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Excerpt
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Introduction

> Giving is the most dangerous thing in the world – unless, of course, it is well administered.
>
> – *William E. Royer, welfare director, Montgomery County, Maryland*

> The test of a free society will be found in the scope of right and privilege possessed by its weakest elements – those who are under the greatest pressure to surrender their independence.
>
> – *A. Delafield Smith, assistant general counsel, Federal Security Agency*

When Senator John F. Kennedy declared in 1960 that the nation was entering a promising and perilous "New Frontier" – "a turning-point in history" – Newburgh, New York, seemed to belong in the proverbial dust heap. Once the headquarters for General George Washington and the Continental Army, and a century later a hub for industry and transportation, Newburgh was falling into ruin. Its population was declining, its housing stock decaying, and its economy failing. City Manager Joseph McDowell Mitchell claimed to know exactly whom to blame: the city's hundreds of "chiselers and loafers," "freeload[ing]" migrants, "social parasites," and "illegitimate children." They burned through "taxpayer" dollars, he alleged, bringing in return only crime, blight, and immoral behavior. If Newburgh could simply reassert traditional, local controls over the poor, he insisted, the city would recover its former glory.[1]

On May Day in 1961, Mitchell gave Newburgh's citizens their first glimpse of "home rule" reclaimed, when he summoned all "reliefers" to the police station. Some endured questions about their sexual behavior, drinking, and criminal records, while others waited hours in line. The real blitz, however, occurred on June 20, when Mitchell sent a thirteen-point memo to the city's commissioner of public welfare. Among the changes he ordered were the issuing of welfare "vouchers" rather than cash payments; a monthly review of all Aid to Dependent Children files; a cap on welfare expenditures; and the imposition of strict time limits on relief – strictest of all for those who were "new to the city," such as Puerto Ricans and black migrants from the South. Mitchell also ordered the denial of relief to broad categories of applicants: "all able-bodied adult males" and other "physically capable" persons who refused employment; all applicants who had "left a job voluntarily"; and women who repeatedly bore children out of wedlock. And this, Mitchell promised, was to be "only the beginning."[2]

Mitchell's zeal was not that of a native son. Born and raised in Maryland, he arrived in Newburgh after military tours in North Africa and Germany, a stint in various federal wartime agencies, graduate work in public administration in Southern California, and several years as city manager of a Pennsylvania township. Perhaps that is why his plan appealed not only to his constituents in Newburgh but also to Americans nationwide. While some media outlets protested Newburgh's approach – it was a return to the "Dark Ages," the *New York Times* announced – others deemed the plan "courageous," humane, and even geopolitically astute: "a perfect way to fight and win the cold war." Leaders of other cities large and small wondered whether Mitchell's proposed reforms could help solve their problems. Arizona senator Barry Goldwater, a rising star among conservative Republicans, embraced Newburgh's approach as a national model. And everyone seemed to accept Goldwater's underlying premise: that the country had gotten itself into a "welfare mess."[3]

Looking back on the Newburgh incident, the beginnings of a now familiar story are visible. Although state authorities quickly put a stop to most of Mitchell's plans and Mitchell himself faded from view, his opinions highlighted a broad and deep dissatisfaction with the nation's welfare programs. In the ensuing decade, Mitchell's moralistic, racially coded, and taxpayer-oriented manner of speaking about welfare would become a national trend, even as liberal politicians announced an all-out "war" on the conditions that trapped so many citizens in poverty.[4] As President Lyndon Johnson's administration attempted to bring poor communities out of "the other America" and into the "land of opportunity," state and local welfare policies would codify Newburgh's assumptions, reinforcing a set of laws that already subjected poor recipients to extensive discipline and surveillance. And poor people and their allies would rise up in protest: within just a few more years, a New York welfare rights organization would virtually shut down that city's welfare system, welfare mothers would stop traffic on the Las Vegas Strip, and the National Welfare Rights Organization would amass more than twenty thousand members. In the same period, some of the nation's most brilliant legal minds would turn to "poverty law," helping to convince the U.S. Supreme Court that the poor were being mistreated at the hands of state lawmakers and that welfare recipients possessed a constitutionally protected interest in their public payments.[5]

But if Newburgh was an important harbinger of the events that followed, it is now an equally useful artifact, one that reveals important and understudied changes over time. First and foremost, Newburgh reminds us that local communities had once enjoyed vast discretionary power over the poor, but that in the lifespan of people like Joseph McDowell Mitchell, something dramatic occurred: other levels of government had come to dictate the terms on which public aid would be available to the needy.

