

UCLA

UCLA Women's Law Journal

Title

Three Generations of Welfare Mothers Are Enough: A Disturbing Return to Eugenics in the Recent "Workfare" Law

Permalink

<https://escholarship.org/uc/item/9b25r7hh>

Journal

UCLA Women's Law Journal, 9(1)

Author

Huberfeld, Nicole

Publication Date

1998

DOI

10.5070/L391017707

Copyright Information

Copyright 1998 by the author(s). All rights reserved unless otherwise indicated. Contact the author(s) for any necessary permissions. Learn more at <https://escholarship.org/terms>

Peer reviewed

RECENT DEVELOPMENT

THREE GENERATIONS OF WELFARE MOTHERS ARE ENOUGH: A DISTURBING RETURN TO EUGENICS IN THE RECENT “WORKFARE” LAW

Nicole Huberfeld*

ABSTRACT

In this Article, Nicole Huberfeld examines recent changes in the welfare system, and considers whether these changes are consistent with the stated goals of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Turning to the history of “workfare,” Huberfeld reveals parallels between the reasoning of its proponents, and that of eugenicists. She argues that workfare mirrors eugenics theory because its proponents are imposing particular white, middle-class values upon the poor as a condition to providing them benefits. Through her comparison of workfare and eugenics, Huberfeld cautions against legislation that seeks to regulate the private conduct and personal decisions of welfare recipients, and of women in general. Instead, she concludes that effective welfare reform must address the inadequate pay rates and educational opportunities available to many welfare recipients, as well as recipients’ general lack of access to childcare and health care.

TABLE OF CONTENTS

I. INTRODUCTION.....	98
----------------------	----

* Associate, Wilentz, Goldman & Spitzer, Woodbridge, New Jersey. B.A. University of Pennsylvania, 1995; J.D. *cum laude* Seton Hall University School of Law, 1998. I would like to thank Professor Marc Poirier, Professor Kathleen Boozang, and Professor John Jacobi for their support, help, and insightful commentary.

II. THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996	99
A. <i>The Act</i>	100
B. <i>History of the Act</i>	103
1. Testimony before the Subcommittee on Human Resources	103
2. Report of the Committee on the Budget ..	108
C. <i>The Dissent of the Democrats</i>	110
III. THE EUGENICS MOVEMENT	112
A. <i>History of the Movement and Its Founders</i>	112
B. <i>Eugenics Gains Credibility</i>	115
1. The Legislative Branch	116
2. The Judicial Branch	117
C. <i>Abuse of Eugenics</i>	119
IV. HOW WELFARE REFORM RHETORIC MIRRORS THE EUGENICS MOVEMENT	121
A. <i>Overt and Covert Racist Policy</i>	122
B. <i>The Role of Classism</i>	125
C. <i>Parallels in Sexism</i>	127
V. CONCLUSION	131

I. INTRODUCTION

Welfare, by meeting the basic demands of subsistence, can help bring within the reach of the poor the same opportunities that are available to others to participate meaningfully in the life of the community. At the same time, welfare guards against the societal malaise that may flow from a widespread sense of unjustified frustration and insecurity. Public assistance, then, is not mere charity, but a means to 'promote the general Welfare, and secure the blessings of Liberty to ourselves and our posterity.'¹

This view of welfare is diametrically opposed to the way welfare is being shaped today. Instead of affording the poor opportunities, welfare has become a means of controlling welfare recipients. Welfare originated in "Mothers' Pensions," a system that aided single mothers so they would not have to join the work force.² Welfare has now become workfare, and women are now told not to become single mothers, but that they should work.

1. *Goldberg v. Kelly*, 397 U.S. 254, 265-67 (1970). Justice Brennan's opinion for the majority of the Supreme Court held that welfare benefits could not be taken away from a recipient without due process of law.

2. See DOROTHY ROBERTS, *KILLING THE BLACK BODY* 203-04 (1997).

The most recent welfare reforms, born out of election year haste and compromise politics, reflect the above idea. In his first term, President Clinton promised to “change welfare as we know it.”³ Both President Clinton and the Republicans promised to address welfare reform. The promises made on both sides laid the groundwork for welfare reform that might not have occurred otherwise. The result was the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“the Act”),⁴ signed into law on August 22, 1996. The Act creates a new form of welfare wherein the states are given block grants to administer as they see fit, effectively removing much of federal oversight from the program. The Act also limits welfare recipients’ eligibility to receive public funds to a total of sixty months. In addition to these structural changes to welfare, the Act’s substantive goals shift from the prior goal of providing basics to the poor to the reduction of out-of-wedlock births, promotion of the nuclear family, and abstinence education for women on welfare. Most notably, the Act creates an incentive for states to decrease the ratio of out-of-wedlock births without increasing the number of abortions.

This Article proposes that the conservative agenda embodied in the Act mirrors the eugenics movement in its theories and faulty reasoning. Aspects of workfare and its history resonate with eugenic reasoning and half-scientific, elitist theories. Part II chronicles the legislative hearings that preceded the Act, addresses the major ways that welfare has been changed, and discusses objections to the Act. Part III briefly traces the history of eugenics, and explains the major goals and consequences of the eugenics movement. Finally, Part IV argues that the Act is similar to the eugenics movement in the manner in which its history and language parallel the racist, classist, and sexist aspects of that movement.

II. THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996

Having determined that welfare was in a state of crisis and needed to be radically altered, in 1996 Congress responded with the Personal Responsibility and Work Opportunity Reconcilia-

3. *Id.* at 202 (quoting President Bill Clinton).

4. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified in scattered sections of 42 U.S.C.), *amended by* Pub. L. No. 105-33 (1997).

tion Act.⁵ The Act grew out of the Republican "Contract with America."⁶ Proponents of the Contract with America went so far as to characterize the current welfare system as a failure that "discourages work and encourages long-term dependency."⁷ Although prior to the Act the political consensus was that welfare needed reform, ultimately the Act was the product of constant conflict between the Democratic President and his legislative minority, and the Republican legislative majority.

A. *The Act*

The Social Security Act of 1934 established the Aid to Families with Dependent Children ("AFDC") program.⁸ The federal government assisted states through a system of matching funds.⁹ Historically, the federal government conditioned this assistance upon adherence to general administrative standards from which states could deviate only with approval from the Department of Health and Human Services ("HHS").¹⁰

Dubbed workfare, the new welfare law differs from traditional welfare in a variety of ways. The Act has restructured and renamed the past welfare system; AFDC is now the Temporary Assistance for Needy Families ("TANF") program.¹¹ The federal government has replaced matching funds with block grants to states.¹²

5. *Id.*

6. See generally H.R. REP. NO. 104-651, reprinted in 1996 U.S.C.C.A.N. 2183 (mentioning the Republican Contract with America proposals that fed into this legislation). For the Republicans, part of the drive to reform welfare grew out of the desire to terminate the waiver system, whereby states had to receive permission from the federal government to deviate from federal standards in their welfare programs. Under the Act, states are no longer required to obtain waivers. To wit, there is a comment in the history of the legislation that states: "Waivers, which can be revoked, keep the power in Washington . . ." *Id.* This was part of a larger effort to give power back to the states. See, e.g., Louis Sahagun, *The Survival Instincts of a Bulldog*, L.A. TIMES, Oct. 21, 1995, at 1 (discussing a local politician's drive to decentralize government and make his local jurisdiction a "microcosm of the GOP 'Contract with America'" by doing such).

7. See H.R. REP. NO. 104-651, reprinted in 1996 U.S.C.C.A.N. 2183, at 2184-85.

8. See 42 U.S.C. §§ 601-617 (1994).

9. See Jodie Levin-Epstein, *Teen Parent Provisions in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, 4 GEO. J. ON FIGHTING POVERTY 323, 325 (1997) (discussing the differences between AFDC and Temporary Assistance for Needy Families in the context of teen welfare recipients).

10. See 42 U.S.C. § 1315(a) (1994).

11. See Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2112 (1996).

12. See *id.*

The stated purposes of the TANF blocks grants are: to provide assistance to children so that they may remain with their families; to promote independence through jobs and marriage; to prevent single mother pregnancies and childbirth by setting numerical goals; and to encourage the formation of the traditional two parent family.¹³ Salient features of the block grant system are: (1) states must maintain at least 80% of prior welfare spending to receive federal funds (this required percentage may drop should the number of recipients complying with work requirements increase); (2) financial penalties may result from a failure to meet federal work requirement quotas; (3) federal funds to a recipient terminate after a total of sixty months;¹⁴ (4) the states must use funds towards certain programs for TANF recipients, such as programs to decrease the number of out-of-wedlock births and teen pregnancies.¹⁵

In addition, the Act also provides for a "Bonus to Reward Decrease in Illegitimacy Ratio."¹⁶ This bonus allocates \$100,000,000 to award \$20,000,000 to the top five states that reduce out-of-wedlock births, without increasing the number of abortions.¹⁷ However, the measurement of out-of-wedlock births is not determined by their number alone, but by an "illegitimacy ratio." The ratio is calculated by dividing the number of out-of-wedlock births by the total number of births in the state.¹⁸

13. 42 U.S.C.A. § 601(a) (West Supp. 1998). Section 601(b) also specifically states that recipients of the state monies resulting from these grants are not entitled, in any way, to the funds. An inference to be drawn from this provision is that workfare recipients do not have a constitutional right to the monies, and thus cannot challenge the new system under the Due Process Clause as has been done in the past when funds were withdrawn.

