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Guaranteed Income: Chronicle of a Political Death Foretold

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PROLOGUE

This symposium issue of the *Chapman Law Review* is devoted to various landmark laws enacted by the 91st Congress, including the National Environmental Policy Act,¹ the Organized Crime Control Act,² the Bank Secrecy Act,³ the Controlled Substances Act,⁴ and the Housing and Urban Development Act.⁵ This Article, by contrast, will explore what could have been: The Family Assistance Act of 1970 (“H.R. 16311”). Had this historic bill been enacted into law, it would have authorized a negative income tax, thus providing a minimum guaranteed income to all poor families with children.⁶ In the words of Daniel Patrick Moynihan, “Family Assistance was income redistribution, and by any previous standards it was massive.”⁷ Although it passed the House by a wide margin, and although there were sufficient

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1 Pub. L. No. 91-190, 83 Stat. 852 (1970).

2 Pub. L. No. 91-452, 84 Stat. 922 (1970).

3 Pub. L. No. 91-508, 84 Stat. 1118 (1970).

4 Pub. L. No. 91-513, 84 Stat. 1242 (1970).

5 Pub. L. No. 91-609, 84 Stat. 1770 (1970).

6 VINCENT J. BURKE & VEE BURKE, NIXON’S GOOD DEED: WELFARE REFORM 108–09 (1974). This book was the brainchild of Vince Burke, the urban affairs and social welfare reporter for the Los Angeles Times. *See id.* at xv. His wife Vee completed the book after Vince died of cancer in 1973. *See id.* at xvi.

7 DANIEL P. MOYNIHAN, THE POLITICS OF A GUARANTEED INCOME 385, 385 (1973).

votes to clear the Senate, the guaranteed income bill never made it to the floor of that august body.⁸

Given that the 91st Congress enacted so many historic laws, why did H.R. 16311 end in failure? The history of the Family Assistance Act has received a great deal of scholarly attention. Previous studies, for example, have surveyed the legislative history of the guaranteed income bill,⁹ scrutinized the economics of the bill,¹⁰ dissected liberal and conservative opposition to the bill,¹¹ or emphasized the spillover effects of the Vietnam conflict on the bill.¹² This Article, by contrast, will narrate the fate of H.R. 16311 in the form of a three-act legislative morality play. To this end, this Article is structured as follows:

Act I will introduce the hero of our story, the idea of a guaranteed income via a negative income tax, and retrace the intellectual origins of this idea. Next, Act II will spotlight the shrewd tactics of the second-most powerful man in Washington, D.C., Representative Wilbur D. Mills, the chairman of the House Ways and Means Committee, who skillfully shepherded the guaranteed income bill through the House of Representatives. Last, Act III will introduce the villain of our story, Senator Russell D. Long, the chairman of the Senate Finance Committee. I make no apologies about casting Senator Long as the villain. This pro-segregation Dixiecrat, who once referred to welfare mothers as “Brood Mares,”¹³ used his position of power to thwart the bill at every turn. A brief epilogue concludes.

Although the hero of our story is an idea, not a person, its fate will be no less dramatic than that of a traditional flesh-and-bones protagonist. At the time, many social liberals and welfare advocates

⁸ For a comprehensive legislative history of H.R. 16311, see CONGRESSIONAL QUARTERLY, *Welfare Reform: Disappointment for the Administration*, in 1970 CONGRESSIONAL QUARTERLY ALMANAC 1030 (1970).

⁹ See generally M. KENNETH BOWLER, *THE NIXON GUARANTEED INCOME PROPOSAL: SUBSTANCE AND PROCESS IN POLICY CHANGE* 6 (1974); Leland G. Neuberg, *Emergence and Defeat of Nixon's Family Assistance Plan (FAP)* (U.S. Basic Income Guarantee, Working Paper No. 66, 2004).

¹⁰ See Jonathan H. Hamilton, *Optimal Tax Theory: The Journey from the Negative Income Tax to the Earned Income Tax Credit*, 76 S. ECON. J. 860 (2010); see also D. Lee Bawden, Glen G. Cain & Leonard J. Hausman, *The Family Assistance Plan: An Analysis and Evaluation*, 19 PUB. POL'Y 323, 352–53 (1971); Aaron Wildavsky & Bill Cavala, *The Political Feasibility of Income by Right*, 18 PUB. POL'Y 321 (1970), reprinted in AARON WILDAVSKY, *THE REVOLT AGAINST THE MASSES* 71–100 (2003).

¹¹ See BURKE & BURKE, *supra* note 6, at 106; see also MOYNIHAN, *supra* note 7, at 384–85; see also Hamilton, *supra* note 10, at 871–73.

¹² See Felicia Kornbluh, *Who Shot FAP? The Nixon Welfare Plan and the Transformation of American Politics*, 1 SIXTIES: J. HIST., POL. & CULTURE 125, 125 (2008).