This change occurred, in large part, via the Social Security Act of 1935 (SSA). Best known for establishing a mandatory system of retirement saving for individual American workers (Social Security), the act also authorized grants-in-aid for need-based income support ("welfare") for large categories of the poor: fatherless children, the aged, and the blind. By attaching those grants to state rather than local programs, the act ensured that federal and state officials would insert themselves between localities and their needy residents.[6] Local administrative machinery often continued to deliver poor people's benefits, and many localities retained responsibility for "residuals" (those who did not fit into the act's categories), but in general, local administrators in this new era found themselves required to "follow the book" and suffer visits from "higher-ups." The "price" of federal and state support, explained one Kansas writer in 1952, "is a number of rules which for practical purposes take out of the hands of our local people the decision as to who shall get 'relief,' in what form, and how much." Newburgh's call for "home rule" represented both nostalgia for an earlier era, in which poor people looked and acted differently, and a critique of the way that the Social Security Act insulated individuals from the beneficence and scrutiny of their communities.[7]

And yet Newburgh was not just a rallying point for people who romanticized local control. It was also a compelling example for political figures, like Goldwater, who championed states' rights and state sovereignty.[8] These people, too, were responding to a dramatic change over time: the rise of federal grants-in-aid and the corresponding reshaping of federal-state relationships. Between 1900 and 1930, when many progressive reform efforts bore fruit at the national level, the combined amount of federal grants to the states rose from $2.8 million annually to more than $100 million. The increase stemmed from the fact that the federal government had limited powers but vast funds (thanks to the institution of the federal income tax), and that influential reformers perceived many problems as beyond the ken of state and local government. As national policymakers responded to the Great Depression, they continued to rely on the grant-in-aid device, finding in it a way to implement sweeping reforms while steering clear of a hostile Supreme Court and appeasing political allies. By fiscal year 1946–47, the estimated annual total of federal grants to the states exceeded $1 billion. This money became a significant part of state budgets, creating relationships of dependence and, in some cases, perceptions of coercion. In the early years of the Depression, federal grants covered less than 2 percent of state and local expenditures; by 1954, federal grants constituted more than 20 percent of some states' annual revenue.[9]

Grants for welfare proved particularly remunerative. In 1937, just after the enactment of the Social Security Act, federal-state aid for highways ($317 million) overshadowed that for welfare ($155 million), but within just two years the situation was reversed. By 1943, state receipts for welfare ($389 million) were more than double those for highways ($164 million) and more than thirteen times the receipts for agriculture, an early area of federal funding. For the fiscal year ending June 30, 1947, grants for the categorical public assistance programs alone – that is, not including the full slate of health and welfare programs – constituted 57 percent of the total federal aid awarded to the states. To the extent that federal funds were remaking state budgets, public assistance grants now led the way.[10]

The grants came at a cost, however. States received public assistance grants on a matching basis, meaning a state got nothing if it contributed nothing, and it got more if it spent more. States responded by spending their own funds on public assistance and renewing those funds every year, at the expense of other goals. The nature of public assistance programs also made it difficult for states to control their outlays. State legislatures set eligibility requirements but could not control how many people applied, and claimant expectations, once established, could be difficult to scale back.