14. See 42 U.S.C.A. §§ 602-604 (West Supp. 1998).

15. See *id.* See also Levin-Epstein, *supra* note 9, at 325-27.

16. See 42 U.S.C.A. § 603(a)(2) (West Supp. 1998).

17. See *id.*

18. See *id.* See also 42 U.S.C.A. § 601 (West Supp. 1998). These findings read in pertinent part:

The Congress makes the following findings: (1) *Marriage is the foundation of a successful society.* (2) *Marriage is an essential institution of a successful society which promotes the interests of children.* (3) *Promotion of responsible fatherhood and motherhood is integral to successful child rearing and the well-being of children.* . . . (5)(C) *The increase in the number of children receiving public assistance is closely related to the increase in births to unmarried women.* . . . (8) *The negative consequences of an out-of-wedlock birth on the mother, the child, the family, and society are well documented as follows:* . . . (B) *Children born out-of-wedlock have a substantially higher risk of being born at a very low or moderately low birth weight.* (C) *Children born out-of-wedlock are more likely to experience low verbal cognitive attainment, as*

The bonus belies the Act's goal to reduce the number of out-of-wedlock births often attributed to dependence on welfare. However, the ratio is not limited to a calculation based on statistics about women who are TANF recipients. In fact, the ratio deliberately includes all single mothers,¹⁹ such as "Murphy Browns,"²⁰ unmarried mothers who support themselves, and lesbian couples in committed relationships that are legally unrecognized.²¹ Furthermore, the illegitimacy ratio is over-inclusive in that it is calculated from statistics on births and abortions of all women in the state.²² As a result, the Act seeks to control all women's reproduction, rather than to promote welfare recipients' transition to self-sufficiency.²³

well as more child abuse, and neglect. (D) Children born out-of-wedlock were more likely to have lower cognitive scores, lower educational aspirations, and a greater likelihood of becoming teenage parents themselves. (E) Being born out-of-wedlock significantly reduces the chances of the child growing up to have an intact marriage. (F) Children born out-of-wedlock are 3 times more likely to be on welfare when they grow up.

Id. (emphasis added). Note that the references to marriage pertain to all women, not just those on welfare, reflecting a value judgment that has become entangled in the legislation. Moreover, according to these findings, all of society's ills can be blamed on single mother births.

19. See 42 U.S.C.A. § 603(a)(2).

20. Murphy Brown is a character in a television situation comedy on CBS who is a successful news personality. She became pregnant and decided to have the child as a single mother in the 1992 television season. The character is white and wealthy, and the storyline challenged the traditional notions of who has children out-of-wedlock. Vice President Dan Quayle was offended by the show and was notoriously outspoken about his disapproval. See, e.g., Jennifer Daves, "Murphy": *Doing Its Job as Television*, L.A. TIMES, Sept. 28, 1992, at F3.

21. See generally William N. Eskridge, Jr., *A History of Same-Sex Marriage*, 79 VA. L. REV. 1419 (1993).

22. See Levin-Epstein, *supra* note 9, at 325 (noting that the bonus applies to the entire population of a state, not just the TANF recipients).

23. See Margaret A. Baldwin, *Public Women and the Feminist State*, 20 HARV. WOMEN'S L.J. 47, 96 (1997) (revealing that the Act seeks to monitor female welfare recipients' personal decisions, but fails to guarantee their right to receive welfare funds and fails to take steps to ensure them jobs). The author writes:

Such are the conditions structuring women's confrontation with "welfare reform." Management of women's maternity, sexual behavior, and economic value forms the core of contemporary welfare policy, directing women's experiences of motherhood and sex explicitly to public ends. [Welfare reformers are] promising no right to welfare, and likewise no right to paid employment

Id.

B. *History of the Act*

A study of the Act's legislative history indicates that it was created amidst a conflict between conservative and liberal politicians, and reveals that conservative politics and biases were incorporated into the Act far more frequently than liberal views.

1. Testimony before the Subcommittee on Human Resources

In March of 1996, the Committee on Ways and Means' Subcommittee on Human Resources²⁴ heard testimony regarding the relationship of out-of-wedlock births to welfare. The Heritage Foundation, the Christian Coalition, Congressman James M. Talent (R-Mo.), Dr. J.S. McIlhaney of the Medical Institute for Sexual Health, and Kathleen Sullivan of Project Reality, represented conservative concerns.²⁵

The testimony of these groups echoed throughout the Act and provided the foundation for the policies embodied in the new welfare bill. Robert Rector of The Heritage Foundation stated, "Marriage is dying in America. . . . Illegitimacy is the principal route to welfare dependence. . . . [T]he primary goal of welfare reform must be to save marriage: to reverse the current alarming trends and bring down the number of out-of-wedlock births."²⁶ The conservatives pressed on in their testimony, stating the need for girls to avoid sexual activity by attending church, and bemoaning the decrease of married women bearing children.²⁷ The testimony also relied on stereotypes of "black wel-

24. See CONGRESSIONAL YELLOW BOOK IV-83 (Spring 1998). This source describes the jurisdiction of the Subcommittee on Human Resources as: "(1) Bills and matters affecting those provisions of the Social Security Act relating to public assistance, i.e., (a) welfare reform, (b) supplemental security income, (c) aid to families with dependent children, (d) social services, (e) child support, (f) eligibility of welfare recipients for food stamps, and (g) low-income energy assistance." *Id.*

25. Although the representatives of the various organizations testifying did not identify themselves as such, the language of their testimony makes their political and social orientations clear. This Article uses the terms "liberal" and "conservative," though clearly an oversimplification of the viewpoints, because to characterize the sides as purely Democrat and Republican is inaccurate.

26. *Causes of Poverty, With a Focus on Out-of-Wedlock Births: Hearings Before the Subcomm. on Human Resources of the Comm. on Ways and Means, 104th Cong. 21 (1996)* [hereinafter *Hearings on Poverty*] (statements of Robert Rector, Senior Policy Analyst, Welfare and Family Studies, The Heritage Foundation).

27. See *id.* at 26. The speaker stated:

Thus regular religious observance cut the probability of out-of-wedlock birth roughly in half. . . . [T]eenage girls who regularly attend church are two-thirds less likely to be sexually active.

fare mothers," uneducated and continuing the cycle of welfare dependence by raising illegitimate children.²⁸

The Christian Coalition echoed testimony from the Heritage Foundation stating, "It is the increasing rate of out-of-wedlock births that is particularly shocking and troubling and which demands some attention."²⁹ Referring to the current welfare system as a "complete failure," the Christian Coalition cited studies which reported that the illegitimacy rate rises one percent every year.³⁰ The testimony further espoused conservative rhetoric that welfare creates an incentive to bear children as a single par-

Government policy must allow churches to play a far stronger role in rebuilding our broken society and in shaping the aspiring hearts and minds of young people at risk within our poorest communities.

Id. at 34.

28. *See id.* at 24. Rector stated: "Among blacks 68.7% of births were out-of-wedlock in 1993 up from 58% in 1980." *Id.* This was contrasted with the lower percentage of single mother births among whites. *Id.*

The speaker then contrasted educated white women with educated black women, stating:

Within the black community, the erosion of marriage has become so pervasive that a large percentage of better educated black women now give birth outside of wedlock. Still the general pattern of out-of-wedlock births remains the same; black high school drop-outs are more than twice as likely to have a child out of wedlock as were black women with graduate education.

Id. at 27. There was no discussion of white high school dropouts. The testimony also focused on black children born to single mothers by stating:

A study of black infants (aged 5 to 6 months) living in households of lower socio-economic status in America's inner cities found that male infants who experienced "minimal interaction with their fathers" had significantly lower levels of overall mental development, lower social responsiveness for novel stimuli. Illegitimate children tend to have lessened cognitive development. . . . The effect on boys is greater

Id. at 28 (citations omitted). Rector further placed emphasis on the black community by testifying:

Using data from the National Longitudinal Survey of Youth, O'Neill found that young black men raised in single-parent families were twice as likely to engage in criminal activities when compared to black men raised in two-parent families, even after holding constant a wide range of variables such as family income, urban residence, neighborhood environment, and parents' education. Growing up in a single-parent family in a neighborhood with many other single-parent families on welfare triples the probability that a young black man will engage in criminal activity.

Id. at 30 (citation omitted).

29. *Hearings on Poverty, supra* note 27, at 98 (statement of Heidi Stirrup, Director of Government Relations, Christian Coalition).

30. *See id.* The speaker stated, "According to a report issued by the Heritage Foundation, one in every three children were born out-of-wedlock last year. The illegitimate birth rate continues to rise about one percentage point every year." *Id.*

ent because the “rapid expansion of welfare benefits makes welfare more attractive than entry-level jobs and subsidizes unwed motherhood making husbands quite dispensable.”³¹ These assumptions, although based on inaccurate statistics and half-truths, provided the foundation for the policies embodied in the new welfare bill, especially the incentive to reduce out-of-wedlock births.³² The Christian Coalition specifically supported the bonus provision, but believed it inadequate to curb illegitimacy.³³

The testimony of other conservatives before the Subcommittee repeats the same themes: the crisis of illegitimacy,³⁴ the focus on Christian ideals,³⁵ exaggeration of the role of the “black welfare mother” (a phrase that would never actually be used in hearings before Congress),³⁶ concerns that married women are

31. *Id.* at 99. This idea of the “cash incentive” for poor minority women to stay on welfare and make babies has been around since welfare began at the turn of the century, and will be explored later in this Article. See discussion *infra* Part III.

32. See *id.* at 100. The Christian Coalition ended:

In short, what is needed for true welfare reform are policies which will discourage dependency and restore a sense of personal responsibility, control costs and reduce the illegitimate birth rates by promoting stable, two-parent families. Instead of offering more federal money to provide more social services to the ever expanding dependency population, we must offer policies designed to save marriages and remove economic incentives and rewards for single parenthood.

Id.

33. See *id.* at 99. Stirrup stated:

The conference report proposal designed to reward states by providing additional block grant money if they successfully reduce out-of-wedlock birth rates without increasing abortion rates is a positive incentive. However, this reward will be very difficult to achieve. The bonus would apply only if states reduce their out-of-wedlock birth ratio by a full percentage point from the base year (1995). With illegitimacy rates rising one percentage point per year on average, even a vigorous effort to control this trend may not result in a net reduction of one percentage point.

Id.

34. See *Hearings on Poverty, supra* note 26, at 19-21 (statement of Congressman James M. Talent [R-Mo.]). Talent stated that, “Nothing the government does in school, day care, job training, family planning, or any of its other programs can overcome the damage done to our children by illegitimacy.” *Id.*

35. See *id.* at 69-72 (testimony of J.S. McIlhane, Jr., M.D., President, Medical Institute for Sexual Health) (stating that the federal government needs to work with churches, among other organizations, to promote abstinence and prevent out-of-wedlock births).

36. See *id.* at 19-21 (testimony of Congressman James M. Talent [R-Mo.]). Congressman Talent commented:

Sending cash indiscriminately to young moms, while leaving them in an environment where they are quite likely being exploited by pushers, boyfriends, or gangs is not a way of caring for them. . . . We have ahead of us the task of . . . reforming welfare benefits . . . [L]et us

having fewer children, fear of incentives that create illegitimacy and propagate welfare dependence.³⁷ As will be discussed later, these themes are based on inaccurate statistics and half-truths that comprise the conservative agenda and that mirror the language of the eugenicists.

