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Welform Reform - An Attack on Us All

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Welfare "Reform":
An Attack on us All

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I. INTRODUCTION

Nineteen ninety-five was a hard year for social programs in the United States. It was particularly hard for public assistance programs commonly known as "welfare." In 1995, Congress voted to end Aid to Families with Dependent Children ("AFDC"), a federal/state program stemming from the New Deal, a program that entitled everyone meeting established criteria to assistance.[1]

Race considerations may well have been a factor pushing for these changes. Race has been an important factor in shaping AFDC even before this point. Many women and children of color depend on AFDC for their subsistence, and welfare is often seen as a program for women of color.[2] Over the years, racial discrimination has prompted various states to adopt exclusionary rules that have led to the denial of benefits to Black women.[3] Perhaps most significantly, Black women are invariably seen as "welfare queens" who are dependent on public assistance and bear children who will also be dependent upon public assistance. According to the legislation passed by Congress, aid will no longer be guaranteed to needy single par-

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1 42 U.S.C. § 601 et seq. (West 1995).

2 This perception ignores the fact that the percentage of white and Black recipients of AFDC is nearly equal. In 1991, African Americans made up 38.8% of AFDC families and Caucasians made up 38.1%. U.S. DEP'T. HEALTH & HUMAN SERVICES ADMIN. FOR CHILDREN & FAM., CHARACTERISTICS & FINANCIAL CIRCUMSTANCES OF AFDC RECIPIENTS FY 1991, 28.

3 Among these rules were the "man-in-the-house" prohibitions struck down in King v. Smith, 392 U.S. 309 (1968) and the "harsh, oppressive, illegal and humiliating" investigation methods challenged unsuccessfully in Smith v. Bd. of Commissioners of the District of Columbia, 259 F. Supp. 423 (D.D.C. 1966).

ents (and certain others) with children.[4] Rather the federal government will give the states "block grants," which the states themselves can apportion among a number of designated needs.[5] The need that used to be covered by AFDC is only one of these needs. The grants are for a fixed amount, however. When the pot is empty, no more needs can be met. Thus, entitlement will come to an end.

Although states have greater leeway under the block grant model than under the current programs, under the block grants, states will be required to conform to a few federal standards. Primary among the standards pertaining to welfare are constraints designed to restore the nuclear family. As explained in more detail below, these constraints reflect a real obsession with illegitimacy and thus with marriage.[6] This obsession came to the fore with the 1994 election—before that time "liberal Democrats," such as President Clinton, had shown no reluctance to impose work requirements, family caps, and time limits.[7] While agreeing on these points, the Republicans, now dominating the House, have moved beyond such "reforms."

Is this new effort to end illegitimacy by compelling marriage only a matter for poor women? Is the assumption that making a woman a wife before she becomes a mother will automatically end the need in this country for public assistance solely a concern for the needy and their sympathizers? Yes, in one sense, questions regarding the shape of this country's welfare system are distinct from questions about gender relations, such as when a husband and wife can divorce and who has control of their property when they are married. But the unquestioned glorification of marriage, the notion that a home with a man is always better than a home without, and the implication that any two-parent home is better than any one-parent home that underlie the changes the "new" Republican leadership wish to make in the welfare system may well have consequences for us all. If so, shouldn't all women be concerned about the faulty assumption that making a woman a wife before she becomes a mother will end the need for public assistance?

How likely is it that these broader messages will take effect? Aren't the problems of welfare recipients—painful as they are—considered a separate and distinct part of politics and law in this country? Unfortunately, the sad story of the dilution of the abortion right suggests this is not the case.

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[4] H.R. 4, 104th Cong., 1st Sess. (1994). As this article goes to press, one version of H.R. 4 has been vetoed by President Clinton as part of the battle over the federal budget. There is, however, consensus on the need for welfare reform and there is some discussion that House Republicans will try to revive H.R. 4 by attaching it to an appropriate bill. *See* Judith Havemann & Barbara Vobejda, *Hill GOP Leaders to Study Governors' Welfare Plan; Gingrich Predicts House Will Act by Early March; Senate Appears More Problematic*, WASH. POST, Feb. 8, 1996, at A8.

