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THE TYRANNY OF RESIDENCE LAWS*

by
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GOVERNOR DEL SESTO, MR. CHAIRMAN, DISTINGUISHED GUESTS, COLLEAGUES:

To be here with you today is a signal honor, and to have this opportunity to discuss with you one of the most stubbornly resistant problems in the whole field of social welfare is a gratifying distinction.

For the sake of orderly discussion, I should like, first, to define certain terms, describe the general problem, and outline the major areas of knowledge and attitude that have important bearing on residency laws. Next, I intend to present and analyze the opposing arguments. Finally, I shall try to bring into some clarity of focus certain proposals for the resolution of residency difficulties.

In preparing myself for this meeting, I had semantic difficulty with only two terms -- "settlement" and "residence." Because I found their interchangeable use confusing, I chose to abandon the more technical term, "settlement," and utilize the more general and familiar term, "residence." I shall, where possible, use the blanket term, "public assistance," to denote all public funds given in aid to needy persons -- the four Federally aided categorical programs plus "general assistance." Because of the high degree of interrelationship between these two approaches to public welfare goals, this broader frame of reference will, I believe, permit a more comprehensive view of the problems involved in all types of aid as they are affected -- or shall I say, aggravated? -- by residency laws.

* Delivered at the Biennial Round Table Conference of the American Public Welfare Association, Statler Hotel, Washington, D. C., Friday, December 4, 1959, 2:00 PM, EST.

THE PROBLEM

There are only three States -- New York, Rhode Island, and Hawaii -- that have no durational resident requirements for beneficiaries of all the Federally aided assistance programs. In the program of old-age assistance, the remaining States are evenly divided between (1) requiring one year of residence immediately preceding the date of application and (2) requiring from three to five years residence out of the nine years preceding application.

In Aid to the Blind, the figures are about the same. Seven jurisdictions have no residence requirement, 24 require one year, and 22 require from three to five years out of the nine years preceding application.

In Aid to the Permanently and Totally Disabled, 7 jurisdictions have no residence requirement, 30 require one year immediately preceding the application, and 11 have requirements of from three to five years.

In Aid to Dependent Children, 8 jurisdictions have no residence requirement, and 45 have provisions similar to the Federal maximum limitation which provides that duration of residence may not be longer than one year immediately preceding application for aid. Special provision is made, as you know, for infants under the age of one year.

In the field of general assistance, the record is somewhat better, but in no sense and in no way is it good enough. The conflicting rigidities that impede general assistance are especially deplorable since their very purpose is designed to meet both emergency, short term needs and those of a more enduring nature not encompassed by the categorical programs.

Aid to non-residents may be given in 9 States without regard to whether the applicant is to be returned to his place of legal residence, but in twenty others aid can be given only when plans to return to legal residence are consummated, when assistance is limited to a specified time, or in the event of emergency. It is interesting to observe in passing that five States did not reply to inquiries about aid to non-residents.

The human consequences of these conflicting restrictions are especially well known to you, whose daily professional duty it is to cope with them. They are also matters of grave concern to all lay citizens who are able to appraise, even superficially, the social, economic, and health hazards that residency requirements create, not only for the needy but also for the whole of American society.

Every year, six million people move from one State to another. Most of these men, women, and children reach their new homes without untoward event and have no need of aid. Some of them -- perhaps a greater number than we might like to guess -- need help but never apply for it, either out of ignorance of local resources or because they are all too well aware of their ineligibility. Those who do plead for aid where residence laws exist must be rejected or are required to return to their former places of residence.

The cumulative hardship that results in these cases is immeasurable. The damage done to children, the families disrupted, the diseases neglected constitute a tragic harvest which provincial self-interest and social indifference to human values inevitably reap.

VIEWS PRO AND CON

Historical Context

I do not propose to recite the history of settlement and residence laws. It is a chronicle that has been retold too many times to warrant another telling here. I want merely to remind you that traditions and institutions conceived and established by former generations have a way of enduring long after they have served the purposes that gave them reason for being. Often, too, they continue to flourish in contradiction of a nation's prevailing social philosophy.

The pertinacity of residence laws is an outstanding expression of this tendency. Historical precedents that derive from the Poor Laws of England, jealously guarded States' rights, decentralization of governmental function, native pride in the supremacy of individualism and family self-sufficiency, neighborly resort to mutual aid, a deep-seated unwillingness to become involved in the problems of outsiders -- these and other influences have served to perpetuate barriers between the States and to withhold aid to stricken strangers who chance to be among us.