In addition to distorting state budgeting decisions, public assistance grants brought federal oversight, with all of its historical baggage. There were rules about how the programs were to operate, who ought to run them, and how the states were to assure the federal government of their compliance.[11] An entire federal agency, with offices and agents out in "the field," was dedicated to enforcement.[12] On the eve of the Newburgh controversy, many of these rules had already been the subject of deep federal-state disagreement, and in general the federal government – specifically, federal administrators – had prevailed. This had embittered some state politicians – especially those who perceived federal coercion in other policy arenas, such as the desegregation of public schools and the regulation of labor markets. Federal grants-in-aid were "a mixture of blackmail and bribery," Goldwater declared in his 1960 manifesto, *The Conscience of a Conservative*. "The States are told to go along with the program 'or else.'"[13]

Irritation with federal pressure was not the only element uniting supporters of the Newburgh plan, however. They also objected to the normative content of the rules and procedures that emanated from federal administrators and reached communities via state and local "welfare bureaucrats," as Mitchell called them. Touching on themes that had inspired the followers of the popular political dissidents Huey Long and Father Coughlin in the 1930s and, before them, the Populist movement of the 1880s and 1890s, Mitchell characterized Newburgh's welfare bureaucrats as colonizers from a foreign nation, intent on building their own "empire."[14] The critique contained some truth: since 1939 one of the conditions attached to federal public assistance grants had been the creation of statewide merit systems for the public employees involved with federally subsidized programs. To further encourage professionalization, federal administrators offered training to state and local administrators and subsidized their attendance at social work schools.[15] The result, over time, was a set of state and local welfare administrators who did not always appear to share the values and priorities of the communities they served. As Mitchell defended his thirteen-point plan, he accused local welfare workers of operating according to the "equalitarian," "socialistic," and impractical philosophies they picked up "in the social schools." These philosophies, he said, led welfare workers to dole out cash for "ne'er do wells" to spend on drink, luxury, and ill-considered children – allocative decisions that were then defended as a complex "science" beyond the comprehension of ordinary people. An oft-forgotten part of Mitchell's famous campaign was about "reorient[ing]" the thinking of these welfare workers and questioning their necessity in the first place. Many of those who cheered Mitchell's actions were cheering Newburgh's revolt against the content and size of welfare's "built-in bureaucracy."[16]

They cheered as well Mitchell's brazen recapturing of the language of rights, which had become a staple of liberal politics over the past thirty years and – contrary to historians' conventional wisdom – circulated even within the stigmatized realm of welfare. Mitchell won the nation's attention, he explained, by

> challeng[ing] the *right* of social parasites to breed illegitimate children at the taxpayers' expense, the *right* of moral chiselers and loafers to squat on the relief rolls forever, the *right* of freeloaders to make more on relief than when working, the *right* of those on relief to loaf by State and Federal edict, the *right* of people to quit jobs at will and go on relief like spoiled children, the *right* of citizens to migrate for the purpose of becoming or continuing as public charges.

In the face of such claims of entitlement, Mitchell asserted *Newburgh's* rights – its rights to dictate its own future, to conserve taxpayer dollars, and to preserve its traditional way of life. Individuals had rights, Mitchell conceded, but they were the negative rights that lawyer and politician Dean Alfange had set forth in the 1950s in his widely circulated essay "An American's Creed": the right to "seek opportunity, not security"; the right to "prefer the challenges of life" to a state-guaranteed existence; the right to refuse to barter "freedom for beneficence." Mitchell urged poor Americans to look not to the state but "to the ant," the hardest worker in God's kingdom. "Consider her ways," he said, quoting Proverbs, "and be wise."[17]

The resolution of the Newburgh controversy – a resolution that proved at best partial and temporary – is similarly revealing. By 1961, New York's welfare system relied heavily on federal funds; a generation of federal administrative interpretations made clear that these funds hinged on adherence *throughout the state* to the preapproved state "plan." Newburgh's revolt thus put the entire state at risk. No responsible state official could condone Newburgh's actions. At the same time, appearing soft on "welfarism" – a term that connoted fraud, dependency, and high government spending – was sure to alienate important constituencies. Ultimately, state officials turned to the seemingly neutral authority of law. At the urging of Governor Nelson Rockefeller, who wanted neither to betray Republican principles nor to appear to condone discriminatory and inhumane treatment, the state attorney general brought suit against Newburgh and a state court enjoined all but one of Mitchell's new rules. "Newburgh cannot be permitted to secede[] from law," the editors of the *New York Times* explained. Newburgh's error was not, in other words, its obsession with "the undeserving chiseler" but its attempt "to be a law unto itself."[18]