The Covenant House, the National Urban League, and Nicholas Zill, Ph.D. represented liberal concerns. The liberal contribution is not apparent in the final form of the legislation. On behalf of the Covenant House, Sister Mary Rose McGeady testified as to the reality of welfare recipients.³⁸ Her observations were especially powerful because the Covenant House works daily with welfare recipients.³⁹ Sister Mary Rose attempted to debunk the myth that single motherhood correlates with dependence on public assistance.⁴⁰ She explained that cuts in public assistance will merely harm the children, who should not suffer for the decisions of their parents. She also observed that the women targeted by the legislation will have children, regardless of welfare benefits.⁴¹ Sister Mary expressed dismay at the proposed legislation because it excluded the most salient aspects of welfare reform: "meaningful job training, job creation, quality day care, a long enough term commitment to the individ-

keep in mind how important reducing the out of wedlock birthrate is to accomplishing these goals.

Id.

37. *See id.* at 19 (stating that the "problem is that welfare lures poor people into having [] children . . . without being married.").

38. *See id.* at 110-12 (testimony of Sister Mary Rose McGeady, President, Covenant House).

39. Covenant House is the largest privately funded homeless shelter program in the United States, and Sister Mary Rose herself works in Bedford Stuyvesant in Brooklyn, New York. Her observations on what would constitute appropriate welfare reform are based on reality, not half-truths and dogma; it is a shame that her recommendations were not included in the Act.

40. *See Hearings on Poverty, supra* note 26, at 110-12 (testimony of Sister Mary Rose McGeady, President, Covenant House). Sister Mary Rose testified:

[W]hile "the welfare reform debate has focused national attention on illegitimate births" in the United States, in fact fully two-thirds of these single women having "illegitimate births" are: not below the poverty line; not high school dropouts; not teenagers; and not on welfare. My point is, quite simply, that there is absolutely no correlation between dependence on public assistance ("welfare") by single mothers and the out-of-wedlock birth rate in this country.

Id.

41. *See id.* at 111. Sister Mary Rose noted, "[R]ecently a 15-year-old caller to our crisis telephone hotline asked how she could get pregnant because all the 'coolest' girls in her high school class were having babies!" *Id.*

ual in need of assistance to give some genuine promise of success."⁴²

Audrey Rowe of The National Urban League, which focuses on youth development, racial inclusion, and on moving people from poverty to self-sufficiency, expressed concern with the "lack of jobs that pay a liveable wage."⁴³ The testimony made recommendations for moving women and children from welfare to independence, including the recommendation to take a hard look at a labor situation which is unfriendly to women and minorities who experience unequal pay and discrimination.⁴⁴ Ms. Rowe's testimony concluded with the warning that "national policies . . . for reducing out-of-wedlock births will only be effective if we fully examine the research, rather than basing them on perceptions and stereotypes about the children and their parents."⁴⁵

Similarly, Nicholas Zill, Ph.D., noted the discrepancy between women and men's wages. He noted that welfare changes cannot ameliorate these differences when they cannot even lift recipients out of poverty.⁴⁶ Dr. Zill also testified that the growth rate of single motherhood was statistically slowing,⁴⁷ and that instead more emphasis should be placed on job training and on creating economic opportunities for citizens not pursuing college educations.

However, liberal views did not influence the Act as much as conservative testimony did. This is further demonstrated in the following section regarding the Report of the Committee on the Budget.

42. *Id.* at 112.

43. *Hearings on Poverty, supra* note 26, at 115-18 (testimony of Audrey Rowe, Executive Vice President, National Urban League). Ms. Rowe stated statistics to support the following points: "(1) This is not just a poverty issue. . . . (2) This is not just a teenage issue. . . . (3) This is not just a race issue. . . . (4) This is also a man's issue. . . . (5) And, it is not necessarily a choice or intended issue." *Id.* at 115-16. Her testimony directly contradicted the conservatives' focus on the black welfare mother myth with the following statistics: "[O]f all unmarried women who gave birth in 1993, 39.5% were white, 36.0% were black, 21.1% were Hispanic, [and] 3.5% were Indian or Asian." *Id.* at 116. Such statistics demonstrate the confusion of issues that occurred in this legislation.

44. *See id.* at 118.

45. *Id.*

46. *Hearings on Poverty, supra* note 26, at 51 (statement of Nicholas Zill, Ph.D., Vice President and Director of Child and Family Studies, Westat, Inc.).

47. *See id.* at 50.

2. Report of the Committee on the Budget

The Report of the Committee on the Budget⁴⁸ ("Report") begins by discussing the policy goals and reasons for the proposed welfare reforms.⁴⁹ Couched in terms of concern for the nation's children, the Report states that the current welfare system "breeds" a "variety of pathologies" because it promotes illegitimacy.⁵⁰ Thus, one of the goals of the Act was to prevent out-of-wedlock births, especially in, but not limited to, the welfare population.⁵¹

The Report claims that the Act saves families and promotes self-sufficiency through work opportunities in a variety of ways.⁵²

48. See CONGRESSIONAL YELLOW BOOK, *supra* note 24, at III-21, IV-23. The duties of the Senate and House Committees on the Budget are the same except the Senate has two extra duties. The common jurisdiction is explained as follows:

(1) To report the matters required to be reported by it under Titles III and IV of the Congressional Budget Act of 1974; (2) To make continuing studies of the effect on budget outlays of relevant existing and proposed legislation and to report the results of such studies to the House [or Senate] on a recurring basis; (3) To request and evaluate continuing studies of tax expenditures, to devise methods of coordinating tax expenditures, policies, and programs with direct budget outlays, and to report the results of such studies to the House [or Senate] on a recurring basis; (4) To review, on a continuing basis, the conduct by the Congressional Budget Office of its functions and duties.

Id.

49. See H.R. REP. NO. 104-651 (1996), *reprinted in* 1996 U.S.C.C.A.N. 2183, at 2185.

50. See *id.* The Report states:

The greatest tragedy of the welfare system is how it harms the Nation's children. . . . First, welfare-encouraged illegitimacy leads to increased risks of behavioral and emotional problems during childhood. The National Health Interview Survey of Child Health has confirmed that children born out of wedlock have more emotional and behavioral problems than children in intact families. These problems include antisocial behavior, hyperactivity, disobedience, greater peer conflict, and dependency.

Second, welfare-encouraged out-of-wedlock childbearing increases the probability of teen sexual activity and future welfare dependency. . . . Third, the receipt of welfare income has negative effects on young boys with respect to their long-term employment and earnings capacity.

Id. at 2185-86. These findings seem to be biased because they use undefined terms to create pathologies for children on welfare that may or may not exist in other children of other classes and races. The reliance on such semi-scientific findings for national legislation is disturbing at best. For a historical analysis of such thought in America, see STEPHEN JAY GOULD, *THE MISMEASURE OF MAN* (1996).

51. See H.R. REP. NO. 104-651, *reprinted in* 1996 U.S.C.C.A.N. 2183, at 2186. This goal is also reflected in the bonus provision, which offers incentives for states to reduce out-of-wedlock births without increasing the number of abortions.

52. See *id.* at 2184.

First, the Report states that the Act prevents people from staying on welfare for more than two years at a time, and limits lifetime benefits to five years. Second, the Report notes that the Act imposes financial burdens on those who have out-of-wedlock births by allowing the family cap concept to become federal public policy.⁵³ Third, the Report purports to strengthen child support enforcement.⁵⁴ Fourth, the Report states that the legislation allows states to move welfare recipients into the workforce by any means they see fit. Consistent with the Republican desire to decentralize government, federal approval is no longer necessary.⁵⁵

53. The family cap concept originated in New Jersey, which received a waiver from the Department of Health and Human Services to enact its program. See N.J. STAT. ANN. §§ 44:10-19 to 10-33 and §§ 44:10-3.3 to 10-3.8 (West 1993). Also called the after-born child statute, New Jersey's law provides that once a woman is on welfare, she cannot receive additional welfare money if she bears more children. See N.J. STAT. ANN. § 44:10-3.5 (West 1993). This was contrary to the traditional welfare scheme, which provided for a certain welfare grant per child, regardless of the timing of the birth.

Two lawsuits have arisen from this statute, one in federal and one in state court. The federal case, *C.K. v. New Jersey Dep't of Health and Human Services*, 92 F.3d 171, 177-194 (3d Cir. 1996), involved a challenge to the federal waiver that the Secretary of Health and Human Services granted to New Jersey to facilitate the implementation of the Family Development Plan, which included the family cap. *Id.* at 177. The Third Circuit affirmed the decision of the district court, deciding that: (1) the waiver furthered the stated goals of AFDC and thus was valid; (2) the provisions did not violate prohibitions against experimentation on humans; (3) the statute did not violate applicable Social Security provisions; and (4) the constitutional rights to due process and equal protection were not violated. *Id.* at 184, 190-95. For a more thorough discussion of the federal case, see ROBERTS, *supra* note 2, at 236-43 (discussing the reasoning of Judge Politan in the district court opinion and the constitutional upshot of this case). The state court litigation is in its initial stages as of the writing of this Article. See generally Donna Leusner, *Family Cap Law for Welfare Clients Challenged Again: Foes, Rebuffed by U.S., Resort to State Courts*, NEWARK STAR-LEDGER, Sept. 5, 1997, at 25. Rutgers University conducted a study that concluded the family cap had no effect on the birth rate of welfare mothers. The state forced Rutgers to keep the study secret for more than a year. See *id.* See also Donna Leusner, *Welfare Cap Didn't Affect Birth Rates: Jersey Kept Rutgers Study a Secret*, NEWARK STAR-LEDGER, Sept. 12, 1997, at 1 (stating that the Rutgers study found that the family cap law had no impact on the birth and abortion rates of welfare mothers); Jon Romberg, *The Family Cap and Other Myths: Why Stay with 'Reforms' Politicians Concede Don't Work*, N.Y. TIMES, Sept. 28, 1997, at NJ 15. The state attempted to explain the lack of effect by calling the family cap law a message, not a method for actually reducing births or expenditures. See William Waldman, *With the Family Cap, the Journey Is the Destination*, NEWARK STAR-LEDGER, Oct. 26, 1997, at 3.