For Residency Laws

Arguments in support of residency laws have but little literature, and to me they have a hollow ring. The established order of things is, after all, its own defense. But when its advocates do defend the status quo, the argument generally takes these lines: (1) the relaxation or elimination of residency

Laws would place an intolerable burden on the taxpayers of certain States, which, because of their healthful climate or enlarging opportunities, would attract, on the one hand, the ill, the infirm, and the aged or, on the other, the improvident, the chronically indigent, and the imprudent adventurer, whose problems are properly the responsibility of their home States; (2) the abolition of residence requirements in States where public assistance provisions are relatively liberal would constitute an open invitation to indigents receiving aid in States where such provisions are relatively meager; (3) established residents of the States are now paying taxes to the maximum of their capacities and could not afford the additional levies that the removal of residence restrictions doubtless would entail; (4) residence laws tend to keep welfare costs at an endurable minimum and make possible better care for bona fide citizens of the States; (5) the moment residence barriers were let down, the unemployed from other States would flock in and draw on public assistance until they found jobs, if ever.

Going even further than these contentions was the report of Strodel and Associates to the General Assembly of the State of Illinois. It advocated the adoption of tighter residence restrictions on the grounds that immediate savings would be realized. It predicted that Chicago, as a rapidly expanding industrial center, could expect enormous increases in population. Concerning such expectation, the report expresses this opinion: "What this could do to the rolls of Public Aid recipients is almost beyond comprehension and calculation. And if no restrictions are placed upon residency beyond those now set at one year, the general program of operation and administering of Public Aid -- embracing the

present accelerating trends, per se, and those likely to develop as indicated -- would require progressively staggering amounts of budgetary appropriations."

Against Residency Laws

Those who seek to remove residence restrictions see this problem in the context of an industrialized, interdependent, continent-wide society, nationally dedicated to the maintenance of social and individual security and internationally committed to human betterment. They assert that residence laws, as they affect the administration of categorical programs, degrade the ideals of social security; as they inhibit the provisions of general assistance, they defeat the purposes of democracy.

Proponents of the abolitionist argument point out that in keeping residence restrictions we irrationally perpetuate an historical anachronism and thus permanently impede the total public assistance effort.

The evidence that supports the conviction of those who would eliminate or markedly modify residence requirements derives from their effect (1) on human values; (2) on the economy; (3) on social justice; (4) on government administration.

On Human Values

The advocates of residency liberalization unequivocally assert that to neglect, evade, or ignore hardship wherever it may occur is a tacit denial of the unique

worth and significance of each and every human being, no matter what his social status or his current earning power. To preach the universality of human rights but to practice their limitation deprive the victims of circumstance of spiritual stature and personal dignity. Rejecting his pleas for help because he has not spent an arbitrary number of days, months, or years on a specified segment of soil not only renders him stateless but also reduces him to the possible ignobility of beggary. Because the same unanticipated vicissitudes befall him as befall those who stay at home, he is denied the right to aid that would have been almost automatically his in his State of origin, perhaps only a few days before. Such parochialism is unrealistic, degrading and un-American in that it perpetuates social obsolescence, deprives the individual of personal pride, denies him the right of mobility and the community protection to which all citizens are entitled, and diminishes his productive contribution to the economy.

On the Economy

Indeed, it is the effect of residence laws on our rapidly expanding economy that present to the opponents of residency regulations concrete and measurable evidence of the urgent need for change. Our continued prosperity depends in large measure on a labor supply of sufficient

mobility to meet the demands of America's enlarging industrial machine. A decrease in the number of jobs in one locality and an increase in another inevitably compels migration. The occurrence of booming enterprise and higher wages in one State will draw like a magnet workers who seek to improve their lot and to find enhanced opportunities for their children.

The contention that great numbers of people migrate to obtain public assistance or larger assistance payments is not borne out by the facts. To our knowledge, welfare officials have seldom found migrants to be impelled by such motives. The State of New York, which has no durational residency requirements for assistance, does not receive as large a proportion of migrants as States that have rigid restrictions. Much larger proportional increases in newcomers have occurred in California with all its strict resident regulation than have occurred in New York. Available information indicates that people move to improve their lot. It also indicates that residence laws impede the flow of ambitious and able people, particularly heads of families who are unwilling to jeopardize their children's, or their own, personal safety and economic security.

Even so, workers who are willing to accept the risks of mobility have repeatedly demonstrated their value to the Nation's economy. The development of defense industries during the last 20 years would not have been possible without the very large influx of workers to those States where the home labor supply was inadequate.