[5] Judith Havemann & Barbara Vobejda, *Hill GOP Leaders to Study Governors' Welfare Plan; Gingrich Predicts House Will Act by Early March; Senate Appears More Problematic*, WASH. POST, Feb. 8, 1996, at A8.

[6] *See infra* notes 57-61 and accompanying text.

[7] Center on Social Welfare Policy and Law, *Update on Federal Welfare 'Reform,'* WELFARE REFORM NEWS, Oct. 1994, at 2, 3.

II. THE ABORTION TALE[8]

With its 1973 *Roe v. Wade*[9] decision, the U.S. Supreme Court announced that a woman has a constitutional right (at least with her doctor) to choose abortion. A series of court cases applied and extended that right in the years that followed.[10] Most recently, however, though the right has been upheld in theory, it has been eroded using an approach first articulated in cases involving poor women.

A. Protecting the Right Post-*Roe*

In 1976, in its first major decision following *Roe*, the Supreme Court considered the validity of a multi-provisioned Missouri statute governing the conditions under which women could obtain therapeutic abortions. In *Planned Parenthood v. Danforth*,[11] the Court invalidated the requirements that minors obtain a parent's consent for an abortion[12] and that wives obtain their husbands' consent for an abortion.[13] The Court also invalidated the statute's ban on the use of saline abortions after the first twelve weeks of pregnancy, at that time the abortion method most commonly used during that stage of pregnancy.[14] The Court did, however, uphold requirements pertaining to the woman's written informed consent,[15] record-keeping, and reporting by providers.[16]

In its 1983 decision in *Akron v. Akron Center for Reproductive Health*,[17] the Supreme Court again invalidated a series of restrictive provisions. The Court struck down an ordinance requiring all second-trimester abortions to be performed in a hospital, a parental consent requirement, an "informed consent" provision, a twenty-four hour waiting period, and a requirement that fetal remains be disposed of in a "humane and sanitary manner."[18]

In its 1986 decision in *Thornburgh v. American College of Obstetricians and Gynecologists*,[19] the Supreme Court found provisions seeking to influence a woman's decision to have an abortion violated her right to

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[8] I am very grateful to Susan Appleton for her important work in developing this point. *See* Susan Appleton, *Standards for Constitutional Review of Privacy-Invading Welfare Reforms: Distinguishing the Abortion-Funding Cases and Redeeming the Undue-Burden Test*, 49 VAND. L. REV. 1 (1996).

[9] 410 U.S. 113 (1973).

[10] *See, e.g.*, Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976); Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747 (1986); Maher v. Roe, 432 U.S. 464 (1977); Harris v. McRae, 448 U.S. 473 (1980).

[11] 428 U.S. 52 (1976).

[12] *Id.* at 74-75.

[13] *Id.* at 71-72.

[14] *Id.* at 79.

[15] *Id.* at 67.

[16] *Id.* at 80-81.

[17] 462 U.S. 416 (1983).

[18] *Id.* at 452.

[19] 476 U.S. 747 (1986).

choose.[20] It overruled requirements that the woman be informed of detrimental physical and psychological effects of abortion, that a woman be advised that medical assistance may be available during her pregnancy and that the father is liable to financially support the child,[21] and various reporting requirements.[22]

In short, a number of cases following *Roe* applied a tough test and invalidated provisions going well beyond the criminal prohibitions on abortions.

