical expenses). Tenants were described by their white landlords in terms similar to the language of slavery—as “childlike,” improvident, inherently lazy, unable to vote wisely, and inferior. As one man told sociologist Arthur Raper, “The Negro should have justice as a human being, but in the light of the kind of human being he is."

Tenants continued to serve as cheap and vulnerable labor, nearly as fully commodified and unfree as in the past. This is also perhaps familiar history, but is especially notable given that during these post-Civil War years the traditional histories of the American welfare state are focused almost exclusively upon northern efforts by states and cities to create “Progressive” reforms. The South is typically absent from the narrative; and since 90% of all blacks lived there until about 1910, so too are African Americans and their very different experience of state power.

Similarly, we might observe that as bad as the Great Depression was in general, it was worse for some, and that the programs of the New Deal affected African Americans quite differently. The Agriculture Adjustment Act (AAA), designed to increase crop values by destroying them or reducing their production, drove massive numbers of tenants off the land, and blacks were three to four times as likely to lose their jobs early in the Depression. By the 1930s, average annual income in the South ($314 in 1937) was half of what it was in the North, and lower
for many: $73 was the average for tenant farmers and from $38 to $87 for sharecroppers. Twice as many southern children worked.\(^\text{34}\) It is in this context that the New Deal came to the South. But, as Green observes, instead of the New Deal tearing down the apartheid regime and bringing a more egalitarian provision of public aid, because of the South’s control over the national Democratic Party and Congress itself, it often shaped New Deal “relief” programs to serve white, planter interests.\(^\text{35}\)

Despite the growing alphabet soup of new relief programs, in the early New Deal African Americans had little to be grateful for. The National Recovery Act (NRA) excluded domestics and unskilled laborers from its provisions, which included minimum wages. In order to avoid raising the wages of those black men and women who were covered by the NRA, some firms simply fired the black workers they had and replaced them with white ones. The NRA was, as a result, variously referred to by blacks as the Negro Run Around, Negroes Ruined Again, and Negro Rarely Allowed. Blacks were barred from the Tennessee Valley Authority (TVA) jobs, too, and were much less likely to have landlords who were willing to electrify their buildings. Very few Civilian Conservation Corps (CCC) jobs, likewise, went to black youths.\(^\text{36}\) In the early 1930s, the Red Cross provided food and clothing; even this was initially resisted by the planters, just as they later resisted federal aid, until many came to realize that they could use relief as an excuse to lower the wages they were paying. To accommodate planters, the Works Progress Administration’s (WPA) and other projects were often suspended at harvest time, to ensure an ample supply of cheap labor. When the Federal Emergency Relief Administration (FERA) did reach the South, whites were more likely to receive cash and blacks were more likely to receive only food. Yet some programs nonetheless achieved successes in distributing benefits to the very neediest cases—which angered planters, since, as one said, “by helping the worst, it puts a premium on improvidence and idleness.” Besides, said another, “most any nigger who wants to work can get something to do.”\(^\text{37}\)

By the end of the decade, things had changed, at least for blacks in the North. African Americans doubled their share of CCC jobs, were able to receive more Federal Farm Security Loans, gained access to one-third of Public Works Administration (PWA) housing units, secured some 5,000 leadership and supervisory jobs in the WPA education programs, and gained good access to relief. Even by mid-decade, the chance for an African American to have been on relief was over two-and-a-half times that of a white man, and while blacks were some 8% of the population, they constituted 24% of those on relief, which given their generally deeper poverty, is logical. This varied greatly by region, however, with it being significantly more likely for an African American in the North

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\(^{35}\) Introduction, in Green, *Before the New Deal*, op. cit.; Introduction, in Green, *The New Deal and Beyond*, op. cit.


to receive aid than if he or she were in the South. Part of the reason may be that southern blacks retained a near monopoly on unskilled and low-skilled labor, causing whites actually to be in greater relative need and to have fewer resources. A larger part of the explanation is that these were joint federal-state programs, and the important decisions were made at the local level, almost always by racist southern whites serving planter interests.