54. See H.R. REP. NO. 104-651 (1996), reprinted in 1996 U.S.C.C.A.N. 2183 at 2186.

55. See *id.*

Finally, the Report also advocates sanctioning drug users on welfare and excluding immigrants from welfare.⁵⁶

Although the Report claims to save families and promote employment, it contains glaring omissions in its proposed legislation. For instance, daycare is not mentioned once in the Report. The Report fails to recognize that for unskilled workers, joining the workforce may present more serious difficulties than staying on welfare. The hourly jobs that recipients obtain do not provide enough income for a family to be self-sufficient. In addition to low wages, unskilled jobs do not provide any benefits: no health insurance, no retirement plans, and no daycare. In fact, the "lack of health coverage is a prime reason many parents are forced to choose welfare over work."⁵⁷ Therefore, without provisions for aggressive job training to allow welfare recipients to rise above the low paying jobs of unskilled workers, the legislation fails to adequately provide welfare recipients the means to become self-sufficient.

C. *The Dissent of the Democrats*

The Committee on Ways and Means-Dissenting Views ("Dissent") makes its position known from the outset: "Sadly, we are forced to conclude that the Republican bill is still too tough on kids, sets up a work program that just won't work, and lets the States raid the Federal Treasury without delivering much in return."⁵⁸ The Dissent states that welfare rolls are down, the poverty rate is down, teen pregnancy rates are down, and teen birth rates have dropped.⁵⁹ The Dissent does share some of the rhetoric about the importance of reform, work programs, and responsibility, but the emphasis is placed on protecting children, not punishing them, for the mistakes of adults.⁶⁰

56. *See id.* at 2187. As will be discussed in Part II, exclusion of immigrants was another major feature of the eugenics movement.

57. *See* H.R. Rep. 104-651 (1996), *reprinted in* 1996 U.S.C.C.A.N. 2183, at 2364.

58. *See id.*

59. *See id.* at 2631.

60. *See id.* The Dissent writes:

We want one point to be clear. We support welfare reform. So does President Clinton. But we also want to make sure that needy children aren't the victims of excessive election-year posturing.

Real welfare reform gives poor children a safety net on which to rely. It makes certain that children are not punished for the mistakes of their parents.

Real welfare reform also makes certain that States deliver on their commitment to protecting children — that kids aren't left hold-

The Dissent also attempts to debunk the “black welfare mother” myth. Stating that the Republican “findings” written into the Act are “rhetorical arguments” and include only some “actual facts,” the Dissent writes its own version of the “facts.” Under the heading “Setting the Record Straight” are the following statements: “Research indicates that the associations between welfare-benefit levels and out-of-wedlock pregnancy generally are small and apply *only to whites*.”⁶¹ The Dissent also writes that “non-marital births are more common in States with lower benefit levels.”⁶² Statistics such as these serve to uncloak the cause and effect assumptions that the conservatives made when drafting the Act.

The Dissent also states that studies show there is not a connection between elevated welfare benefits and the rise in single mother childbearing.⁶³ The Dissent further states that the Republican bill focuses, without empirical data to support it, on the connection between welfare benefits and single mother pregnancies, when there is no proof to support the conclusion that behavior is connected to receipt of welfare monies.⁶⁴ The Dissent makes the point that the reforms being implemented by the Republicans will create more poor children, not fewer.⁶⁵ This indicates that the Act cannot effectuate the legislators’ purported goals, and that the Act is thus symbolic and punitive in nature.

The history of the legislation displays an alarming amount of disregard for the reality of why people remain on welfare. Welfare, as initially envisioned, was a system to support children whose parent/s could not afford to care for them. The new workfare has created a system of symbolic change that attaches middle-class social policy and mores to the payment of public

ing an empty bag when powerful interests pressure State governments to spend limited resources on nursing homes — or roads — or schools — or prisons.

Real welfare reform also means tough, but fair, work requirements. It means making sure everyone who is able to work does work, even if the government has to supply the job.

But most important, real welfare reform means helping some very desperate families — and their children — have a vision about the future, a sense that they are worth something and can do something with their lives, and that it matters to us that they have that chance.

Id. at 2632.

61. *See id.* at 2640 (emphasis added).

62. *See id.* at 2643.

63. *See id.* at 2640.

64. *See id.*

65. *See id.*

monies to the poor, and poor children have been lost in the shuffle. The Act is based on faulty reasoning that mirrors the basis of the eugenics movement.

III. THE EUGENICS MOVEMENT

The history behind the Act recalls the rhetoric and ideals of the eugenicists. Eugenics was a turn-of-the-century movement which taught that genetics dictated all physical and mental characteristics.⁶⁶ Guided by this theory, eugenicists sought to maximize the reproduction of the upper and middle classes, who were thought to be genetically smarter and thus more worthy to reproduce. Conversely, adherents also sought to reduce lower class reproduction, believing that traits such as pauperism, criminality, and mental deficiency ran rampant in the genes of the poor and minorities.⁶⁷ Succinctly stated, eugenicists sought to improve the "human race through selective breeding."⁶⁸ This section briefly describes the emergence of eugenics, its proponents, and its ultimate fall in respectability and politics.

A. *History of the Movement and Its Founders*

The idea of eugenics originated in Britain with Francis Galton, in 1865.⁶⁹ Galton was a white, middle-upper class, well educated, Christian man who saw eugenics as a means to social improvement.⁷⁰ Based on a study of family backgrounds, Galton determined that genius was hereditary, and thus should be encouraged through breeding the upper class.⁷¹ Because Galton believed (and advocated) that heredity dictated both physical and mental characteristics, he also thought that pauperism, criminality, and inferior mental ability were inherited traits. Associat-

66. For an excellent in-depth historical and sociological exposition on the eugenics movement, see DANIEL J. KEVLES, *IN THE NAME OF EUGENICS* 3 (1995). Since being published, this book has been widely considered a thorough historical authority on the eugenics movement.

67. *See id.* at 62.

68. *See* Annette Dula, *Bioethics: The Need for a Dialogue with African Americans*, in "IT JUST AIN'T FAIR": THE ETHICS OF HEALTH CARE FOR AFRICAN AMERICANS 16 (Annette Dula & Sara Goering eds., 1994) (discussing eugenics in the context of birth control movements in the early 20th century).

69. *See* KEVLES, *supra* note 66, at 3; *see also* EDWARD J. LARSON, *SEX, RACE, AND SCIENCE* 18 (1995). Galton was the cousin of Charles Darwin.

70. *See* KEVLES, *supra* note 66, at 54.

71. *See* LARSON, *supra* note 69, at 19. *See also* Ruth F. Chadwick, *The Perfect Baby: Introduction*, in *ETHICS, REPRODUCTION, AND GENETIC CONTROL* 97 (Ruth F. Chadwick ed., 2d. ed. 1992).

ing these traits with the poor and minorities, he feared their continued breeding. Galton believed that the unworthy gene carriers should be kept in monasteries and convents where they could not propagate their kind.⁷² Galton originated what is now called “positive eugenics,” the advocacy of more fervent reproduction by the upper class in reaction to the fear that the lower classes were “outbreeding” the most worthy gene carriers. Eugenics was, from the start, an elitist movement of members of the upper class seeking to confirm the strength of their place in the social pecking order.⁷³

The movement came to the United States in 1877 through the work of Richard Dugdale, who wrote a social Darwinist history of the Jukes family.⁷⁴ Dugdale traced a large group of criminals, prostitutes, and other social outcasts to one set of parents from upstate New York. Dugdale attributed much to the degenerative environment in which the offspring were raised, but eugenicists seized onto his study and made it into a heredity issue.⁷⁵ Dugdale himself was not a eugenicist, but his work was later distributed by the Eugenics Record Office, a leading eugenics group in America.⁷⁶ American eugenics centered on “negative eugenics,” which focused on preventing the propagation of unworthy genes, rather than on the breeding of superior ones, as Galton originally had envisioned.⁷⁷ Whereas positive eugenics included such incentives as tax rebates to “meritorious families” who succeeded in breeding healthy children,⁷⁸ negative eugenics operated through restrictive marriage laws, sexual segregation, involuntary sterilization, and limits on immigration.⁷⁹ Interestingly, negative eugenics did not approve of abortion as a method to prevent the unworthy from reproducing.⁸⁰ Instead, American

72. See LARSON, *supra* note 69, at 19.

73. See KEVLES, *supra* note 66, at 24. Discussing another British eugenicist, Kevles writes: “Pearson was less concerned with the shape of a new society than with where the Karl Pearsons would fit into it.” *Id.*

74. See *id.* at 71. See also LARSON, *supra* note 69, at 19.

75. See KEVLES, *supra* note 66, at 71.

76. See LARSON, *supra* note 69, at 21.

77. See WILLIAM H. TUCKER, *THE SCIENCE AND POLITICS OF RACIAL RESEARCH* 59 (1994) (stating that American eugenicists paid only lip service to Galton’s founding ideals of breeding the upper class); see also LARSON, *supra* note 69, at 21-22 (stating that the legal approach to negative eugenics began in America).

78. See KEVLES, *supra* note 66, at 91 (discussing the ultimate turn to government for incentives by the proponents of positive eugenics).

79. See LARSON, *supra* note 69, at 22.

80. See KEVLES, *supra* note 66, at 92.

eugenicists focused on encouraging white women to stay at home and bear children, while immigrants and blacks were to limit their family size through birth control.⁸¹

Although initially not widely accepted on either side of the Atlantic, Gregor Mendel's theories of heredity in the early 1900s gave eugenics the scientific validation it needed.⁸² Charles Davenport, another important American eugenicist, relied heavily on Mendel for legitimizing his eugenic theories. By the turn of the century, eugenics became part of American and British parlance.⁸³ The fact that eugenics was largely based upon social agendas, and not on science, was not considered important by its proponents.⁸⁴

Eugenicists were often from different professions, but shared a number of traits. They were primarily white, Protestant, educated, middle-class⁸⁵ males.⁸⁶ Women in general played a minimal role in the movement, and minorities clearly were not welcome.

The only woman to play a notable role in the eugenics movement was Margaret Sanger, the birth control advocate.⁸⁷

81. See Dula, *supra* note 68, at 16 (describing the moral rhetoric imposed on white women, and the birth control methods imposed on all poor women during the eugenics movement).

82. See KEVLES, *supra* note 66, at 41-47 (noting that Mendel completed his famous experiments on peas in 1866 but that the scientific community was not ready for such discoveries for about 40 years).

83. See *id.* at 58 (noting that thousands of families sent their family histories to Davenport to be studied at the Eugenics Record Office, and that even F. Scott Fitzgerald wrote a song about it as an undergraduate called "Love or Eugenics").