For their part, federal administrators stayed quiet. They had the authority under the Social Security Act to cut off New York's grant, but after twenty-five years of funding the state, its utter dependence on federal money made that solution too harsh – and too dangerous for the federal agency. Such was the lesson of the 1950s, when numerous states attempted to make their programs more restrictive and less appealing, in ways that discriminated against nonwhite applicants and conflicted with established federal policies. Reining those states in had produced damaging charges of federal overreaching and socialistic tendencies. Yet not acting also had costs. By 1961, federal officials understood that they were rapidly losing their credibility as enforcers of welfare law, and with it their ability to bring national authority and expertise to bear on an important policy area. As critics called for a reevaluation of the entire welfare system, federal administrators did little more than promise to study the matter and await Congress's instruction.[19]

Left unresolved in 1961, then, were the questions at the heart of the Newburgh revolt: In a modern nation-state, with a system of divided government, who bears responsibility for those in need? As one journalist put it, "Precisely who is my brother's keeper?"[20] Equally important, and implicit in Mitchell's thirteen-point plan: Who enjoys the power that comes with giving, and how may that power be exercised? When it comes to the poor, where does legitimate power begin and end? These questions had troubled Americans for centuries but had become ever more pressing over the preceding twenty-five years, after the federal government intervened so boldly in the realm of poor relief.[21] These are the questions that poor Americans and their lawyers would ultimately bring to the Supreme Court in the late 1960s, seeking a resolution that neither administrators nor politicians could deliver.

These are the questions, too, that animate *States of Dependency* as it tracks the remaking of American public welfare between 1935, when Congress enacted the Social Security Act, and 1972, when the most radical of the act's possible implications – a national guaranteed minimum income – appeared to expire for good. The book is less about answers, however, than about how diverse groups of Americans searched for answers, drawing on their own experiences of the changes unfolding around them. It is about the lives and deaths of their ideas, alliances, institutions, and laws. It is about the constraints they faced, and the choices they made from within those constraints. And it is about the impact of those choices on fundamental structures and principles of governance, an impact that reverberates today.

In telling this history, *States of Dependency* advances three main arguments, detailed in the sections that follow. In brief, the first argument is about the deployment of rights language in the realm of poor relief during the New Deal. Previous scholarship cast the welfare rights claimants of the 1960s and 1970s as pioneers of a new, deeply controversial way of talking about poor relief. *States of Dependency* shows that the pairing of welfare and rights has another history, grounded less in activism and more in public administration: New Deal administrators spread rights language throughout the nation in an attempt to rationalize and modernize the landscape of public welfare. Over the course of the next three decades, Americans inside and outside of government would translate this rights language from ideas into practice, in complex and sometimes contradictory ways. The second argument is about the role of New Deal public assistance in impelling changes in the respective powers of federal, state, and local governments. Though often described as decentralized and minimally intrusive, New Deal welfare programs helped the federal government develop the robust and extensive administrative machinery that is with us today. Less visibly – and perhaps more importantly – these programs helped states do the same. Localities, meanwhile, lost control over a policy area that had long been their exclusive jurisdiction.[22] The third argument is about the "legalization" over time of American poor relief: its increased reliance on statutory and constitutional law; its incorporation of legalistic procedures; and its eventual turn to courts as the ultimate arbiter of disagreements. Austin Sarat's pithy observation – that for the poor, "the law is all over" – had not always been true. But it became so in the decades after the New Deal.[23]

These three arguments – about welfare and rights, realignments in federal-state-local power, and the legalization of American poor relief – converge to produce a broader intervention: a revised portrait of the modern American state. As previous accounts have suggested, this state is bureaucratized, professionalized, rights-oriented, and centralized, with power concentrated in Washington. It is also, I argue, heavily dependent on state and local government, relatively indifferent toward substantive rights, and tolerant of vast inequality. These latter characteristics are neither accidents nor aberrations. They have not come and gone with changes in political leadership. They are now defining features of American governance.