This is a common thread in our history of welfare state apartheid. We might remember that slavery not only helped to build the southern economy, but granted the South enduring disproportionate electoral power in national government, thanks to the lasting effects of the three-fifths clause. And race, because of its role in the creation of a fragmented political system and party structures, partly explains the comparative “weakness” even of the white welfare state. This federalism-based distinctiveness continues: as it was with AFDC, the history of TANF shows state-by-state variation attributable to race.

As a result, African Americans have had to depend upon their own institutions of self-help. As Green writes of an earlier period:

The institution of slavery complicated the question of public relief in the southern states. What little public provision existed was generally denied to blacks; slaves were the responsibility of their masters and were prohibited from receiving aid in most states. Free blacks, too, were usually denied public assistance and were forced to develop their own informal self-help mechanisms, setting in motion a trend that would last until the twentieth century. Black churches began assuming the responsibility for supporting indigent members by establishing ‘poor saints funds’ or other methods of caring for their own. Mutual assistance associations, which would become one of the cornerstones of black civic life later in the nineteenth century, provided the equivalent of death benefits, burial policies, and even unemployment insurance for those whom the state refused to assist.

Similarly, by the early twentieth century, the National Association of Colored Women could report that its member organizations throughout the nation had established training schools for kindergarten teachers, day nurseries, vocational schools, old age homes, reading rooms, prisoner programs, settlement houses, orphanages, Sunday schools, temperance work, and self-help meetings for young mothers.

Poverty, Labor, and the Prison

There is an argument to be made that the institution of the state that the poor American (but especially the poor black man) is and has been most likely to encounter is the police force, and we might therefore incorporate the criminal

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38 Trotter, op. cit.
41 Green, *Before the New Deal*, op. cit., p. xi.
justice system generally, and the prison more specifically, into our thinking about
the welfare state. According to recent data, some 2 million families receive TANF
benefits, 600,000 people inhabit a homeless shelter on any given night, some
100,000 annually reside in mental hospitals, 6 million receive SSI, and perhaps
600,000 children live within the foster care system. Most will concede that these
are institutions and programs legitimately within the purview of welfare state
analysts.

At the same time, according to the US Department of Justice, some 2.1 million
are confined within American jails and prisons, and another 4.8 million remain
under the surveillance of the state on probation or parole. These men and, in
growing numbers, women are disproportionately black and Hispanic, less-
educated, drug- or alcohol-addicted, and poor and unemployed at the time of
their arrest. Felons and ex-offenders inhabit their own sphere in the welfare state,
typically denied eligibility for public housing, food stamps, or in some states
licenses to be bus drivers or hairdressers. To comprehend the political economy of
poor neighborhoods, we must consider the manner in which the mass
incarceration of black men has removed potential fathers, partners, and wage-
earners from the community—urban poverty today cannot be understood
without incorporating the prison. This was as true in our past as it is now, when
the punishment for poverty—codified in an array of anti-vagrancy and anti-
tramping laws in the North as well as the Black Codes of the South—was debtor’s
prison, the work farm, or indentured servitude, just as jail or expulsion from the
city is today punishment for loitering, begging, sleeping in public places, or other
public displays of need. It is useful to remember that the Thirteenth Amendment did not abolish
slavery: it explicitly retained involuntary servitude “as a punishment for crime
whereof the party shall have been duly convicted.” African Americans suffered
disproportionately from this “loophole,” and continue to through their over-
representation in American prisons. And just as it is today, throughout our
history most executions have taken place in the South, while one is more likely to
be executed for murder if the victim is white. Further, it was not merely the
Thirteenth Amendment that was unenforced, but the Fifteenth too. Massive
fraud, the threat of violence, and violence itself was required to keep
emancipated slaves from voting. Said one Democrat: “We were forced to a choice