The treatment accorded migratory farm laborers, who admittedly make possible the harvesting of crops worth hundreds of millions of dollars, is a flagrant example of the self-defeating character of residence restrictions.

The problems of the migrant farm worker have been studied and documented by the President's Commission on Migratory Labor. Its report describes them as follows:

"Migratory farm laborers move lucklessly over the face of the land, but they neither belong to the land, nor does the land belong to them. They pass through community after community, but they neither claim the community as home, nor does the community claim them. Under the law, the domestic migrants are citizens of the United States, but they are scarcely more a part of the land of their birth than the alien migrants working beside them.

"The migratory workers engage in a common occupation, but their cohesion is scarcely greater than that of pebbles on the seashore. Each harvest collects and regroups them. They live under a common condition, but create no techniques for meeting common problems. The public acknowledges the existence of migrants, yet declines to accept them as full members of the community. As crops ripen, farmers anxiously await their coming; as the harvest closes, the community, with equal anxiety, awaits their going."

In considering the forces and the characteristics of migration, economists, demographers, and welfare experts do not overlook or under-rate the impact of

massive one-way flows of population. Admittedly, there have been periods when restrictions, no matter how forbidding, have not kept people at home. From 1950 to 1954 migrations of this kind inflated the populations of Arizona, California, Florida, and Nevada by 18 and 31 percent. During the first three-and-a-half years of World War II, 1,360,000 people migrated to California, reducing the populations of 15 Oklahoma counties by 25 percent and changing the social and economic characteristics of scores of communities in every section of the Nation.

Massive migration within a relatively short span of time does indeed result in increased demands on the available public assistance funds of the receiving State. But, after an initial period of adjustment, these migrants, including those who needed the most help, are in large measure responsible for the upward spiral of production and consumption levels that consolidate the general prosperity of all the State's citizens, new and old.

In any event, such massive movements are exceptional. They loom as large in our judgment of their significance as they do in numerical mass. Most population movements are not one-way and they tend to cancel each other out numerically, with the result that few communities suffer any considerable net gain or loss in population.

Such reciprocal exchanges of population make possible the intricate social and economic pattern by means of which knowledge, skills, good, and services are interchanged, adapted to new conditions, and redeveloped to enlarge their applicability.

The increasing scope and complexity of industrialization, the inevitability of automation, the ultimate development of low-cost and universally available power from nuclear energy, all point to greater rather than less mobility of the American people in the future. Such additional factors as the glutted facilities of metropolitan centers, the pressing demands for skilled workers in defense industries which now are being located outside areas of population concentration, competitive recruitment of professional and technical personnel, the continuing trend of higher income groups to seek better living conditions in suburbs intensify compulsions toward mobility. These technological and human drives and needs not only will compel large population movements but probably will necessitate a greatly changed occupational distribution to meet the demands of geographically separated industrial, scientific, technological, and commercial enterprises, in this country and abroad.

On Social Justice

Residency laws are assailed for their destructive influence on social justice, which, as a fundamental principle, we have sought valiantly to foster for most American citizens in their "pursuit of happiness." But the disparity between our professed good intentions and our treatment of needy migrating citizens constitutes a refutation of any acceptable concept of justice. The basic constitutional guarantees of freedom, equality,

and justice do not inform our response to appeals for aid from newcomers among us. The mere fact of moving makes them second-class citizens who retain only the right to suffer alone or the privilege to pursue the chimera of the patronizing hand-out -- guarantees our founding fathers did not conceive of as contributing to social justice.

Although they may not have had opportunity to earn enough to pay local and State taxes, migrants do pay Federal taxes. But even this investment in their own security is negated by residence laws, despite the fact that over the past decade the Federal Government has provided an increasingly larger percentage of the cost of welfare aid while the percentage of State and local contributions has declined. In fiscal year 1959, Federal funds represented 58.7 percent of the total funds for assistance in the Federally aided categories, while State funds represented 33.6 percent, and localities only 7.7 percent.

On Government Administration

Those who urge the eradication of residence laws point out the enormous expense and exertion of personnel effort they impose on State governments.

Residence requirements make it necessary for overburdened staffs to spend prolonged periods in attempts to prove residence eligibility, quite in addition to the routine requirements of investigating an applicant's needs and resources. Sometimes assistance must be withheld until both the proof and

the investigation are complete. Often there must be extensive correspondence with other States or localities. On many occasions differences of opinion arise between States as to the facts of residence. If laws and policies of States coincide, it is mere chance, and often an individual will be without recognized and acknowledged residence. With residence laws go the machinery for returning a needy person to his place of residence. This is often not to the best interest of the individual or society because it tends to tie him to his old place of residence and defeats his efforts to improve himself.