B. Undercutting the Rights

Despite these abortion rights victories, two important defeats came at the end of the 1970s. In 1977, the Supreme Court upheld a Connecticut law barring Medicaid payments for elective abortions.[23] Then, in 1980, the Supreme Court upheld a federal law denying Medicaid payments for most therapeutic abortions.[24] The Connecticut case, *Maher v. Roe,* turned on the newly introduced notion that the Constitution only "protects the woman from *unduly burdensome interference* with her freedom to decide whether to terminate her pregnancy."[25] According to the majority, the government had simply declined to fund a poor woman's exercise of her right, it had not placed an obstacle in her way.[26] The Supreme Court allowed the statutory prohibition on Medicaid funding for elective abortions, treating the denial as a mere value judgment in favor of childbirth and not an undue burden on abortion.[27] The Court then upheld a federal prohibition on Medicaid funding for almost all abortions on the same grounds in *Harris v. McRae.*[28]

The impact these decisions have had on women of color, given their high poverty rate, is severe.[29] As Catharine MacKinnon points out, "[t]he Medicaid issue connects the maternity historically forced on African American women integral to their exploitation under slavery with the motherhood effectively forced on poor women, many of whom are Black, by deprivation of government funding for abortions."[30]

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20 *Id.* at 760.

21 *Id.* at 764.

22 *Id.* at 767-68.

23 Maher v. Roe, 432 U.S. 464 (1977).

24 Harris v. McRae, 448 U.S. 297 (1980).

25 *Maher,* 432 U.S. at 473-74 (emphasis added).

26 *Id.* at 474.

27 *Id.*

28 448 U.S. 297.

29 David Robert Baron, *The Racially Disparate Impact of Restrictions on the Public Funding of Abortion: An Analysis of Current Equal Protection Doctrine,* 13 B.C. THIRD WORLD L.J. 1 (1993).

30 Catharine A. MacKinnon, *Reflections on Sex Equality Under Law,* 100 YALE L.J. 1281, 1320 (1991).

The failure to see funding for one course and not the other as a violation of equal protection has been severely criticized analytically.[31] The *Maher* decision, and to a greater extent the *Harris* decision, were subjected to strong political criticism too. The American Civil Liberties Union, for instance, characterized the *Harris* ruling as "a complete and cruel abandonment of the constitutional guarantee of equal justice."[32] Inherent in this criticism is the sense that the funding problem, as one involving impoverished persons, is separate and distinct from the mainstream struggle for abortion rights. For example, a key figure in the Planned Parenthood organization decried the decision, calling it a terrible irony that "women who are at the highest risk of having unplanned pregnancies or complications, or of seeing the child die in infancy—poor women, black women and teen-agers—had been 'picked out' by Congress and subjected by the Court to denial of a basic medical service."[33] Similarly, from a legal point of view, the *Harris* decision was described as "end[ing] lengthy litigation to establish a *federal* constitutional right to public aid for poor women in making the choice of whether or not to terminate a pregnancy."[34]

The Medicaid issue can be distinguished doctrinally from other abortion rights issues. Unlike the other decisions, the Medicaid cases involve state inaction, rather than state action. But the bright line that these abortion funding cases purported to draw between state action and inaction simply was not respected in later cases.[35]

Not long after the undue-burden doctrine was established, the Court used it to dilute the rights of minors, another vulnerable group. The Supreme Court made clear in the *Bellotti* cases that certain parental notification requirements were permissible.[36] Despite its previous decisions invalidating parental consent requirements under the same standard applied

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31 *See, e.g.*, Rachel N. Pine & Sylvia A. Law, *Envisioning a Future for Reproductive Liberty: Strategies for Making the Rights Real*, 27 HARV. C.R.-C.L. L. REV. 407, 418-22 (1992); Laurence H. Tribe, *The Abortion Funding Conundrum: Inalienable Rights, Affirmative Duties and the Dilemma of Dependence*, 99 HARV. L. REV. 330, 336-37 (1985); Kathleen M. Sullivan, *Unconstitutional Conditions*, 102 HARV. L. REV. 1413, 1439-40 (1989).

32 Robin Herman, *After Decision, Focus Turns to Lower Courts and Abortion Politics*, N.Y. TIMES, July 1, 1980, at A1, B9.

33 *Id.*

34 Dara Klassel, *Restrictions on Medicaid Abortions Open to Challenge on State Constitutional Grounds*, 9 FAM. PLAN./POPULATION REP. 89, 95 (1980).