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43 This is not a phenomenon only of the South. During the second great wave of black
migration during World War I, northern cities controlled this influx of African Americans in
various ways, often with incarceration. In Pittsburgh, for example, the number of blacks
arrested went from 1,681 in 1914–1915 to 2,998 in 1916–1917, virtually all of the increase for
minor offenses—disorderly conduct, drunkenness, and being “suspicious characters.”
Harrisburg doubled its black prison population during the same time. Blacks in Cleveland
jails went from 13% of the total in 1916 to 87% in 1917. Their crimes were typically “loafing”
and being “suspicious.” Those who received aid instead of incarceration depended upon
black churches and self-help organizations. Few received public poor relief, although many
unable to find shelter were sent to the workhouse. Henderson H. Donald, “Dependents and
Delinquents,” Journal of Negro History 6:4 (1921), pp. 458–470; see also Stephen Pimpare,
The New Victorians: Poverty, Politics, and Propaganda in Two Gilded Ages (New York: New
Press, 2004), ch. 6.

44 Marie Gottschalk, The Prison and the Gallows: The Politics of Mass Incarceration in
America (Cambridge: Cambridge University Press, 2006); David Cole, No Equal Justice: Race
between the evils of negro rule and the evils of the questionable practice to overthrow it. We chose what we thought was the lesser evil, and it is now not to be regretted.”

That legacy remains: many states continue to deny felons or ex-felons the right to vote, with the result that 13% of black men are disenfranchised, and if current trends continue, one in three can expect to spend some portion of his life in prison or jail and many more will be denied the right to vote. Little wonder that some today adopt the language of abolitionism to describe prison reform movements.

As one Mississippi state official said after the end of the Civil War, “Emancipation … will require a system of prisons.” One former slave likewise noted that, “in slavery times, jails was all built for the white folks. There warn’t never nobody of my color put in none of them. No time … to stay in jail; they had to work.” In what may be nothing more than a curious coincidence, New York State emancipated its slaves and created its first state prison on the same day in 1796. Yet as early as the 1720s, there were more jails in the Colonies than there were hospitals or public schools.

It is only recently that we have not thought of the prison as a welfare or welfare state institution. As late as 1922, in an article about public welfare in the American South, one observer identified “four age-old institutions” of public welfare: the asylum for the insane; relief for the dependent; the jail and prison for criminals; and the courts “for dispensing of justice,” which often meant allocating people to the appropriate welfare institution. Until 1956 the central, national organization of public welfare in the United States was the National Conference on Charities and Corrections, while many states developed Bureaus of Charities and Corrections to coordinate punishment and relief activity. Our early history makes the case for identifying the criminal justice system as a welfare state institution, for at least until the late 1800s most poorhouses, almshouses, poor farms, and asylums were truly more prison (and workhouse) than refuge. In the late 1700s in Philadelphia, blacks were some 15% of almshouse inmates and about one quarter of paupers in prison; about one in ten of those on the “vagrancy

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48 Oshinsky, op. cit., p. 34. See also Marable, op. cit., ch. 4.


50 Gottschalk, op. cit., p. 43.

Throughout much of American history, to be poor was, quite literally, a crime. Should you have found yourself in debt in Colonial Philadelphia, you would be jailed and then required to pay for your own food and heat. If you were among the fortunate few you would have been granted a trial, but even if acquitted you would have been obligated to pay court costs; if unable to pay, you would have been incarcerated and required to bear the cost of your keep. Thus, even to be accused of poverty meant the denial of your most basic liberty and to be driven deeper into need by your punishment. Conditions in debtor’s prisons were typically dreadful—foul and foul-smelling, crowded, and raw and cold in winter. Most were incarcerated for small sums; some were prostitutes who owed money to their brothels; others were sailors guilty of nothing, accused by their captains and incarcerated only to ensure that when he next needed them to set sail they would be available. Historian Laurel Ulrich notes that we can identify another function of debtor’s prison:

In the abstract, imprisonment for debt seems a barbaric practice, something on the order of branding thieves or cutting off the ears of rioters. In reality, it put as much pressure on a man’s connections as on the man himself. A form of coercion rather than punishment, it was a way of forcing a man to reveal hidden property or liquidate capital – social as well as financial.

Indeed, while welfare state histories have focused on public poor relief, food stamps, or social security, the typical encounters poor people have had with government is not through welfare programs but through the police. Because relief and reform institutions were so often used to control, change, and indoctrinate the poor, while punishing those resistant, we have a compelling reason to include the prison within the purview of the welfare state. Its functions are perhaps easiest to discern in the late nineteenth century.