WELFARE, RIGHTS, AND THE ADMINISTRATIVE RECONFIGURATION OF CITIZENSHIP

Most scholars associate the concept of welfare rights with the second half of the 1960s: with the broadening of the modern civil rights movement, the establishment of the War on Poverty's Legal Services Program, the flourishing of grassroots welfare rights organizations, and a series of bold pronouncements from the Supreme Court about the constitutional rights of poor citizens. They also associate welfare rights with conservative backlash – with the discourse on wasteful government and "welfare queens" that hung like a cloud over late-twentieth-century social welfare policy, until President Bill Clinton proudly "ended welfare as we [knew] it."[24] In fact, however, the idea of welfare as a right – and the related but distinct idea of welfare recipients as rights holders – has a longer history, one that both helps us understand why rights language appealed to poor Americans and their allies in the 1960s and why rights claims met such fierce resistance from other parts of the polity.

This longer history has been obscured from view by a construct that continues to dominate our understanding of U.S. social welfare provision: the "two-track welfare state." Historically, national-level insurance-based programs – constituting what scholars call the upper track – have been more generous, better administered, and more secure. Old Age Insurance ("Social Security") is the classic example. Payments from these programs have generally been framed as earned rights or entitlements, and white men and their dependents have benefited disproportionately. "Means-tested" programs, in contrast, such as Aid to Dependent Children (ADC) (now Temporary Aid to Needy Families), have historically been less generous and secure, more vulnerable to maladministration, and more stigmatizing. This lower track has disproportionately served women and racial minorities, and its benefits, according to the two-track account, are decidedly *not* rights.[25] Scholars have often noted that when old age and unemployment insurance were brand new, their New Deal designers used welfare as a point of contrast – as the quintessential *non*right against which the superior programs could be defined.[26]

Peering underneath the hood of this two-track welfare state, *States of Dependency* reveals that well before the War on Poverty or the modern welfare rights movement some government officials eagerly introduced rights concepts into the world of welfare. The Social Security Act, we tend to forget, was not just about Social Security; it also authorized matching grants to states for programs of need-based income support. These "welfare" programs encompassed large categories of the poor: dependent (i.e., fatherless) children, the aged, and the blind.[27] Desperate for funds and overwhelmed by their citizens' needs, nearly all states applied for grants – and thereby enabled the federal government to claim an ongoing role in the administration of a jealously guarded local function. "For the first time," to borrow one New Deal administrator's metaphor, "the American people hitched three wild horses, Federal, State and Local governments . . . to the same wagon" and set forth on a shared journey.[28] Rights concepts, although nowhere mentioned in the Social Security Act itself, were central to the story of what happened along the way.[29] The task facing New Deal administrators was to reform and supplant what they self-servingly referred to as the "old poor law," a localized, nonuniform system of poor relief with very deep roots. Rights language appeared to be a useful tool for reaching uncomprehending and at times uncooperative state and local officials. The old poor law, federal administrators explained in speeches, guidance documents, and training sessions, understood relief as charity or a gratuity; that is why poor relief could at one time be administered by nonexperts, in a highly discretionary fashion, with little regard for the individual in need. The benefits of the new public assistance programs, in contrast, came to recipients *as a matter of right*, and therefore had to be administered in a more systematic and professional way, with due regard for the recipient's other rights – to fair and equal treatment, to autonomy in his or her spending choices, and to some degree of privacy.[30]

Much of the talk of rights took place out of view of the general public, but it was hardly insulated from Americans' everyday experiences. In the 1940s, as the nation straddled depression and war, the federal government assumed new responsibilities, such as wartime production and price controls, and offered Americans new rights, most notably to political and social security. It also demanded great sacrifices, through a large-scale draft and the first-ever income tax on nonwealthy Americans.[31] The result, by the second half of the 1940s, was an embrace of rights language – which was now tightly tied to the concept of national citizenship – and a simultaneous and deepening anxiety about welfare. A paradigm emerged in which these programs represented tax dollars at work and central-state bureaucracy on the march. These same programs became linked in the public mind to disruptive demographic and cultural changes: the mass migration of African Americans from the South to the North; the increasing number of unmarried mothers and fatherless children; and the abandonment of elderly parents to the care of the state.[32] At the level of actual