35 Appleton, *supra* note 8.

36 Bellotti v. Baird, 428 U.S. 132 (1977) [hereinafter *Bellotti I*]; Bellotti v. Baird, 443 U.S. 622 (1979) [hereinafter *Bellotti II*]. The resolution of minors' rights in the *Bellotti* cases could be read as a partial victory. At issue in *Bellotti v. Baird* was a Massachusetts statute requiring both parents to consent to a minor's abortion. Once the top Massachusetts Court made plain that the statute required that the minor attempt to obtain her parents' consent before approaching a court for permission for her abortion, that parents receive notice of a minor's petition to a court, and that the court hearing the minor's petition could deny it on the ground that it was not in her best interest, the U.S. Supreme Court found it unconstitutional. Though not a simple recognition of a minor's right to abortion, the ruling was helpful to minors. A mature minor, the Court said, must be given permission for an abortion irrespective of the judge's view and even an immature minor must be permitted to have a confidential abortion, if in her best interests.

to other provisions, the Supreme Court held in *Bellotti II*,[37] that a more lenient standard should be applied in cases involving minors. The Court explicitly expressed the standard in "undue burden" terms. Thus, the Court asked whether the statute before it provided for parental notice and consent "in a manner that does not unduly burden the right to seek an abortion."[38] The use of this standard for minors was confirmed by the Court's 1981 decision in *H.L. v. Matheson*.[39]

The undue burden doctrine, initially announced in the context of poor women and extended in the context of minors, was then applied to all women. Justice O'Connor played a critical role in making this happen. In her 1983 dissent in *Akron v. Akron Center for Reproductive Health*,[40] O'Connor wrote that the Constitution only "protects the woman from unduly burdensome interference with her freedom to decide whether to terminate her pregnancy."[41]

In her 1986 dissent in *Thornburgh v. American College of Obstetricians and Gynecologists*,[42] Justice O'Connor elaborated on this approach, making clear that only "absolute obstacles or severe limitations on the abortion decision," and not any state regulation inhibiting abortion, meet the undue burden test.[43] Once again, O'Connor relied on the abortion funding cases. Three years later, O'Connor's concurrence in *Webster v. Reproductive Health Services*[44] made clear that under the test first articulated in *Maher* and *Harris*, a regulation that only marginally increased the cost of abortions would stand.[45] For O'Connor, and later others, then, so long as abortions remain available, although at an increased cost, no undue burden exists.[46]

The undue burden test advocated by O'Connor has played a critical role in undercutting reproductive freedom protections. In *Planned Parenthood v. Casey*,[47] it was used by Justices O'Connor, Kennedy, and Souter,[48] to rewrite *Roe v. Wade* and uphold a series of Pennsylvania abortion restrictions.[49] Not surprisingly, both *Maher* and *Harris* were invoked

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37 443 U.S. 622 (1979).

38 *Id.* at 640.

39 450 U.S. 398 (1981).

40 462 U.S. 416 (1983).

41 *Id.* at 461 (O'Connor, J., dissenting) (quoting Maher v. Roe, 432 U.S. 464, 473-74 (1977)).

42 476 U.S. 747 (1986).

43 *Id.* at 828 (O'Connor, J., dissenting) (quoting *Akron*, 462 U.S. at 464) (arguing that even undue burdens on abortion, once subjected to the compelling state interest test, might survive such strict scrutiny).

44 492 U.S. 490, 507-11 (1989).

45 *Id.* at 530 (O'Connor, J., concurring).

46 *See Akron*, 462 U.S. at 466-67; *see also* Planned Parenthood v. Casey, 505 U.S. 833, 874 (1992).

47 505 U.S. 833 (1992).

48 The joint opinion explained that the "undue-burden" standard achieves a truer balance between individual and state interests than did Roe's trimester formula, which rests on an inherent contradiction by recognizing the state's interest in potential life *throughout* pregnancy while confining the state's efforts to advance that interest to the brief period after viability. *Id.* at 874-77.