Left an orphan after the end of the Civil War, one Georgia boy’s uncle hired him out to a sea captain. By 21, technically free to leave, he signed on for another

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54 Laurel Thatcher Ulrich, *A Midwife’s Tale: The Life of Martha Ballard, Based on Her Diary, 1785–1812* (New York: Knopf, 1990), p. 267. The usual vagrant prison term in pre-Revolutionary War Philadelphia was about one month. From then until the late nineteenth century, treatment of tramps was less harsh than it was in the last quarter of the century, during the second great mass incarceration of the century (1805–1835 marked the first), when even sick and disabled inmates were forced to undertake hard, manual labor, and violence and threats of violence were used as tools to motivate the poor inmate. There were twice as many foreign-born as natives in the late century and as many as 43% in 1879. Only by the 1820s were there blacks in large numbers—51% in 1823 and 53% in 1825, five times their representation in the population. From the 1820s until just after the Civil War, when their opportunities for employment substantially improved, women often made up half or more of the inmate population of tramps and vagrants. Black women were more common in the prison than were black men from the 1840s to 1860s. Priscilla Ferguson Clement in Eric H. Monksonen (ed.), *Walking to Work: Tramps in America, 1790–1935* (Lincoln, NE: University of Nebraska Press, 1984).
year, and another, and another, eventually taking a ten-year contract with the
captain’s son, a Georgia senator. More striking were the other “workers” who soon
appeared on the senator’s plantation, black convicts leased from the state for some
$200 per year:

When I saw these men in shackles, and the guards with their guns, I was scared
nearly to death. I felt like running away, but didn’t know where to go. . . . We free
laborers held a meeting. We all wanted to quit. We sent a man to tell the Senator
about it. Word came back that we were all under contract for ten years and that the
Senator would hold us to the letter of the contract, or put us in chains and lock us up
– the same as the other prisoners. . . . We had sold ourselves into slavery – and
what could we do about it? The white folks had all the courts, all the guns, all the
hounds, all the railroads, all the telegraph wires, all the newspapers, all the money,
and nearly all the land – and we had only our ignorance, our poverty, and our
empty hands . . . most of us worked side by side with those convicts during the
remainder of ten years.

After the ten years, most of the convicts were informed that they each owed the
senator $100 or more for debts supposedly incurred at the commissary from which
they were obliged to buy their food and supplies. And “no one of us would have
dared to dispute a white man’s word – oh no; not in those days.” For the next
three years, this man lived as a “peon.” His nine-year-old son was “given away to
a negro family across the river in South Carolina, and I never saw or heard of him
after that.” This, note, was in the early years of the twentieth century. Such
practices were widespread, especially in Georgia, both the forced indentured
“contract” servitude and the abundant use of prison labor to take the place of what
slavery had previously provided. Many had been charged with public order
offenses or with adultery. The state made sure that there were plenty of such
prisoners:

A number of negro lewd women were employed by certain white men to entice
negro men into their houses; and then, on certain nights, at a given signal, when all
was in readiness, raids would be made by the officers upon these houses, and the
men would be arrested. . . . Nine out of ten of these men, so arrested and so charged,
would find their way ultimately to some convict camp, and, as I said, many of them
found their way every year to the Senator’s camp while I was there.55

One of the virtues of convict labor was that the worker could never become a
tramp—he had no power and could never, finding wages or conditions intolerable,
set out for a better deal. Oregon, California, Missouri, and Massachusetts each had
some experience with convict leasing, but these were modest, limited experiments.
Leasing was a feature of the South and, in the post-Civil War years, instead of
prisons the Confederate states often relied upon plantations, mines, and mills.56
But while predominantly a southern phenomenon, thanks to federal subsidies that

55 William Loren Katz and Laurie R. Lehman (eds), The Cruel Years: American Voices at the
Dawn of the Twentieth Century (Boston: Beacon, 2001), pp. 170–182; Katzman and Tuttle,
op. cit., pp. 151–163.
56 Matthew J. Mancini, One Dies, Get Another: Convict Leasing in the American South,
encouraged the use of prison labor to build or improve public roads, it was, until
the 1930s, sanctioned and subsidized by the US government.\textsuperscript{57}