84. See TUCKER, *supra* note 77, at 39 (stating that the "appearance of careful empirical observation, quantitative thinking, universal application of principles, and other elements of the scientific approach gave many of [Galton's] investigations an image of scientific respectability that belied their dependence on his personal perceptions as a substitute for objective measurement."). Tucker continued that whatever Galton "expressed in numbers became, ipso facto, science." *Id.*

85. See LARSON, *supra* note 69, at 30 (stating that the eugenics movement was "characteristically progressive because it involved middle-class professionals applying scientific expertise to solve pressing social problems through governmental intervention.").

86. See KEVLES, *supra* note 66, at 107 (writing that the eugenicists tended to "identify as depravity most sexual expression that fell outside the bounds of prevailing middle-class standards."). Kevles continued: "An entire sociopolitical movement can hardly be put on the analyst's couch," but he noted "the attention given eroticism, the denunciation of feminism, and the genital attack implicit in sterilization . . ." *Id.*

See also TUCKER, *supra* note 77, at 44 (calling Galton a Victorian ethnocentrist).

87. See ROBERTS, *supra* note 2, at 72-81 (discussing Sanger's role in the eugenics movement as causing the loss of her feminist edge). Sanger began as an advocate

Otherwise, although women comprised a large part of the eugenics audience, they were not the movement's leaders.⁸⁸ Women should have been interested in the movement because given the prevailing ideas of public and private spheres at the turn of the century, much of what the eugenicists discussed was directed at women.⁸⁹ Historian Daniel Kevles notes: "Eugenics, concerned ipso facto with the health and quality of offspring, focused on issues that, by virtue of biology and prevailing middle-class standards, were naturally women's own."⁹⁰ Female eugenicists were also "middle to upper class, white, Anglo-Saxon, predominantly Protestant, and educated."⁹¹ In fact, the burgeoning feminist movement of the early 1900s was considered a threat to eugenic ideals because it encouraged women to obtain an education and to leave the home.⁹²

B. *Eugenics Gains Credibility*

The widespread acceptance of eugenics in America was evidenced by governmental actions that were eugenics-based. The legislative branch effected laws on both the state and federal level with eugenic goals, such as sterilization of the feeble-minded. The judiciary approved of these actions, both legally and as a policy matter. And even the executive branch included

of birth control for women's health reasons, and Roberts argues that Sanger was not racist, despite her support for negative eugenics. Even though Sanger stated that blacks tend to breed carelessly, *id.* at 77, Roberts believes that Sanger wanted to help the health of the poor and believed that eugenics was a means to that end. *See id.* at 81.

Cf. Darci Elaine Burrell, *The Norplant Solution: Norplant and the Control of African-American Motherhood*, 5 UCLA WOMEN'S L.J. 401, 419-26 (1995). Burrell argues that Sanger believed the focus on restricting the reproduction of black women was "fully justified." *Id.* at 421-22. She states that Sanger, who began as an advocate of birth control for women as a health issue, fully bought into the eugenic arguments that black women were unfit mothers and would raise children who would "detract from the social order." *Id.* at 422.

88. *See* KEVLES, *supra* note 66, at 64 (stating that "women played an insignificant role" in the United States national society of eugenicists, but "a prominent one in local groups. In both [the United States and Great Britain], women constituted a large part of the eugenics audience." However, because eugenicists believed that "middle and upper class women should remain at home, hearth and cradle — that it was their duty . . . to marry and bear children," women were never leaders in the movement.). *Id.* at 88.

89. *See id.*

90. *Id.*

91. *Id.*

92. *See id.* at 88-89.

an occasional proponent of eugenic thought.⁹³ This widespread support of eugenics came to an eventual halt, when the Nazi regime pushed the philosophy and practice of eugenics over the line of what American eugenicists found acceptable.

1. The Legislative Branch

Although the eugenics movement had its origins in social Darwinism, which rejected government interference in the natural selection of genetic superiority, both British and American eugenicists soon looked to their governments for intervention "of a coercive nature in human reproduction."⁹⁴ The most prominent federal eugenic actions were in the form of immigration restrictions, beginning with the Chinese Exclusion Acts of 1882 and 1902 and the Gentleman's Agreement with Japan, and culminating in 1924 with the Immigration Act, which closed off immigration to all but a percentage of groups that had been allowed into the country in 1890.⁹⁵ It was this restriction that later prevented German and other European Jews from finding asylum in the United States.⁹⁶

At the state level, eugenic theory was reflected in marriage license laws, anti-miscegenation laws, and most importantly, sterilization laws.⁹⁷ Sterilization laws authorized states to sterilize criminals, epileptics, the mentally ill, and "idiots" in state institutions without their consent.⁹⁸ Indiana, in 1907, was the first state to enact a sterilization law, allowing the state to mandate sterilization of "confirmed criminals, idiots, rapists, and imbeciles"

93. *Id.* at 85. Theodore Roosevelt was noted for stating to Charles Davenport: "[S]omeday we will realize that the prime duty, the inescapable duty, of the good citizen of the right type is to leave his or her blood behind him in the world." *Id.*

Calvin Coolidge, when he was vice-president, was quoted as stating: "America must be kept American. Biological laws show . . . that Nordics deteriorate when mixed with other races." *Id.* at 97. He later signed the Immigration Act of 1924 into law; this was the act that prevented European Jews from entering the United States during the Holocaust. *See id.*

94. *See id.* at 91 (discussing the turn to government to manipulate natural selection in favor of the genetically fit).

95. *See id.* at 96-97 (discussing the restrictive immigration laws installed by both England and the United States).

96. *See* discussion *infra* Part II.C.

97. *See* KEVLES, *supra* note 66, at 100 (discussing the negative eugenics laws of America).

98. *See id.*

once three doctors determined that they were “incurable.”⁹⁹ Other states — California, New York, Michigan, and Wisconsin, to name a few—soon followed suit.¹⁰⁰ A hallmark of the progressive era generally was reliance on science and experts for creating legislation. Eugenics was the popular “science” of the day.

The eugenic policies espoused by the states grew stronger as the twentieth century progressed; the Great Depression was an impetus for strengthening existing sterilization laws in order to limit the number of people the government had to feed.¹⁰¹ By 1941, about 36,000 people had been involuntarily sterilized.¹⁰²

2. The Judicial Branch

Even the United States Supreme Court placed its imprimatur on the eugenics movement with *Buck v. Bell*,¹⁰³ a case that is now considered by many to be a low point in Supreme Court jurisprudence. The Court in *Buck v. Bell* reviewed a Virginia state law that permitted the superintendent of the State Colony for Epileptics and Feeble Minded to order sterilization of the patients in his care.¹⁰⁴ Carrie Buck was a white woman committed to the state facility, where her mother also lived, and who gave birth to a child there.¹⁰⁵ She challenged the state law as violative of the Fourteenth Amendment’s Due Process and Equal Protection Clauses.¹⁰⁶

Turning first to the due process challenge, the Court examined the history and reasoning behind the sterilization law,¹⁰⁷ noting that the statute allowed the superintendent to choose the

99. *See id.* *See also* LARSON, *supra* note 69, at 27 (noting that as soon as sterilization methods were developed in Europe, eugenicists incorporated the methods into their movement).

100. *See* LARSON, *supra* note 69, at 27.

101. *See* KEVLES, *supra* note 66, at 116 (noting that poor families hid in the mountains for fear of being subjected to involuntary sterilization).

102. *See id.*

103. 274 U.S. 200 (1927).

104. *See id.* at 205.

105. *See id.* at 205-06.

106. *See id.* at 205.

107. *See id.* at 205-07. The statute stated that the sterilization of “mental defectives” furthered both the “health of the patient” and the general welfare; that the operations could be performed without “serious pain”; that sterilization was the only means by which the “defective persons” could leave the institution and become part of society; and that “experience has shown that *heredity plays an important part in the transmission of insanity, imbecility, etc.*” *Id.* at 206 (emphasis added).

patients to be sterilized, according to a prescribed process.¹⁰⁸ The Court determined that the procedure afforded ample due process, and that the superintendent followed this procedure in choosing to sterilize Buck.¹⁰⁹ Defeating a substantive contention, the Court wrote about the need for people to make sacrifices for the state, and that sterilization was needed to prevent "being swamped with incompetence."¹¹⁰ Justice Holmes finished with the infamous words: "Three generations of imbeciles are enough."¹¹¹

Justice Holmes summarily dismissed Buck's argument that the Equal Protection Clause was violated, stating that this argument was just bootstrap for those with no real argument.¹¹² The Court found that all those who were similarly situated were treated the same, under the sterilization law, and that it therefore passed constitutional muster. Justice Holmes never addressed why the insane and "imbeciles" were a class unworthy of equal protection.

Only Justice Butler dissented from this eugenically motivated decision, and without writing an opinion. *Buck* was clearly a boon to the eugenics movement. The decision fueled the state sterilization laws that had begun to proliferate, and by the 1930s, half of the states had enacted them.¹¹³

The ironic postscript to this case is that Vivian Buck, the daughter of Carrie Buck, was found to be at least of average in-

108. *See id.* at 206. The process included a petition to the board of directors of the institution, of which the patient or inmate had to receive notice (including a guardian or parent, if appropriate). If the board approved the operation, the inmate could appeal to the county court, which could consider the evidence that the board considered. Finally, the patient could appeal to the Supreme Court of Appeals, which would hear the case based on the record made by the trial court. *See id.* at 206-07.

109. *Id.* at 207. The Court noted that the plaintiff was actually challenging the statute at the substantive level, stating, "It seems to be contended that in no circumstances could such an order be justified." *Id.*

110. *Id.* The court continued by stating it is better to sterilize social outcasts than to execute them or let them starve. *See id.*

111. *Id.* The court wrote:

It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes.

Id.

112. *See id.* at 208.