49 Pennsylvania's definition of medical emergency used in later provisions and its "actively" imposed requirements for detailed informed consent, a 24-hour waiting period, record-keeping,

in the process.[50] The "undue-burden" test has thus come a long way from the "no obstacle" formulation used to deprive poor women of the abortion option in the funding cases.

Where do things currently stand? According to the controlling opinion in *Casey*, the Constitution will permit efforts purposely designed to dissuade a choice nominally defended as fundamental.[51] In theory, the joint opinion left room for factual showings of burden, so that the newly-formulated test retained some of *Roe*'s teeth.[52] This possibility in combination with the plurality's refusal to reverse *Roe* outright was initially a source of optimism.[53] The lower courts' difficulty in finding undue burdens seems to confirm that the *Maher/Harris* "undue-burden" approach severely undermines the abortion right, both as a legal doctrine and a social reality.[54]

In retrospect, the abortion tale is a sorry one. The initial target of and legal approach to change in the abortion area purported to focus on a distinct, confinable issue: the government's ability to express taxpayer's values in spending the people's money. The issue was seen as discrete both in terms of legal analysis and in terms of the discrete group affected. Yet, it seems clear that the attack on abortion rights for the vulnerable[55] served as the chink in the dike, and that the dam is now near to breaking over us all. In Catharine MacKinnon's words, "for those who have not noticed, the abortion right has already been lost: this was when."[56]

III. The Welfare Tale

Does the coming welfare "reform" create a similar risk? Are supposedly distinct concerns about the government's right to decide how to spend the people's money so as to further the people's values really distinct? Are they likely to undermine another important part of the struggle for, to use an old fashioned term, women's liberation?

An appreciation of current political realities is essential to the answer. Since the Republicans took control of Congress in the 1994 election and sought to take the "moral high ground" on a variety of family issues, a

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and reporting provisions all passed constitutional muster. Only the burden imposed by the spousal notification requirement was found undue. *See id.* at 884-87, 893-94.

50 *Id.* at 875 (quoting Harris v. McRae, 448 U.S. 297, 314 (1980)).

51 *Id.* at 885-87 (joint opinion).

52 *See, e.g.*, Nadine Taub, *What Casey Tells About Fighting for Choice, in* Reflections After Casey: Women Look at the Status of Reproductive Rights in America (Center for Constitutional Rights ed., 1993).

53 *See, e.g., id.*

54 *See, e.g.*, Casey v. Planned Parenthood, 947 F.2d 682 (3d Cir. 1991), *modified by* 505 U.S. 833 (1992); Barnes v. Mississippi, 992 F.2d 1335 (5th Cir. 1991), *cert. denied*, 113 S.Ct. 468 (1993); Barnes v. Moore, 970 F.2d 12 (5th Cir. 1992), *cert. denied*, 113 S.Ct. 656 (1992). *But see*, A Woman's Choice v. Newman, 904 F. Supp. 1434 (S.D. Ind., 1995) (looking to factual circumstances to invalidate abortion restrictions); Women's Medical Professional Corp. v. Voinovich, No. 395-414, 1995 WL 6756857 (S.D. Ohio, Dec. 13, 1995) (same).

55 *See supra* notes 23-28 and accompanying text.

56 MacKinnon, *supra* note 30, at 1320.

major new concern is illegitimacy and the need to maintain the traditional marriage.[57] As one observer noted, "[t]he GOP has apparently come to accept [Charles] Murray's November 1993 formulation that, 'Illegitimacy is the single most important social problem of our time—more important than crime, drugs, poverty, illiteracy, welfare or hopelessness because it drives everything else.' "[58]

Democrats are now also concerned with illegitimacy. They simply dispute the role of welfare in promoting out-of-wedlock births. For example, in his testimony to the House Subcommittee handling the welfare legislation, the Executive Director of the Center on Budget and Policy Priorities, Robert Greenstein, frankly conceded the centrality of the illegitimacy issue. In his words, "[a]nyone concerned about the well being of children must be deeply troubled by the increasing numbers of children born outside of marriage."[59] Greenstein merely disagreed about the cause of this phenomenon, pointing to the broad societal trend toward motherhood without marriage[60] and the research showing increased welfare benefit levels have no significant effect on out-of-wedlock child bearing.[61]