Convict leasing masks itself as an alternative institution of the criminal justice
system, but it is also an institution of labor market control, like slavery or poor relief;
and, as historian Matthew Mancini put it, “the criminal justice apparatus was
systematically geared for the collection of labor.” It was those industries that stood
most to gain from the practice that pushed for the creation of new vagrancy laws or the
stepped-up enforcement of laws already on the books. In 1907, one Florida turpentine
operator, in desperate need of labor, presented the sheriff with a list of some 80 black
men he thought might be good workers and promised to pay $5 a head; all 80 were
then arrested—for vagrancy, gambling, disorderly conduct—within the span of three
weeks. In 1876, Mississippi passed the Pig Law, which made the theft of a farm animal
or property valued at $10 or more punishable by up to five years in prison; and a few
weeks later, the legislature passed a law to permit the leasing of convict labor. So,
subsequently, we find black men like Rause Echols getting three years for stealing a
suit of clothes; Robert Hamber, five years for stealing a horse; Lewis Luckett, two years
for a hog. Walter Blake was fined $50 dollars and $132 in court fees for illegal
gambling—and, like most such fines, they had to be paid in hard labor. It is no accident
that African Americans were typically as much as 90% of convict laborers and no
accident that the institution, while different, still bore an uncanny resemblance to the
slave system recently deposed. Mancini says evidence is mixed as to whether leasing
depressed wages generally, but it clearly did so in select industries.\textsuperscript{58}

Housing for convict laborers was in “great rolling cages,” small railroad cars
with as many as 30 men in each, often chained together at the ankle, sharing one
fetid bucket for waste, wearing clothes that were often—quite literally—never
washed; they were replaced once worn out. Conditions, though awful
everywhere, were likely the worst in Arkansas, Mississippi, and Louisiana.
They were beaten, whipped, and tortured. In some camps, men were made to
fight each other for the entertainment of their overseers. Because the pay for
guards was so low, in some camps black men also served as guards.\textsuperscript{59} A constant
of labor camps has been the poor, often unsanitary accommodations, lousy food,
and low wages—and because throughout most of our history there were no state-
level laws governing their operation, only those within city limits were typically
regulated.\textsuperscript{60} In most camps, “perhaps the only statistic in excess of mortality rate
would be escape rate.” And the mortality rate was high indeed: 11% in Mississippi
from 1880–1885, 14% in Louisiana in 1881, and 16% in Mississippi died in 1887.
Between 1877 and 1888, the death rate was 45% for convicts tasked to the
Greenville and Augusta Railroad in South Carolina. In 1888, one-third of
Alabama’s prisoners were estimated to have “chronic, incurable diseases.” In
Mississippi, perhaps one in four convicts was a child or adolescent—one six-year-
old girl, Mary Gay, got 30 days and a fine for stealing a hat. Young Will Evans
served two years for taking the change off a grocery-store counter.\textsuperscript{61}

\begin{footnotes}
\item[57] Gottschalk, op. cit., p. 51.
\item[58] Mancini, op. cit.
\item[59] Ibid.
\item[60] Frank Tobias Higbie, Indispensable Outcasts: Hobo Workers and Community in the
\item[61] Mancini, op. cit.; Oshinsky, op.cit.
\end{footnotes}
For some employers leasing was an improvement over slavery—slave masters had to bear the costs of sustaining the entire slave community, including those who could not work: the very young, the old, and the sick. With a lessee, by contrast, he was concerned only with the laborer himself, and many were none too concerned with his well being. As one planter said, in the title of Mancini’s book, if “one dies, get another.” Convict labor was probably less productive than “free” labor, but its extraordinary cheapness made the bargain well worth it, at least until the rise of chain gangs and states’ increasing determination to use their convicts for their own purposes.62