113. *See* KEVLES, *supra* note 66, at 111; *see also* LARSON, *supra* note 69, at 28 (discussing the repercussions of *Buck v. Bell*).

telligence, and her teachers considered her “very bright.”¹¹⁴ This information certainly calls into question the eugenic premise of the case, that mental deficiency is genetic and should be stopped through forced sterilization.¹¹⁵ Also not mentioned in the case was the fact that Carrie was raped by a friend of the foster family with whom she lived, and that she was institutionalized to hide the resulting pregnancy.¹¹⁶ This calls into question the eugenic notion that “imbeciles” were uncontrollably promiscuous and had to be stopped from reproducing at all costs.¹¹⁷

C. Abuse of Eugenics

At the same time that sterilization laws were becoming a widespread practice in the United States, Germany was experiencing the rise of a unique brand of eugenics — Nazism. Hitler’s brand of eugenics was to be the fall of the eugenics movement in the United States and Britain. Hitler initially relied on eugenic “science” by utilizing studies by anthropologists, geneticists, and anatomists to support his racist theories.¹¹⁸ In 1933, Hitler’s government enacted the Eugenic Sterilization Law, which included all who were considered genetically inferior, such as the feeble-minded, drug addicts, epileptics, schizophrenics, the blind, and the physically deformed — not just those who were confined to institutions.¹¹⁹ Within three years of enacting that law, the Nazis sterilized over 225,000. It was not until the Nuremberg Laws of 1935 that the eugenic sterilization laws included Jews, who initially were considered “Aryan.”¹²⁰ By 1939, sterilization had become open killing of all those who were not consid-

114. See KEVLES, *supra* note 66, at 112.

115. See NORMAN ANDERSON, *ISSUES OF LIFE AND DEATH* 73-74 (1976) (stating that geneticists currently believe that sterilization can have only minimal effects on the development of the human race, and noting that *Buck v. Bell* is still considered good law).

116. See TUCKER, *supra* note 77, at 101 (dispelling the notion that Carrie Buck was a promiscuous woman who was spreading around her mental deficiency).

117. See *id.* at 100-01 (retelling an account of the Buck family, which included a typical eugenic assumption that the poor were mentally deficient and impossibly promiscuous).

118. See *id.* at 117 (discussing the rise of Nazism in Germany and the eugenic ties to that movement). See also *id.* at 110-33 (discussing the role of eugenics in Nazi policies).

119. See KEVLES, *supra* note 66, at 116 (discussing the Nazi version of eugenics).

120. See TUCKER, *supra* note 77, at 88-89 (relaying the history of the elitist ideas of the eugenicists). Notably, the word Aryan came from a European eugenicist in the early 1920s, and was adopted by Hitler. *Id.*

ered Aryan by Hitler, including Jews, the handicapped, homosexuals, and gypsies.¹²¹

Eugenics thus became associated with Hitler's master race ideology and the genocidal policies of the Nazis.¹²² Sterilization, once thought of as a humane way to keep imbeciles from starving, became entangled with Mengele's experiments on death camp inmates, and more generally with Hitler's ideology of a master race.¹²³ Condemnation did not come immediately. American eugenicists initially supported Hitler's policies, calling the German sterilization laws a "milestone which marks the control by the most advanced nations of the world of a major aspect of controlling human reproduction, comparable in importance only with the states [sic] legal control of marriage."¹²⁴ American and British eugenicists supported the policies of Hitler until World War II began, not only academically, but politically as well, by persuading the United States government to deny European Jews asylum because they were "a 'parasitic' race."¹²⁵

The role of American and British eugenicists was disturbingly large in the National Socialist movement.¹²⁶ The German genocide of the Jews in the concentration camps was all the more frightening because it was carried out by well-educated professionals who used their eminence to persuade others and to gain support for their cause. Furthermore, Germany was considered a modern and progressive nation. Hitler and his followers used the prestige of medicine and science to overcome moral and emotional reticence towards their actions.¹²⁷ The pseudo-science of the eugenicists on which the Nazi regime partially relied, and which Hitler used to justify his actions, fueled the fire that resulted in the deaths of millions of people whom Hitler thought

121. *See id.* at 116-18.

122. *See* Chadwick, *supra* note 71, at 103 (discussing the moral problems associated with genetic engineering).

123. *See* ANDERSON, *supra* note 115, at 73.

124. TUCKER, *supra* note 77, at 123.

125. *Id.* at 126-27.

126. *See id.* at 122-23. Furthermore, the American Henry Hamilton Laughlin, the editor of *Eugenical News*, was highly regarded in Germany and was even awarded an honorary degree from the University of Heidelberg. *Id.* at 123.

127. *See id.* at 132-33 (discussing that what made the Holocaust especially terrible was the level of intelligence and sophistication with which it was carried out).

were unfit to participate equally in society. This lesson cannot be forgotten.¹²⁸

IV. HOW WELFARE REFORM RHETORIC MIRRORS THE EUGENICS MOVEMENT

[T]he movement was to be characterized by the most simple-minded notions about the hereditary nature of personal traits, a contemptuous disdain for the poor, and racist attitudes towards blacks and immigrants from “inferior” races, beliefs all espoused with religious fervor. The most oppressive policies would be justified with moral arrogance, born of the certainty that they were the ineluctable social consequences of scientific truth.¹²⁹

This statement, which applies to the eugenicists, could easily have been written about the Act and the provision at issue in this Article. Neither eugenics nor the Act is based on scientific methods and findings. They are instead the viewpoints of powerful members of society, presented with seemingly scientific objectivity in order to ward off criticism that the ensuing legislation is politically motivated. First, both eugenics and the Act have racist undertones. Second, both the eugenicists and the Republican proponents of the Act display classist reasoning. They perceive being poor as a sign of moral faultiness, and thus focus on such things as vocational training instead of education and equal pay and benefits. Third, both eugenicists and proponents of the Act were sexist. The eugenicists saw the role of women as primarily reproductive, and a similar type of thinking is reflected in the provisions of the Act focusing on curbing welfare mother ‘breeding’ and bemoaning the decline of births among married, middle-class women. The Act, when analyzed in its entirety, is too similar to the eugenics movement in its reliance on half-truths, little real research, faulty scientific methods, theories, and statistics, and middle-upper class misperceptions about the poor.

128. See C.K. Chan, *Eugenics on the Rise: A Report from Singapore*, in ETHICS, REPRODUCTION, AND GENETIC CONTROL, *supra* note 71, at 164. The author warns that:

For those of us who might have thought that vulgar eugenics had fallen into irredeemable disrepute in the hands of Nazi Germany’s race hygienists, the recent developments in Singapore are a startling reminder that eugenic doctrines, in their more benign forms, retain much of their plausibility for large sectors of public opinion.

Id. The author goes on to describe the eugenic policies of Prime Minister Lee Kuan Yew of Singapore, who firmly believes that 5% of the population is superior to the rest of the country, and that is why they run it. *Id.*

129. TUCKER, *supra* note 77, at 53.

A. *Overt and Covert Racist Policy*

The racist elements of eugenics were obvious: non-whites and immigrants were considered inferior and unworthy to reproduce simply because they were not white "Nordics."¹³⁰ Eugenacists were overt in their racism. The sterilization laws and restrictive immigration policies that they adopted were obviously based on their belief that immigrants, and certain American citizens, were inferior to themselves. Eugenacists promoted the idea that the reproductive habits of "inferior populations" were a matter of social policy with which the government and society should be concerned.¹³¹ The eugenacists were not socially stigmatized for being overtly racist because, at that time, the victims of their racism were not represented to any significant degree in the universities or the government. Today, however, these groups are better represented,¹³² and those who continue to espouse similar beliefs have become more covert in their racism. This can be seen as a reenactment of the conformist agenda of the eugenacists, advocating that their values and lifestyle be the definitive ones, rather than respecting those of others. That the racism in the Act is covert, however, does not make it nonexistent.

Statistical studies show there is little or no correlation between receipt of welfare benefits and rate of childbirth among teens, and if there is any correlation, it only applies to white mothers.¹³³ Furthermore, there is no evidence that out-of-wedlock childbearing decreases with the decline of welfare bene-

130. See Beverly Horsburgh, *Schrödinger's Cat, Eugenics, and the Compulsory Sterilization of Welfare Mothers: Deconstructing an Old/New Rhetoric and Constructing the Reproductive Right to Natality for Low-Income Women of Color*, 17 CARDOZO L. REV. 531, 549-50 (1996) (discussing the eugenic conception of Nordics and Alpines, Nordics being the equivalent of Aryans, and Alpines being everyone else who was inherently inferior).

131. See Jana Leslie-Miller, *From Bell to Bell: Responsible Reproduction in the Twentieth Century*, 8 MD. J. CONTEMP. LEGAL ISSUES 123, 124-25 (1997) (discussing the eugenic conceptions of the races and the hierarchy amongst them in the context of the recent book *THE BELL CURVE*).

132. Note, however, that you cannot register to vote if you do not have an address, so the homeless are inherently outside the political process and under represented as a needy minority in American society.

133. See Greg J. Duncan & Gretchen Caspary, *Welfare Dynamics and the 1996 Welfare Reform*, 11 NOTRE DAME J.L. ETHICS & PUB. POL'Y 605 (1997). The authors report that "since 1975 the rate of out-of-wedlock childbearing among teens has nearly doubled, while inflation-adjusted value of AFDC, food stamps, and Medicaid benefits has fallen." *Id.* at 628. The authors continue, "Some studies have found evidence that higher welfare benefit levels are associated with higher out-of-

fits.¹³⁴ Nevertheless, the Act and its history contain language and provisions that resonate in racist innuendo and assumptions. For instance, the testimony of the Christian Coalition preaches abstinence for those on welfare, and promotes white middle-class Christian fundamentalist ideals as those that should be adopted by all of society.¹³⁵ The authors of the Act also adopted incentives, furthered by the Christian Coalition, to encourage welfare mothers to marry and exit the system — another example of imposing, white, middle-class values on the poor as a condition to providing them with benefits, and instead of focusing on the real issues that confront welfare mothers, such as lack of education or day care.¹³⁶ This type of incentive, which was clearly adopted by the creators of the Act, is based on a white upper-middle class conception of family and deliberate avoidance of true issues for single mothers on welfare.¹³⁷

The testimony of the Heritage Foundation reveals the same type of eugenic misconceptions. This testimony stated that the rise in illegitimacy was essentially due to the decrease in the birth

wedlock birth rates among white females. *Almost none of the studies have found such effects for black females.* *Id.* at 629 (emphasis added).

134. *See id.*

135. *Hearings on Poverty, supra* note 26, at 99 (statement of Heidi Stirrup, Director of Government Relations, Christian Coalition). Ms. Stirrup stated: "Abstinence is essential and must be a national priority."

136. *See id.* at 100. This paper is not advocating that marriage and/or leaving welfare are inherently bad things. The point here is that this legislation ignores the fact that marriage is not enough to get welfare recipients off the public dole, nor should it be necessary for women to be able to support themselves and/or their children. To advocate such would be a return to social Darwinism and the roots of eugenics. *See* GOULD, *supra* note 50, at 146 (describing the use of social Darwinist "science" to explain women's "gentler" nature).