The investigation and the return process involve extensive costs to the States. Question can be raised whether these costs do not balance the cost a State might incur from giving assistance to needy persons who have lived in a State for a shorter period than is now specified in its law. The evidence points this way. The ultimate costs of State residence laws must be measured by adding the more minor out-of-pocket costs of administration to the less tangible but more substantial social costs. Since these laws make it difficult for an individual to improve his personal situation, their costs to the community in perpetuating the depressed economic status of needy people assume large and grave proportions.

In terms of efficiency, residence laws are cumbersome for any State government to administer. The Massachusetts Legislative Research Council has stated that 'over the past 300 years there has developed an enormous and complicated body of law, both by statute and judicial decision, which almost defies appropriate administrative methods to deal with it.' The volume of work may be so extensive that in some states there have developed specialists known as "settlement lawyers." Some years ago the State of New York made a time study which revealed that determination of residence occupied 11.6 percent of the time of the caseworkers and 18 per cent of the time of the total staff of local welfare agencies. In addition, the very large accumulation of records and accounts which must be maintained takes up valuable office space. Other studies have shown, moreover, that collections and disbursements under the "chargeback" system often tend to balance out, making the heavy administrative cost an unwarranted burden.

PROPOSALS FOR SOLUTION

A number of proposals have been made in an effort to ameliorate, if not to eliminate, the conditions created by residency laws. As long ago as 1895, the Minnesota State Board of Charities and Corrections advocated a Federal law regulating the interstate migration of dependents. In 1899 the National Conference of Charities and Corrections recommended a uniform State Settlement Law. In 1931 a committee of the American Public Welfare Association proposed interstate

agreements for the relief of dependents. The Association prepared a draft for a Uniform Transfer of Dependents Act. The resulting Act enabled the enacting States to enter into reciprocal agreements for the transfer and support of dependent persons. Eleven States adopted the law but only half of them entered into the agreements.

The 21 States that were represented at the interstate conference of the Council of State Governments in March 1936 called upon Congress to assume responsibility for the relief of interstate transients, the relief to be administered by permanent State departments and coordinated local units. They recommended that Federal grants-in-aid for this purpose be made to the States.

In January 1937, the Third General Assembly of the Council of State Governments voted resolutions that called for Federal financial aid coupled with uniform settlement legislation by the States.

In March of the same year, more than 15 Midwestern States responded to the invitation of the Governor of Minnesota to participate in a Midwest Interstate Conference on Transient Problems. They also urged Federal action to initiate a cooperative Federal-State program.

Concurrently, the American Public Welfare Association approved the principle of reciprocal agreements between States that had adequate legislation to provide for the State supervision and financing of transient relief programs and called for Federal grants for general and categorical relief.

At the Fifth General Assembly of the States held in January 1941 by the Council of State Governments a report was issued which proposed a "general relief category" under the Social Security Act, to be administered by the States. This general assistance category would make Federal grants available on the same basis as the other Social Security Act categories. Assistance to transients and "stateless" persons would be provided under the new category.

Throughout the remainder of the forties and well into the present decade efforts have continued toward a solution of residence restrictions. A little progress has been made. Many States have voluntarily reduced residence requirements, and reciprocal agreements have forwarded this trend.

The most recent development in the States occurred in 1957 and 1958 when the Northeastern States began moving in the direction of an interstate compact which would replace individual agreements, broaden their coverage, and simplify administrative machinery by means of a reciprocal group approach.

The Department of Health, Education, and Welfare has consistently worked with professional, governmental, and voluntary groups and agencies in an attempt to solve this resistant problem.

On August 4, 1959, Secretary Fleming in his address to the Governors' Conference at San Juan, Puerto Rico, made the following statements:

"I know of no Department of the Federal Government that is involved to a greater degree in relations between the Federal and State Governments than the Department of Health, Education, and Welfare. This is true of all of the areas for which we have responsibility, but it is, of course, particularly true in the area of public welfare. . .

"Just a little over two billion dollars, or two-thirds of the total operating budget of the Department of Health, Education, and Welfare, is used to match the expenditures of State Governments in the four categories of old age assistance, aid to the blind, aid to dependent children, and aid to the permanently and totally disabled. This represents over 58 percent of the total expenditures in these four categories. . .