But this is not just a feature of the American past: there are now some 750,000 people employed in American prisons, which would make the prison industry the second-largest employer if it were counted among the Fortune 500; because the American prison population is disproportionately black and Hispanic, so too are these convict laborers, as they historically have been. They can be paid as little as 20 cents an hour, making some of them cheaper than sweatshop labor in Mexico or Indonesia. A wide range of companies have used prison labor, including Lexus, Boeing, Honda, Konica, Microsoft, TWA, Toys ‘R’ Us, IBM, Dell, AT & T, Starbucks, Nintendo, and Victoria’s Secret.63

Nor is the work farm consigned to history. In June 2005, Ronald Robert Evans was arrested for having drawn mostly black, homeless men into indentured servitude on his cabbage and potato farm in Florida. According to a number of news reports,64 Evans promised jobs, along with room and board. After each day’s work, they were offered alcohol, cigarettes, and crack cocaine on credit—the last at about four times the street cost.65 And, as in the past, many found themselves with debts instead of income. It was workers at the camp, surrounded by fence and barbed wire, who brought it to the attention of the law. Some of the 80 or so men found at the camp, upon their emancipation, were arrested on outstanding warrants. And thanks to private company contractors, like Halliburton and others, in the wake of hurricane Katrina in 2005, hundreds of Mexican men were lured with the promise of jobs paying $8 per hour with room and board; instead, they were packed as many as 19 into a trailer, fed sometimes only once per day, and rather thin fare at that, told they would be deported if they left the military bases where many of the contractors were based, and, for many, summarily dismissed without having been paid after weeks of work—left homeless and entirely without resources in a foreign country.66

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62 Mancini, op. cit.; Oshinsky, op. cit.
65 This is an old practice, and drug dealers were often to be found plying their trade, often at the request of the owners, at migrant labor camps. See David Gottlieb and Anne Lienhard Heinsohn (eds), America’s Other Youth: Growing up Poor (Englewood, NJ: Prentice-Hall, 1971), p. 51 for a case from the late 1960s.
The United States has been identified as a “welfare state laggard,” because we came more slowly to national programs of unemployment insurance and old-age pensions, because we have spent a lower portion of GDP on such efforts, and because our coverage is more limited (notably, we remain the only advanced nation without a universal program of health insurance) and more likely to be means-tested. Jacob Hacker and Christopher Howard have argued that it is not, in fact, that we do less but that we do it differently—providing more of our protection against risk through private market mechanisms.\textsuperscript{67} I suggest here that there may be another way to complicate the “welfare state laggard” story: it is not that the United States has done less, but that our welfare state has been more repressive and attuned to labor market regulation than most regimes of Western Europe. The unique role that race has played in our federal system has, in part, made this possible. The African American experience of state power has been sufficiently distinct that we cannot productively generalize about the welfare state. The prison today may be the clearest example: in lieu of education, job training, drug treatment, family supports, and other policies, we provide institutions of forced incarceration and forced labor—enduring, disproportionately black (and now Hispanic) programs of involuntary servitude. There does seem to be a relationship between welfare and incarceration: if money is not spent on relief, pensions, jobs, job training, and education, it will, all else being equal, be spent on police, prisons, and repression.\textsuperscript{68}

While I have drawn a line here from American slavery through convict leasing and the American prison, Marie Gottschalk’s warning that we not “flatten out” variation across institutions and over time is worth remembering. As she writes, “today’s incarceration rate of nearly 7,000 per 100,000 African-American males dwarfs the number of blacks imprisoned in the South under convict leasing.”\textsuperscript{69} Though she offers this caution to make a different point, I will use it as a reminder that progress does not necessarily follow merely from the passage of time, and the American welfare state, rarely a force for good for African Americans, still inclines more toward punishment, isolation, and social control than relief and aid.

We should also note a curious irony: African Americans have historically been more likely to be castigated for their dependence on welfare, despite their relative independence (through exclusion) from it, but we could instead claim that it has been whites who have been dependent upon blacks: for childrearing and housekeeping; as cannon fodder; as politically indispensable scapegoats; and for cheap labor on the plantation, on the farm, in the factory, or in the prison.


\textsuperscript{69} Gottschalk, op. cit., p. 15.