

Fall 1970

Robert M. O'Neil, *The Price of Dependency: Civil Liberties in the Welfare State*

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Recommended Citation

Ivan E. Bodensteiner, *Robert M. O'Neil, The Price of Dependency: Civil Liberties in the Welfare State*, 5 Val. U. L. Rev. 196 (1970).

Available at: <https://scholar.valpo.edu/vulr/vol5/iss1/14>

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THE PRICE OF DEPENDENCY: CIVIL LIBERTIES IN THE WELFARE STATE. By Robert M. O'Neil. New York: E.P. Dutton & Co., Inc. 1970. Pp. 351. \$8.95.

As the title indicates, this book attempts to show that America is in fact a welfare state and that the price of this dependency on the government is often the surrendering of certain constitutional rights and liberties. America is a welfare state in that "most citizens receive government benefits at some time in their lives." In order to understand the book, it is important to note the characteristics of the beneficial relationships between the government and the recipients of the benefits or subsidies. First, the relationship is voluntary on both sides; second, the relationship results from some type of formal application for the benefit; third, the benefits are not available to everyone; and fourth, the subsidy or benefit is usually substantial and very important to the beneficiary. These beneficial relationships should be distinguished from relationships such as: 1) involuntary relationships resulting in reception of government funds, *e.g.*, persons serving in the armed services; 2) government regulation of individual conduct through licenses, passports, etc.; 3) incidental opportunities afforded to all persons by the government, *e.g.*, use of highways, parks, forests, etc.; and 4) individual rights inherent in our democracy, *e.g.*, right to vote and right to speak or worship freely.

After discussing generally the extent of government benefits and subsidies, the author concentrates on five major categories of government beneficiaries: government employees, students at state colleges and universities, welfare recipients, tenants in public housing projects and occasional or incidental users of public property. Each of these five categories is examined quite thoroughly in subsequent chapters after some discussion of why the government conditions and restricts all of these benefits. While it is very difficult to determine exactly why any specific benefit is conditioned or restricted, it is possible to set out a few of the more fundamental reasons. The author identifies the following purposes of conditions on benefits: to gather information or maintain records, to ensure eligibility of beneficiaries, to control or restrict the scope of the program, to promote political objectives, to promote moral objectives, to discourage dependency, to reallocate resources and to achieve, indirectly, government goals which cannot be achieved through direct regulations, *e.g.*, threatening to cut off federal funds unless schools desegregate.

Whether there is any limit on government's power to condition or restrict is a vital question because, to a great extent, the limitations, or lack of them, determines exactly how high the price of dependency is or will be. An extreme position, and one accepted by some courts in the past, is that the government can arbitrarily condition and restrict benefits because the benefits result from a relationship that is voluntary on both sides, *i.e.*, if the government does not have to provide any benefits, why cannot it arbitrarily withhold, condition or restrict benefits? One chapter is devoted to an explanation of how the theory of unconstitutional conditions developed in the courts, and how courts are now frequently striking down government conditions on benefits.

Two chapters deal with the status of government employees. Therein, the author considers loyalty oaths, political activities, the lack of collective bargaining and the right to strike, job requirements such as citizenship and lack of criminal record, and reasons for dismissals and the right to a hearing. The author also explores the effect of the civil service system on the plight of the government employee. Both the past and present status of government employees are arrived at by examining the court decisions involving the rights of public employees.

Another two chapters are devoted to the relationship between the student and the public educational institution. The primary issue discussed in these chapters is the student's constitutional rights versus the institution's power to suspend or expel. This necessarily includes individual confrontations resulting from demonstrations, protests and demands. Here again, the changing trend of the courts is examined and reveals that students today are in a much better position legally than they were fifteen years ago.

First amendment rights are the primary topic of discussion in a chapter entitled "Government Property." It deals almost exclusively with the public forum, its accessibility, protection of the users, the expansion to include what was formerly "private" property, and controversy in the public forum. Under this heading the author also briefly discusses the government power to license radio and television stations.

The price of dependency for the poorest beneficiaries of government benefits is discussed in chapters dealing with public housing and public welfare. Many of the recent court decisions enforcing the constitutional, statutory and regulatory rights of tenants and recipients are examined in these chapters. Nearly all the important court decisions defining the rights of public housing tenants and public welfare recipients have been handed down in the past four or five years. In fact, some of the more important ones have been decided since this book was written. Reasons

for this late development of case law include the general hesitancy to bite the hand that feeds you and the lack (prior to the funding of OEO Legal Services Programs) of attorneys willing to file such suits. These two chapters reveal the fact that even though tenants and recipients are winning many court battles, certain evils are inherent in the system as established and cannot be corrected in the courts.

The value of this book will depend on the perspective and background of the reader. Although written by an attorney and dealing primarily with the status of five major categories of government beneficiaries as developed by the courts, the book provides a good general survey of the law in those areas for the non-attorney. One certainly does not have to be an attorney to understand the book. In addition to providing a survey of the law, to a certain extent the book may help educate people to the fact that nearly everyone receives government benefits, not just the recipients of "public welfare." Only the terminology is different. A quote from a newspaper reporter contrasting Senator Eastland's relationship to government (specifically the \$157,930 he received from the Department of Agriculture in 1967) with that of an unmarried Mississippi mother near starvation because of inadequate welfare payments is very relevant. "For the Poor, It's a Dole, For the Rich, Subsidies—But It's All Welfare." It is quite obvious after reading the book that the price of dependency is much higher for the mother receiving welfare than it is for Senator Eastland.

For an attorney not too familiar with developments in civil liberty or poverty law matters, the book might be a valuable tool with which to begin legal research. Most of the cases discussed and referred to in the text of the book are cited in a separate section entitled "References and Bibliography." It suffers from a problem common to all casebooks, law review articles and treatises dealing with these matters, *i.e.*, the law is changing so rapidly through court decisions that by the time a book or article is published it is no longer current. This is especially true in the area of public housing, public welfare and students rights. Any attorney who keeps abreast with the developments in these areas of the law would not gain much from reading the book. The book was probably not intended for such a person.

Finally, in response to the basic question of whether or not the book is worth reading, I would conclude that there is some value in the book for everyone. It is relatively easy to read and understand and not very lengthy. However, I would caution that all readers who want to obtain a true picture of the price of dependency should keep in mind that even though the court decisions referred to in the book would seem to imply

that the price is gradually being reduced, only a very small fraction of the arbitrary denials, conditions or withdrawals ever reach the courts and it often takes years before court decisions are implemented at the level where it counts. Thus a study of the law and court decisions can paint an unrealistic picture if the courts are not easily accessible to all recipients of government benefits.

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