¹³ See 114 CONG. REC. 10,543 (1968) (remarks by Hon. Walter F. Mondale); see also MOYNIHAN, *supra* note 7, at 518–19. For a more forgiving, or nuanced, view of Senator Russell's racist perspectives, see MICHAEL S. MARTIN, *RUSSELL LONG: A LIFE IN POLITICS* 115–16 (2014).

complained the bill's proposed annual stipend was too low, while at the same time many fiscal conservatives and so-called Dixiecrats (Southern Democrats) thought the plan was too costly.¹⁴ Moreover, how can a guaranteed income bill help the poor without distorting work incentives or increasing taxes on everyone else? These are, of course, mutually incompatible goals. Hence, with apologies to the late Latin American literary giant Gabriel García Márquez, the title of this legislative play.¹⁵

ACT I: A BEAUTIFUL IDEA

The first act of a dramatic work is usually used for exposition and to establish who the main characters are.¹⁶ At some point during the first act, an inciting incident or conflict situation will occur. This incident calls the main character, or protagonist, of the story to action. The hero will have to make a decision—one that will change his life forever.

The hero of our three-act play is not a person, however, but rather an idea: a guaranteed minimum income to all persons via a negative income tax. The idea of a guaranteed income has an illustrious pedigree. Historical figures as diverse as Bertrand Russell, Edward Bellamy, and Thomas Paine—polymath, utopian planner, and patriot alike—all advocated for some form of universal basic income in their day.¹⁷ But it was the conservative economist and future Nobel Laureate, Milton Friedman, along with his wife Rose Friedman, who coined the term “negative income tax” in a best-selling book, *Capitalism and Freedom*, and in the popular press.¹⁸

¹⁴ The bill's proposed annual stipend for a family of four was \$1,600, or about \$10,000 in 2020 dollars. See *infra* text accompanying notes 29–30.

¹⁵ GABRIEL GARCÍA MÁRQUEZ, *CHRONICLE OF A DEATH FORETOLD* (Gregory Rabassa trans., First Vintage International ed. 2003). The Nobel Prize in Literature 1982 was awarded to Gabriel García Márquez “for his novels and short stories, in which the fantastic and the realistic are combined in a richly composed world of imagination, reflecting a continent's life and conflicts.” *The Nobel Prize in Literature 1982*, NOBEL PRIZE, <http://www.nobelprize.org/prizes/literature/1982/summary/> [<http://perma.cc/7WHV-U4N6>] (last visited Feb. 28, 2020). Unlike the great García Márquez, however, I will tell the story of the Family Assistance Act in a linear fashion.

¹⁶ See, e.g., DAVID TROTTIER, *THE SCREENWRITER'S BIBLE: A COMPLETE GUIDE TO WRITING, FORMATTING, AND SELLING YOUR SCRIPT* 5–7 (3d ed. 1998).

¹⁷ See BERTRAND RUSSELL, *THE PROPOSED ROADS TO FREEDOM*, 109–10 (2004); see also Thomas Paine, *Agrarian Justice* (1797), in JOHN CUNLIFFE & GUIDO ERREYERS, EDs., *THE ORIGINS OF UNIVERSAL GRANTS* 3–16 (2004); EDWARD BELLAMY, *LOOKING BACKWARD: 2000–1887* (Daniel H. Borus ed., 1995).

¹⁸ See MILTON FRIEDMAN, *CAPITALISM AND FREEDOM* 191–94 (40th Anniversary ed. 2002); see also Milton Friedman, *Negative Income Tax—I* (1968), in MILTON FRIEDMAN, *BRIGHT PROMISES DISMAL PERFORMANCE: AN ECONOMIST'S PROTEST* 348–50 (William R. Allen ed., 1972); Milton Friedman, *Negative Income Tax—II* (1968), in *id.* at 351–53. Professor Friedman would be awarded “The Prize in Economic Sciences in Memory of Alfred Nobel” in 1976. *The Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel*, COLUMBIA

Although the idea of a reverse income tax predates Friedman,¹⁹ it was Milton and Rose Friedman who brought this unorthodox idea to a popular audience and made it palatable to social conservatives. If *Capitalism and Freedom* was destined to become Friedman's most famous work,²⁰ the negative income tax chapter of his book put forth one of his most original, provocative, and beautiful ideas.²¹ In summary, Friedman proposed that the federal income tax should be graduated—not only upward, but also downward. Under Friedman's proposed negative income tax scheme, a person without any income would receive a modest guaranteed income of \$300 per year.²² Later, Friedman would revise this amount upward, recommending a minimum guaranteed income of \$1,500 for a family of four.²³ Friedman's negative income tax thus inspired the 1970 guaranteed minimum income bill: "Had it not been for Friedman's endorsement of the basic principles underlying Nixon's Family Assistance Plan (FAP) . . . it is unlikely that FAP would ever have left the White House."²⁴