The results of this increased focus on legitimacy are readily apparent in the work of Congress.[62] Title I of the bill introduced into the House, The Personal Responsibility Act, H.R. 4 of 1995, states in its first sentence that, "[i]t is the sense of Congress that (1) marriage is the foundation of a successful society; (2) marriage is an essential social institution which promotes the interests of children and society at large . . . ."[63]

The nominally more liberal Senate version of the welfare reform bill, the Work Opportunity Act of 1995, S. 1120,[64] introduced at the end of the summer of 1995, contains exactly the same language. It is simply placed under a new heading. Thus, S. 1120 introduces its section 406, Promoting Responsible Parenting, with the quoted language from H.R. 4. One of the substantive provisions in the House bill would encourage states to deny assistance—forever—to children born out-of-wedlock.[65] The more "liberal" Senate would simply give states the option to impose the same limitations.[66]

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57 R.W. Apple, Jr., *The 1994 Elections: News Analysis; A Vote Against Clinton*, N.Y. TIMES, Nov. 9, 1994, at A1; David E. Rosenbaum, *The Nation: Right Stuff: GOP Unleashes Its New Weapon: Winning Candidates*, N.Y. TIMES, Nov. 13, 1994, § 4, at 4.

58 Michael Laracy, What's Good for the Goose (unpublished manuscript, on file with the author).

59 *Welfare Reform Proposals: Hearing Before the Subcomm. on Human Resources, House Ways and Means Comm.*, 103rd Cong., 2d. Sess. 850 (1994) [hereinafter *Hearings*] (testimony of Robert Greenstein, Executive Director, Center on Budget and Policy Priorities).

60 *Id.* at 3.

61 *Id.* at 8.

62 *See* H.R. 4, 104th Cong., lst. Sess. (1996).

63 *Id.*, tit. 1, § 101.

64 S. 1120, 104th Cong., 1st Sess. (1995).

65 H.R. 4, tit. 1, § 402(a)(1)(A).

66 S. 1120, tit. 1, § 402(a)(1)(F) (1995).

But what are the consequences of this desire to reinstate marriage? Inequality in marriage has long been an issue for feminists. One concern is the relegation of marriage to the private sphere, with the result that women have had very little legal power vis-a-vis their "partners."[67] Other concerns stem from the system of coverture. Under coverture, an Anglo-American legal system in full force until the nineteenth century with effects lasting well into the twentieth century, a married couple became one person, the man. Prominent among the coverture's features were restrictions on conveying property, earning incomes, and making legally cognizable decisions about one's children. In essence, coverture meant that women were able to have relations with the outside world only through their husbands.[68] Given these constraints, women's rights activists in the nineteenth century (the "First Wave" of U.S. feminism) saw the institution of traditional marriage as particularly onerous for women.[69]

The idea that marriage is a reflection, source, and reinforcement of women's oppression was also one of the major insights that emerged in the late 1960s and 70s. This realization occurred in the consciousness raising groups that were important in moving U.S. feminists forward during that time. We benefit today from those struggles both to reshape marriage and to free women from the necessity of marrying. Their efforts were numerous: they sought to aid married women in keeping their own identities; in choosing their own names;[70] and domiciles.[71] They sought an equal right to

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[67] Nadine Taub & Elizabeth Schneider, *Perspective on Women's Subordination and the Role of Law, in* THE POLITICS OF LAW 121 (David Kairys ed., 1st ed. 1982).

[68] *See generally* HERMA H. KAY, TEXT, CASES AND MATERIALS SEX-BASED DISCRIMINATION, ch. 2 (2d ed. 1981).

[69] *See generally* J. RALPH LINGREN & NADINE TAUB, THE LAW OF SEX DISCRIMINATION, ch. 1, at 21-28 (2d ed. 1993).

