AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 9: Liberalism Divided – Individual Rights

Tucker v. Toia, 43 N.Y. 2d 371 (NY 1977)

In 1976, the New York state legislature sought to force adults to take greater responsibility for the financial needs of dependent minors. The legislature amended its public assistance laws to bar individuals under the age of 21 from receiving assistance unless legal proceedings were first brought against any responsible relatives to provide support and a judicial disposition had been made in such a suit. Legal aid attorneys quickly filed suit on behalf of a group of indigent minors. The plaintiffs included an eighteen-year-old whose mother was committed to a mental hospital and whose father's whereabouts were unknown, a nineteen-year-old pregnant woman whose mother was deceased and whose father was in Alabama, and an eighteen-year-old who had left home after a dispute with her mother and whose father's whereabouts were unknown. In each case, public assistance was suspended for weeks or months as the plaintiffs awaited dispositions from the family courts. Philip Toia, the commissioner of the state department of social services, appealed directly to the New York Court of Appeals after the statutory provision was declared unconstitutional by a county trial court. The law was challenged on the grounds that it violated both the state equal protection clause and a provision of the New York state constitution that mandated government support for the needy. The high court unanimously affirmed the decision of the trial court without reaching the equal protection issue.

What distinguishes this case from the case involving individuals who decline employment, which the court cites in its opinion? What conditions can the legislature place on public assistance? How might the court evaluate a system of administrative determinations that required several weeks or months to complete about whether an individual is needy? Does the legislature have discretion to refuse to support needy minors if responsible adults refuse to provide support or the minor refuses to accept that familial support? Does the legislature have discretion to impose conditions on the receipt of support, such as a requirement that the individual perform public service or reside in a state facility?

GABRIELLI, J.

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. . . . Under the challenged statute, the plaintiffs and others in similar situations are, of course, denied any public assistance during this period, although they meet all criteria for measuring need, solely on the basis of their failure to obtain a disposition. Since they do meet the need criteria, and are thus *a fortiori* unable to support themselves without public aid, one must wonder how they are to survive this period of waiting for an overcrowded Family Court system to process their often quite futile support petitions.

In New York State, the provision for assistance to the needy is not a matter of legislative grace; rather, it is specifically mandated by our Constitution. Section 1 of article XVII of the New York State Constitution declares: "The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine". This provision was adopted in 1938, in the aftermath of the great

depression, and was intended to serve two functions: First, it was felt to be necessary to sustain from constitutional attack the social welfare programs first created by the State during that period; and, second, it was intended as an expression of the existence of a positive duty upon the State to aid the needy.

The legislative history of the Constitutional Convention of 1938 is indicative of a clear intent that State aid to the needy was deemed to be a fundamental part of the social contract. For example, the report of the Committee on Public Welfare, the group which drafted what became section 1 of article XVII of our Constitution, specifically states that one purpose of the amendment was to "recognize the responsibility of the State for the aid, care and support of persons in need." Even more explicit are the comments by Edward F. Corsi, Chairman of the Committee on Social Welfare, in moving the adoption of the provision by the convention:

> . . . . "Here are words which set forth a definite policy of government, a concrete social obligation which no court may ever misread. By this section, the committee hopes to achieve two purposes: First: to remove from the area of constitutional doubt the responsibility of the State to those who must look to society for the bare necessities of life; and, secondly, to set down explicitly in our basic law a much needed definition of the relationship of the people to their government.
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> "While the obligation expressed in this recommendation is mandatory, in that the Legislature shall provide for the aid, care and support of persons in need, the manner and the means by which it shall do so are discretionary.
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> . . . . What it may not do is to shirk its responsibility which, in the opinion of the committee, is as fundamental as any responsibility of government."

In view of this legislative history, as well as the mandatory language of the provision itself, it is clear that section 1 of article XVII imposes upon the State an affirmative duty to aid the needy. Although our Constitution provides the Legislature with discretion in determining the means by which this objective is to be effectuated, in determining the amount of aid, and in classifying recipients and defining the term "needy", it unequivocally prevents the Legislature from simply refusing to aid those whom it has classified as needy. Such a definite constitutional mandate cannot be ignored or easily evaded in either its letter or its spirit.

We find that section 15 of chapter 76 of the Laws of 1976 is unconstitutional in that it contravenes the letter and spirit of section 1 of article XVII of the Constitution. The effect of the questioned statute is plain: it would effectively deny public assistance to persons under the age of 21 who are concededly needy, often through no fault of their own, who meet all the criteria developed by the Legislature for determining need, solely on the ground that they have not obtained a final disposition in a support proceeding. Certainly, the statute is in furtherance of a valid State objective, for it is intended to prevent unnecessary welfare expenditures by placing the burden of supporting persons under 21 upon their legally responsible relatives. This valid purpose, however, cannot be achieved by methods which ignore the realities of the needy's plight and the State's affirmative obligation to aid all its needy.

In *Matter of Barie v. Lavine* (NY 1976), we were presented with a somewhat similar challenge to a social services regulation providing for the temporary suspension of recipients who unjustifiably refuse to accept employment. We summarily dismissed the constitutional arguments proffered in *Barie*, stating: "The Legislature may in its discretion deny aid to employable persons who may properly be deemed not to be needy when they have wrongfully refused an opportunity for employment." In that case we were concerned with a reasonable legislative determination that such individuals were not needy. The present case, in contradistinction, presents a very different question: May the Legislature deny all aid to certain individuals who are admittedly needy, solely on the basis of criteria having nothing to do with need? Today, we hold that it may not. . . .

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The judgment appealed from should be *affirmed*.