

Discovering (Tax) Rights that the Poor Have Post-Welfare Reform

Author : Ezra Rosser

Tagged as : [Poverty Law](#)

Date : November 16, 2017

Susannah Camic Tahk, *The New Welfare Rights*, **Brooklyn L. Rev.** (forthcoming 2017), available at [SSRN](#).

Professor Susannah Camic Tahk's newest article is a welcome and optimistic read that opens space for future work (re)constructing the idea that the poor have rights. *The New Welfare Rights* has much to offer scholars and advocates alike, showing that the poor have under-appreciated rights as taxpayers or as recipients of tax-based benefits. This is an important contribution because it shows the continued possibility of claims framed in terms of "rights" even in the aftermath of welfare reform.

The New Welfare Rights begins appropriately by presenting the rise and fall of rights-based claims to welfare. As Professor Tahk highlights, rights-based claims enjoyed a brief moment in the sun, but the Supreme Court stepped back from the promise of *Goldberg v. Kelly*, with a series of holdings—Professor Tahk focuses on *Dandridge v. Williams* and *Eldridge v. Matthews*—hostile to the idea that the poor have a right to public support. Professor Tahk explains, "After these cases, lawyers working on issues pertaining to government benefits and rights hit a wall." (P. 12.) So far, this is not exactly new territory. Martha Davis' masterful history of the rise and fall of welfare rights in her book *Brutal Need: Lawyers and the Welfare Rights Movement, 1960-1973* (1993) is the leading account but numerous other articles and books tell a similar story.¹ With only a few exceptions², most scholars and advocates generally accept the notion that the Courts are not receptive to arguments that the poor have rights. Somewhat less strongly stated, in today's environment it is understood that existing recognized rights are vulnerable and the list of rights is not likely to be expanded through litigation. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 or Welfare Reform Bill, which explicitly stated that welfare was not an entitlement, is treated as final proof that the law has slammed shut on the poor.

What makes *The New Welfare Rights* so helpful is it shows that such pessimism might not be entirely merited. Following welfare reform, welfare rolls plummeted and did not rise after start of the Great Recession³, but tax benefits to the working poor took off. With bi-partisan support, poor support morphed from welfare claims made by individuals, especially poor mothers and children, into money claimed by the working poor who file tax returns. This transition and the rising importance of the Earned Income Tax Credit (EITC) can rightly be critiqued for moving from a program geared towards supporting individuals as people or as citizens to a system of aid that values only people as workers.⁴ But as Professor Tahk shows, the move to provide assistance through the tax system "has opened the door to a new set of rights, the same rights that any taxpayer has." (P. 5.) Post-welfare reform and after the Supreme Court turned away from *Goldberg*, state constitutions and state courts have been seen as a possible way for the poor to have their rights recognized.⁵ By showing the ways in which the poor, as taxpayers and as tax filers, have rights that are under-appreciated by advocates who focus solely on direct cash assistance, *The New Welfare Rights* creates space for additional rights-based claims on behalf of poor people. Professor Tahk notes, "Tax benefits come with rights. These rights accrue to poor recipients of tax benefits much as they do to wealthy individuals or businesses who obtain subsidies

through the tax code. These rights arise from participating in the tax system." (P. 26.)

I will admit I am not entirely convinced by Professor Tahk's argument that the "tax-based welfare state does not operate along two tiers" and that "it presents a one-tiered vision of equal citizenship." (P. 27.) A recent article by Professor Wendy Bach does a nice job attacking that argument⁶ and Matthew Desmond's essay on the inequality connected to the mortgage interest deduction similarly challenges such a rosy view.⁷ But by highlighting the procedural rights that are part of the tax system, including those tied to the Taxpayer Bill of Rights, and connecting those rights to poor people (Pp. 35-43), *The New Welfare Rights* opens our eyes to ways in which to help the poor by leveraging rights built into the tax system. It is an article worthy of attention and is perhaps especially valuable to those of us who are skeptical about the government recognizing and responding positively to rights talk when it comes to poor people.

1. The background stories of many of the seminal cases are presented as chapters in **The Poverty Law Canon: Exploring the Major Cases** (Marie Failinger & Ezra Rosser eds., 2016).
2. See Julie Nice, *No Scrutiny Whatsoever: Deconstitutionalization of Poverty Law, Dual Rules of Law, & Dialogic Default*, 35 **Fordham Urb. L.J.** 629 (2007) (arguing that advocates should not give up on rights-based claims).
3. See, e.g., **Peter Edelman, So Rich, So Poor: Why It's So Hard to End Poverty in America** 82 (2012) (highlighting the "near-demise of welfare"); Jason DeParle & Robert M. Gebeloff, [Living on Nothing But Food Stamps](#), **N.Y. Times** (Jan. 2, 2010).
4. For Professor Tahk's presentation of this line of critique and her response to it, see Pp. 32-34.
5. See, e.g., William C. Rava, *State Constitutional Protections for the Poor*, 71 **Temp. L. Rev.** 543 (1998).
6. See Wendy A. Bach, [Poor Support/Rich Support: \(Re\)Viewing the American Social Welfare State , Fl. Tax Rev.](#) (forthcoming, 2017).
7. Matthew Desmond, [How Homeownership Became the Engine of American Inequality](#), **N.Y. Times Mag.** (May 9, 2017).

Cite as: Ezra Rosser, *Discovering (Tax) Rights that the Poor Have Post-Welfare Reform*, JOTWELL (November 16, 2017) (reviewing Susannah Camic Tahk, *The New Welfare Rights*, **Brooklyn L. Rev.** (forthcoming 2017), available at SSRN), <https://lex.jotwell.com/discovering-tax-rights-that-the-poor-have-post-welfare-reform/>.