[70] *See* Kenneth L. Karst, *A Discrimination So Trivial: A Note on Law and the Symbolism of Women's Dependency*, 35 OHIO ST. L.J. 546, 549-54 (1974); Priscilla MacDougall, *Divorce/Dissolution Name Change—Ripe for Legislative Reform*, MARRIAGE, DIVORCE & THE FAMILY NEWSLETTER, Sept. 1976.

> A personal story illustrates the importance of having one's name:
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> There was no question that I would change my name—certainly not in my crowd. But I didn't realize how critical [on marriage] the action nonaction was until I entered room after room with my now legally-affiliated significant other. I learned by having the experience over and over again of the hostess starting to say "These are the . . ." and having to stop in midsentence. One after another switched to say "this is so-and-so and so-and-so." Having my own name wasn't merely my crowd's mode or an abstract symbol. It was, I learned, a very important, very concrete way to convey my personhood.

Nadine Taub, *Recollections, Reflections and Concerns in* FEMINIST MEMOIRS (Ann B. Snitow & Rachel DePlessy eds., forthcoming). *See also* Priscilla MacDougall *Married Women's Common Law Right to Their Own Surnames*, 1 Women's Rts. L. Rep. 2 (1972).

[71] "[M]arriage has traditionally deprived a woman, but not a man, of the privilege accorded all other responsible adults, that of choosing her own *legal domicile*. In most states when a woman marries, her husband's domicile automatically supersedes her own." KAY, *supra* note 68, 177-78.

make decisions[72] and ways to control and escape spousal abuse.[73] They also sought to end the internal as well as external pressure to marry.[74]

Our continuing efforts to overcome the subordination marriage has entailed seeking to reshape the traditional family both through altering power relations within the nuclear family and through recognizing diverse family forms. Success in either approach depends on having the option to escape the traditional nuclear family. Pressuring a woman to remain a traditional wife and mother obviously undercuts her ability to shape a satisfactory role for herself within or outside the nuclear family. The law plays an important role in generating this pressure. Nancy Dowd tells us:

> The Law embodies pictures of family that focus singularly on the patriarchal marital nuclear family. . . . The corollary to the elevation of the nuclear family is the devaluation and stigmatization of other family structures. . . . Both socially and legally, we relentlessly stigmatize single parents as bad parents who have broken incomplete, dysfunctional families which result in predictably disastrous consequences for their children. . . . We also impose economic and psychic penalties as a matter of social policy and legal structure. We continue to consign large numbers of children to poverty who have the bad luck to be born into or become the wrong kind of family.[75]

Stigmatization through the law seems to be on the increase as social realities push the other way.[76] Certainly, this appears to be the case in the welfare "reform" context where, as Dowd points out, the discourse is filled with blame of single parents.[77]

In sum, those who have shaped the current welfare "reform" drive see the birth of "illegitimate" children who live in single parent households as the major source of concern. The panacea for this problem is a return to traditional marriage with its two-parent households. Nevermind that for many poor women and many others those traditional marriages have been quite oppressive. Having been continuously constrained by gender expectations and subjected all too often to physical and psychological abuse, scores of women have decided that traditional marriage is not the be all and end all and have fought to change the options open to them. Yet those now in the lead on welfare "reform" would deny poor women this chance.

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[72] *See, e.g.*, Reed v. Reed, 404 U.S. 71 (1971).

[73] *See, e.g.*, Nadine Taub, *Adult Domestic Violence: The Law's Response*, 8 VICTIMOLOGY: AN INT'L J. 152, 152-62 (1983).

[74] A personal account of a consciousness raising group: "I remember one woman saying it was an incredible breakthrough for her when she realized she didn't have to get married. Amazing that women had to do this. Amazing that a movement could free one woman up like that." Taub, *supra* note 70.

[75] Nancy E. Dowd, *Stigmatizing Single Parents*, 18 HARV. WOMEN'S L.J. 19, 19-20 (1995).

[76] *Hearings*, *supra* note 59.

[77] Dowd, *supra* note 75, at 20-26.

IV. ENDNOTE

Once again poor women have become the focus of an issue that is plainly important to all women's struggles. Will the abortion story be repeated? It's not clear.