137. This is where the image of the "black welfare mother" becomes relevant. The belief that most people who are on welfare are black, single women who breed children with the intent of living off of the public dole is a major misperception in American society.

See Burrell, *supra* note 87, at 415-16 (describing the historical devaluation of African American women as mothers). She explains the traditional views of black women in our society:

Generally, four controlling images of African-American women have emerged, all of which deviate from the middle- and upper-class standard of womanhood: (1) "mammy," the faithful, obedient, nurturing, and caring domestic servant; (2) the "matriarch," who is overly aggressive, unfeminine, and emasculating; (3) the "welfare mother," who is irresponsible, lazy, and immoral; and (4) the "Jezebel," who is sexually aggressive. These images, linked both to the Black woman's sexuality and her maternity, combine to present African-American mothers in a negative light.

Id. at 416 (emphasis added) (citation omitted).

rate of married women.¹³⁸ Just like the eugenicists, the Heritage Foundation focused on the need for women in traditional nuclear family settings to bear children, and focused specifically on the black population, stating that within the black community, “the erosion of marriage has become so pervasive that a large percentage of better educated black women now give birth outside of wedlock.”¹³⁹ The testimony added that “the general pattern of out-of-wedlock births remains the same; black high school drop-outs are more than twice as likely to have a child out of wedlock as are black women with graduate education.”¹⁴⁰ As with eugenicists, we ultimately are presented with an association based on race, rather than an attempt to address other contributing factors such as environment, educational opportunities, and economic disparities. Furthermore, marriage has not been historically prevalent in the black community, for reasons ranging from slavery to modern problems with low employment and incarceration. Effective reform must address these conditions of severe inequality which contribute to recipients’ dependence on welfare. The preoccupation with race, marriage, and illegitimacy lends itself to facile conclusions that ignore the fact that marriage will often not end families’ dependence on welfare.¹⁴¹

The provision in the Act calling for a decrease in out-of-wedlock births without increasing abortions is the culmination of the viewpoints and value judgments embodied in the conservatives’ testimony. This provision is also a “symbol” in the sense that it does nothing to actually facilitate a migration off of wel-

138. *Hearings on Poverty*, *supra* note 26, at 21, 25 (statement of Robert Rector, Senior Policy Analyst, Welfare and Family Studies, The Heritage Foundation). Specifically, “not only has marriage among women of child bearing age declined but the birth rate among the shrinking pool of married women has also fallen.” *Id.* at 25.

139. *Id.* at 27. The testimony contrasted that with the statement that “illegitimacy is virtually non-existent among highly educated women; among white women with some graduate education, only two percent of births were illegitimate.” *Id.* (emphasis added).

140. *Id.*

141. See Burrell, *supra* note 87, at 417-20 (discussing the reproductive abuses that slave women suffered in the context of modern control over the reproduction of African Americans). See also ROBERTS, *supra* note 2, at 28, 51-52 (discussing marriage among slaves and the structure of slave families), and at 224-25 (stating that marriage will not bring black families out of welfare because low income or unemployed fathers are no more likely to bring the family out of poverty than the single mother; also noting that a disproportionately large number of black men are incarcerated).

fare into steady jobs that provide benefits such as health care.¹⁴² Instead, it represents an effort to control welfare recipients that makes the receipt of welfare an even more repugnant and humiliating experience.

B. *The Role of Classism*

The original eugenicists were not only overt about their racism, but also in their blatantly classist theories and actions. Almost by definition, eugenicists were classified as white middle to upper class males or their wives.¹⁴³ The word eugenic literally means "well born," a term used in the context of both genetics and class.¹⁴⁴ Galton's aim was to increase the reproduction of genius and talented genes, which being hereditary, he concluded could only come from the upper class and outstanding members of the middle class.¹⁴⁵ Negative eugenics took the classism even farther, calling for an end to the reproduction of the unworthy, who were the poor, the mentally imbalanced, and anyone else who did not fit within upper-class society. Sterilization laws were the most obvious culmination of the eugenic objective: to increase worthy genes (the well-to-do) and eliminate the unworthy (everyone else).¹⁴⁶

142. See JOEL F. HANDLER & YEHEKEL HASENFELD, *THE MORAL CONSTRUCTION OF POVERTY: WELFARE REFORM IN AMERICA* 11 (1991). The authors identify what they call "symbols" and "myths and ceremonies" in welfare policies. The book focuses on these two themes. The authors write:

[S]ocial welfare policy cannot be fully understood without recognizing that it is fundamentally a set of symbols that try to differentiate between the deserving and undeserving poor in order to uphold such dominant values as the work ethic and family, gender, race, and ethnic relations. In this sense welfare policy is targeted not only at the poor, but equally at the nonpoor, through the symbols it conveys about what behaviors are deemed virtuous or deviant.

Id. The authors thus write that "greater emphasis is placed on the symbolic than on the substantive consequences of welfare policy." *Id.*

This leads to the myths and ceremonies, which connote that the implementation of welfare "tends to focus on structural features designed to affirm the distinctions between deserving and undeserving poor, and to certify eligibility for welfare benefits." *Id.* The authors accordingly conclude that welfare benefits will never be structured to truly alleviate the poverty of recipients, but their lives will be profoundly affected by the symbols, myths, and ceremonies attendant with the receipt of their meager benefits. See *id.* at 12.

143. See discussion *supra* Part II.

144. See Horsburgh, *supra* note 130, at 541 (discussing the beginnings of eugenics with Sir Francis Galton).

145. See *id.* at 541-42 (noting the inherent classism in Galton's heredity theories).

146. See generally *Buck v. Bell*, 274 U.S. 200 (1927).

The classist ideas in current welfare reform are less blatant. The Act calls for TANF recipients to work, but only provides minimal job training monies. It is a fiction that welfare recipients can live above the poverty level in the unskilled jobs they inevitably obtain. The Act requires states to provide parents with "job preparation, work, and support services to enable them to leave the program and become self-sufficient."¹⁴⁷ This is a noble goal, but the means to realistically obtain it are not provided. Unskilled workers earn wages that do not rise above the poverty level; they do not receive benefits such as health care; and child care is always an issue.¹⁴⁸ Furthermore, an emphasis is placed on vocational training rather than education, which virtually ensures that welfare recipients will never rise above a certain level of income and benefits. Vocational training as a eugenic idea sprang from the belief that because intelligence was hereditary certain lesser members of the human race were made for more menial labor.¹⁴⁹ Thus, work programs in the Act are highly symbolic, and have the effect of stigmatizing the recipients of welfare who do not work, rather than ensuring that people can leave welfare permanently.¹⁵⁰

This classism reflects a denial of the need for education and of how inaccessible it is for a large portion of the population. The Act's findings state that: "Children born out-of-wedlock were more likely to have lower cognitive scores, lower educational aspiration, and a greater likelihood of becoming teenage

147. 42 U.S.C.A. § 602(a)(1)(A)(i) (West Supp. 1998).

148. See generally Alan Finder, *Evidence Is Scant That Workfare Leads to Full-Time Jobs*, N.Y. TIMES, Apr. 12, 1998, at 1, 30.

149. See TUCKER, *supra* note 77, at 107-08 (stating that one purpose of IQ tests was to provide "vocational guidance" to children who were either hereditary superstars or whose "dullness was racial").

150. See HANDLER & HASENFELD, *supra* note 142, at 199. The authors write:

It is clear that requiring welfare recipients, women and men, to work for their relief does little to improve their economic well-being. It is also abundantly clear that for the majority of women on AFDC, even when they work, periodic dependency on welfare benefits is unavoidable. Thus the dominant cultural norm of viewing welfare as antithesis to work contradicts the social reality, in which work and welfare must complement each other. . . . As long as the moral ambiguity of poverty is not resolved at the institutional level, *work programs will continue to serve their symbolic function* while being mostly marginal to the social reality of poverty and welfare.

Id. (emphasis added). The authors further note that children are seen as part of the moral depravity of the poor, so the effect of so-called work programs on children is never taken into account. See *id.* Thus, daycare is never a consideration.

parents themselves."¹⁵¹ Such findings are predicated on the assumption that children who are on welfare, if they had two parents, would have the same opportunities as middle and upper class children, and thus would have higher test scores, higher educational goals, and would not be teenage mothers. Such assumptions ignore the fundamental societal problems America faces in inner-city settings and with poverty in general. Children in such settings have severely unequal educational opportunities starting at the grade school level, and higher education is impossible to afford for a large portion of the middle to lower class.¹⁵² In favor of blaming single mothers on welfare for the problems of their children, the Act ignores such factors.¹⁵³

C. *Parallels in Sexism*

Eugenic thought began at a time when sexism was taken for granted. Women in Victorian times could not vote, rarely held jobs (unless they were poor), and were relegated to the private sphere. Women were not leaders in the movement, but they bore the brunt of its policies. Poor women especially were victimized by the sterilization laws which persisted into the twentieth century and were upheld as constitutional by Justice Holmes in *Buck v. Bell*. Similarly, the Act forces poor mothers into the domestic (private) sphere by favoring a traditional nuclear family, the assumption being that marriage is the solution to single mothers' inadequacies. The Act also seeks to regulate women's behavior and reproduction, preaching abstinence for welfare mothers,

151. 42 U.S.C.A. § 601(8)(D) (West Supp. 1998).

152. See Phillip J. Longman, *The Cost of Children*, U.S. NEWS & WORLD REPORT, Mar. 30, 1998, at 51. The author writes: "[T]he typical child in a middle-income family requires a 22-year investment of just over \$1.45 million. That's a pretty steep price tag in a country where the median income for families with children is just \$41,000. The child's unit cost rises to \$2.78 million for the top-third income bracket and drops to \$761,871 for the bottom-third income bracket." *Id.*

153. See Kenneth L. Karst, *The Coming Crisis of Work in Constitutional Perspective*, 82 CORNELL L. REV. 523, 542-43 (1997). The author writes:

"The problem of welfare," in today's political rhetoric, is a racially polarizing expression that serves to *divert attention from one of the chief causes of poverty: a lack of jobs that pay a living wage*. The prevailing image of the welfare mother offers political actors the opportunity to link the idea of work as discipline with primordial fears of the out-of-control "other." Once again, racial and sexual scapegoating is encoded in genteel-sounding appeals to the ideal values associated with work. The "moral order" reinforced by the politics of welfare is indistinguishable from the age-old status order of social groups.