"In approaching the problems that confront us in the public welfare and relief field, I do so with the conviction that we must subject our proposed solutions to just one test, namely, will they help those who are in need.

"There are those who believe that we are justified in refusing to help the individual in an effort to achieve some desirable social goals. I submit that those who take this position are contending that the means, namely a refusal to help a human being in need, justifies the end. As is always the case, however, the means will color the end and, in the final analysis, we will fail to help the individual and, at the same time, we will weaken instead of strengthen our social order. . .

" We face the question of whether or not the Federal Government should continue to grant funds by categories, namely, for old age assistance, aid to the blind, aid to dependent children, and aid to the permanently and totally disabled. I have asked our professional staff to make a very thorough study of this issue, as I personally believe that serious consideration should be given to recommending to the Congress that the categorical approach be abolished and that the Federal Government make a single grant for public assistance. The States, of course, should be left free to decide whether they desire to continue to administer their programs by categories.

"I believe that we should examine this approach very carefully to see whether or not the elimination of the categories by the Federal Government would have the effect of strengthening Federal-State relations by reducing to a considerable degree the supervision of public assistance programs by the Federal Government, and also whether or not it would likewise have the effect of accelerating the trend in the direction of making welfare programs more effective when it comes to strengthening family life.

" There is the issue of whether or not the States should include residence requirements as a part of their public assistance programs. To the extent that State funds are used the Federal Government has no legitimate concern. I am convinced, however, that to the extent that Federal funds are utilized for public assistance purposes

there should be no residence requirement. The Federal Government is making funds available in order that persons who are in need may receive assistance. It has no concern and should not have any concern about how long persons have lived in a particular community or State. In fact, I feel that it is indefensible for the Federal Government to continue to permit the restriction of the use of its funds in this manner."

In June 1959, the Governors' Conference Special Committee issued a report concerning these matters, which gives many encouraging indications of progress toward the easement of welfare restrictions. In essence, the Committee recommended Federal leadership without additional Federal financial participation or the establishment of a new Federally administered welfare program. Cooperation through the device of an interstate compact was stressed as a prime factor in the States' assumption of responsibility for a solution to the problem. General assistance would be left in the hands of the States.

The Committee specifically recommended:

- (1) that the Congress enact legislation amending the Social Security Act so that all four federally aided categories of public assistance will be governed by a uniform one-year ceiling on residence requirements.
- (2) that general assistance remain a state and local program and that the states develop an interstate compact under which persons moving from one party state to another shall not be denied some form of aid if they are in need, irrespective of residence requirements otherwise existing.

In refinement of the second recommendation, the

Committee stated:

"States joining the compact would, on a reciprocal basis, make general assistance available to any person who moves from one party state to another -- any existing residence or settlement requirements to the contrary notwithstanding. If the person who moves was already an assistance recipient, the state he leaves will continue to pay assistance for ninety days before the new state of residence takes on any assistance obligation."

The Committee also presented an optional provision:

"Through an optional provision of the compact, effective only as among and between those states which agree to add it to the basic plan for reciprocal general assistance, a similar arrangement would be operative as respects the federally aided categories, child welfare services, and care of unwed mothers. This optional section would also authorize supplementary agreements for additional cooperation between small groups of states which might want to explore other areas of cooperation."

Since the elimination of residence laws is an unlikely eventuality, now or in the foreseeable future, their modification along the lines of the Governors' Conference Committee recommendations and the liberalization of welfare aid provisions through either the expansion of general assistance or its substitution for the categorical programs are proposals that deserve the most careful study by all official and voluntary agencies.

However, before we can realistically envision the abolition of residence requirements, it will be necessary for the profession of welfare service to undertake long-range research projects to determine the factual and quantitative aspects of migration especially in terms of the personal

and social costs of residence requirement policies, the factors that motivate people to change communities, the circumstances that lead to appeals for aid, and the cost of that aid to the community's taxpayers. As a pertinent corollary, such research should seek to define, with some precision, the consequences to individuals and families whose applications for assistance are denied for reasons of residence. Similarly, the destinies of those who are returned to their States of origin should be objectively ascertained.

Armed with the facts, the profession of welfare service would be in a position to undertake an effective educational program to inform the public of the humane and economic advantages of doing away with residence laws and to stimulate community discussion and action. As a result, you might well mobilize in the interest of this vital cause the most powerful of all democratic forces -- public opinion.

Thank you for your gracious attention.

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