Id. at 543 (emphasis added).

which parallels the eugenic goal of preventing the birth of "undesirables." Finally, the history of the Act reveals the inaccurate assumptions that poor single mothers are breeding generations of welfare dependent children.¹⁵⁴

The presumption that marriage will solve all of welfare mothers' problems is painfully reminiscent of the public/private sphere ideals of the Progressive Era. The language of the Christian Coalition and the Heritage Foundation in their testimony was like a new articulation of eugenics. Both used unsupported statistics to preach abstinence for those on welfare while lamenting the decrease in married women's childbearing. This is reminiscent of the eugenicists' goal to have upper and middle class women breed genetically sound children. It is the regulation of women's private conduct and choices. As in *Buck v. Bell*, certain types of women are not entrusted with important personal decisions.

In its goal of increasing marriage, regardless of harm to women or children, the Act imposes on women's reproductive rights. Giving states an incentive to decrease single mother births without increasing abortions places yet another roadblock in the reproductive rights of all women, especially poor women. It is already difficult for poor women, particularly those on welfare, to obtain abortions.¹⁵⁵ Government funds do not pay for abortions, and now the states have an extra incentive to limit poor women's access to safe and regulated procedures. At the same time, procreative choice will be hampered by the new family cap laws that are becoming popular in the states.¹⁵⁶ Furthermore, some have suggested that welfare mothers should be

154. See, e.g., Duncan & Caspary, *supra* note 133, at 615. The authors state that: [E]stimates show that 42% of first-time recipients can expect to receive welfare for only one or two years and thus would not be affected by a . . . time limit on benefits; 35% of first-time recipients can expect to receive it for a total of five years or more and thus would be affected by a five-year limit; if ten years is taken as the definition of very long-term receipt, then only about one in four (23%) first-time recipients fits the long-term stereotype.

Id.

155. See generally Jack Hitt, *Who Will Do Abortions Here?*, N.Y. TIMES MAG., Jan. 18, 1998, at 20 (discussing that fewer and fewer doctors are learning how to perform abortions, and that poor women are disproportionately affected by this decrease because women with money have always had access to safe abortions, and implying that the fear of women dying from covert abortions will be lost when the old guard are no longer around to perform the operation).

156. See *supra* text accompanying note 54 (discussing New Jersey's family cap law).

forced to use Norplant, a semi-permanent birth control method; it is roughly the equivalent of the involuntary sterilization laws successfully promoted by the eugenicists.¹⁵⁷

Although the Act does not recommend Norplant, it preaches abstinence for poor women. Aside from the motivation for states to prevent out-of-wedlock births, the Act directly addresses abstinence education by mandating that states have an abstinence education program that focuses “on those groups which are most likely to bear children out-of-wedlock.”¹⁵⁸ “Those groups” are inherently poor women. There seems to be a return to the *Buck v. Bell* mentality that three generations are enough. Thus, to the legislators, prevention of more births is appropriate. The current actions contravene cases that refute *Buck v. Bell*, such as *Skinner v. Oklahoma*,¹⁵⁹ as well as *Roe v. Wade*¹⁶⁰ and *Planned Parenthood of Southeastern Pennsylvania v. Casey*.¹⁶¹ Not only is there a constitutional right to procreate, but women also have the right to privacy after procreation. Women’s constitutional rights do not diminish when they receive welfare.

These goals are in part based on the myth that women on welfare are given an incentive to bear more children, and that they are thus breeding generations of children who will stay on the public dole forever. In fact, studies show that there is not a correlation between elevated levels of welfare benefits and child-birth rates.¹⁶² For instance, the state that has the lowest payment per child, Mississippi, also has the highest percentage of families

157. See Burrell, *supra* note 87 (thoroughly discussing the Norplant proposals and how they are motivated by racism and sexism and based on the black welfare mother myth). See also Dorothy E. Roberts, *Unshackling Black Motherhood*, 95 MICH. L. REV. 938, 960-61 (1997) (discussing the Norplant proposals in the context of selective prosecution of black women for taking drugs while pregnant).

158. 42 U.S.C.A. § 710(b)(1) (West Supp. 1998).

159. 316 U.S. 535 (1942).

160. 410 U.S. 113 (1973).

161. 505 U.S. 833 (1992).

162. See Duncan & Caspary, *supra* note 133, at 628-30. The authors posit:

If benefit levels were to influence non-marital birth rates, one would logically expect non-marital births to increase or decrease with corresponding changes in benefits. However, a look at simple descriptive data does not support such a relationship. For example, since 1975 the rate of out-of-wedlock childbearing among teens has nearly doubled, while the inflation-adjusted value of AFDC, Food Stamps, and Medicaid benefits has fallen. Meanwhile, states with the largest decreases in the inflation-adjusted value of AFDC benefits have *not* experienced decreases or smaller increases in out-of-wedlock childbearing.

Id. at 628.

with more than four children.¹⁶³ Women on welfare actually tend to have fewer children than the average family not on welfare.¹⁶⁴ The belief that welfare is an incentive to have children proceeds from reasoning like that of the eugenics movement. Eugenecists used social Darwinist ideas to justify opposing assistance to the poor for fear that they would become biologically poor, relying only on the public dole the way an animal might become domesticated.¹⁶⁵ This notion is especially offensive when it is combined with the belief that marriage and abstinence can effectively prevent this cycle. Welfare is now a "means of modifying poor people's behavior," especially poor women's behavior because they are disproportionately affected by the policies and incentives in the Act.¹⁶⁶

This severe limitation upon the constitutional rights of women on welfare is particularly objectionable as the cost of welfare arguably does not impose a substantial burden upon the federal budget. Welfare constitutes only one percent of the federal budget, increased to three percent if food stamps are included.¹⁶⁷ The glaring eugenic value judgments being made about the worth of poor mothers and their children are underscored in legislation which views these people as entrenched in dependence; with little justification, the Act seeks to make decisions about their private lives and provides little opportunity for a transition to self-sufficiency.

The legislation ignores the reality that it is nearly impossible for anyone to rely on a single income — especially for poor mi-

163. See ROBERTS *supra* note 2, at 218 (stating that there is not a causal relationship between welfare benefits and childbirth). Noting the situation in Mississippi, the author writes that "it would be irrational for a woman on welfare to assume the tremendous costs and burdens of caring for an additional child given the meager increase in AFDC payments that results." *Id.* Mississippi only pays an additional \$24 per child per month, certainly not enough to begin to cover the cost of care. *Id.*

164. See *id.*

165. See TUCKER, *supra* note 77, at 56 (discussing the role of social Darwinism as a common thread among eugenecists).

166. See ROBERTS, *supra* note 2, at 202. See also Baldwin, *supra* note 23, at 100. Baldwin writes:

Women's independent, material security and dignified civil participation were never among the primary aims of federal or state welfare policy, or a structural characteristic of the welfare bureaucracy. Feminist work on welfare policy reveals instead that a consistent goal of welfare policy has been the furtherance of a patriarchal mandate to marry, imposed especially harshly on women who are mothers.

Id.

167. See PATRICIA J. WILLIAMS, *THE ROOSTER'S EGG: ON THE PERSISTENCE OF PREJUDICE* 7 (1995).

nority women who receive disproportionately low wages, and who have no access to daycare.¹⁶⁸ The conservative writers of the Act essentially blame single mothers for poverty and their logic is specious. They reason that because single mothers are disproportionately poor in relation to the rest of the population, out-of-wedlock birth must be the cause of their children's poverty.¹⁶⁹

V. CONCLUSION

The Act's provisions, especially the incentive program rewarding states for decreasing out-of-wedlock births, clearly reflect the goals of the eugenicists. From the use of such value laden language as "illegitimate" and "breed," to the blame placed on single mothers for poverty as if it were a genetic trait they pass to their children, eugenic thought enjoys a disturbing resurgence in this law. American society must be careful and learn from history, as this is not the only area where eugenic thought is reemerging.¹⁷⁰

Finally, early evidence shows that workfare is not working. While the recipient rolls may decrease, states are seeing a notable increase in their homeless population.¹⁷¹ Exactly what happens to the women and their children when they are cut off from welfare is unknown because there is no follow-up once they leave the rolls. Statistics indicate that only about a third have found full time jobs, and only one in six has risen above the poverty level.¹⁷² It is time to abandon eugenic rhetoric and to focus on

168. See ROBERTS, *supra* note 2, at 223 (debunking the myth that marriage can end poverty for children).

169. WILLIAMS, *supra* note 167, at 8 ("From the Republicans to the Democratic White House, from the *National Review* to the *Washington Post*, the message is the same: if only blacks would stop reproducing, stop complaining, and get a father and a job, order would reign once more.").

170. See, e.g., RICHARD J. HERRNSTEIN & CHARLES MURRAY, *THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE* (1994) (returning to the intelligence theories of the eugenicists by stating that minorities are inherently inferior; this book was on the *New York Times* bestseller list for some time). For a general response to and refutation of *THE BELL CURVE*, see GOULD, *supra* note 51, at 367-90.

The drive to map genes through the Human Genome Project has also raised fears of genetic engineering driven by eugenic thought. See KEVLES, *supra* note 66, at 291-301.

171. See generally Ruth Conniff, *Welfare Miracle, Or Mirage?*, N.Y. TIMES, Mar. 7, 1998, at A13.

172. See *id.* (relating the experience of Wisconsin, which has become a model for many other states). The author writes: "[P]eople on welfare must forgo education

true problems, such as unequal access to education and resulting unequal access to jobs that pay above the poverty level, and the degree of respect that comes with them. Equal pay for women and access to quality health care are also factors that must be considered. The Act expresses concern for children, but placing racist, sexist, and classist blame on mothers for poverty only penalizes children in the end.¹⁷³ Ultimately the original goals of welfare have been forgotten in the new workfare law. Effective change must include equalization of educational opportunities, pay rates, health insurance, and childcare. Anything else is merely symbolic.

and training and take the first available job. That's shortsighted, since most welfare recipients cycle in and out of low-wage work and need schooling to get ahead. Child care is another problem." *Id.*

173. See Tamar Lewin, *Study Finds that Youngest U.S. Children Are Poorest*, N.Y. TIMES, Mar. 15, 1998 at 19 (noting that jobs pay too little to raise families above the poverty level, but they are forced into low paying jobs by the 1996 welfare law).