But if the hero of our story is Milton and Rose Friedman's negative income tax idea, what is the inciting incident or call to action of our doomed legislative tale? One possibility is a May 27, 1968 letter, which was signed by over 1,000 North American academic economists, calling on Congress to enact "a workable and equitable plan of income guarantees . . ."²⁵ This letter, which was co-authored by a group of leading economists—including such

ECON., <http://econ.columbia.edu/faculty/nobel-laureates/the-sveriges-riksbank-prize-in-economic-sciences-in-memory-of-alfred-nobel/> [<http://perma.cc/96HA-S2KD>]. Although Milton Friedman's name appears as the sole author on the front cover of *Capitalism and Freedom*, he wrote this book in collaboration with his wife, Rose D. Friedman. See LANNY EBENSTEIN, MILTON FRIEDMAN: A BIOGRAPHY 140 (2007).

¹⁹ See BURKE & BURKE, *supra* note 6, at 140–41. As an historical aside, the first Anglo-American person to propose a negative income tax as the mechanism for providing a guaranteed income was Lady Juliet Rhys-Williams. See Peter Sloman, *Beveridge's Rival: Juliet Rhys-Williams and the Campaign for Basic Income, 1942–55*, 30 CONTEMP. BRIT. HIST. 203, 203–04 (2016); see also Evelyn L. Forget, *Canada: The Case for Basic Income*, in MATTHEW C. MURRAY & CAROLE PATEMAN, EDs., BASIC INCOME WORLDWIDE: HORIZONS OF REFORM 83 (2012).

²⁰ According to the University of Chicago Press, for example, *Capitalism and Freedom* has been translated into eighteen languages and has sold over 500,000 copies since its initial publication in 1962. See FRIEDMAN, CAPITALISM AND FREEDOM, *supra* note 18.

²¹ Friedman was one of the most (if not *the* most) prominent North American economists at the time. See, for example, the cover of the December 19, 1969 issue of *Time Magazine*, which is included in Appendix A to this Article.

²² See FRIEDMAN, CAPITALISM AND FREEDOM, *supra* note 18, at 192.

²³ See Friedman, *Negative Income Tax—I*, *supra* note 18, at 349.

²⁴ See MARTIN ANDERSON, WELFARE: THE POLITICAL ECONOMY OF WELFARE REFORM IN THE UNITED STATES 78–79 (1978).

²⁵ The letter, along with the list of 1,228 economists who signed the letter, is found in *Income Maintenance Programs: Hearings Before the Subcomm. on Fiscal Policy of the J. Econ. Comm.*, 90th Cong. 676–90 (1968). The text of this letter is included in Appendix B to this Article.

luminaries as James Tobin (Yale), Paul Samuelson (MIT), and John Kenneth Galbraith (Harvard)—openly called for a national system of income guarantees and made the front page of *The New York Times*.²⁶ Alas, curiously absent from this massive list of signatures was Milton Friedman's.

Why did Friedman demur from the May 1968 letter? Why did he not join his own colleagues in support of his own cause? The most likely reason Friedman jumped off this basic income bandwagon is the letter's choice of words; it omits any reference to the words "negative income tax." Moreover, the May letter not only calls for a guaranteed income, it also calls for *supplements* to this income. In other words, the letter seems to imply that existing social welfare programs should co-exist with a guaranteed income. Friedman, by contrast, supported a guaranteed income concept only if it replaced all, or most, existing social entitlements.²⁷

Here, then, is an alternative inciting incident: President Richard M. Nixon's historic speech on August 8, 1969, calling for a guaranteed income. Between the historic Apollo 11 lunar mission (July 16–24, 1969) and the Woodstock Music Festival in Bethel, New York (August 15–18, 1969), Nixon delivered a televised address announcing one of the most radical and revolutionary poverty-relief proposals in our nation's history: a uniform, unconditional, and guaranteed minimum income for all poor households in the United States.²⁸ Under Nixon's anti-poverty plan, a poor family of four would receive an annual cash stipend of \$1,600—no strings attached—the equivalent of \$10,600 in today's inflation-adjusted dollars.²⁹

In some respects, the proposal Nixon described in his nationwide address would fall far short of his lofty rhetoric; in other respects, however, Nixon's speech understated the radical nature of his plan.³⁰ Overall, Nixon's guaranteed income bill, or "family assistance plan" ("FAP"), had three internal contradictions—time bombs that would eventually cause his plan to

²⁶ See *Economists Urge Assured Income*, N.Y. TIMES, May 28, 1968, at 1. For additional background and a chronology of events leading up to the 1968 petition, see BRIAN STEENSLAND, *THE FAILED WELFARE REVOLUTION: AMERICA'S STRUGGLE OVER GUARANTEED INCOME POLICY 64–70* (2008).

²⁷ For alternative explanations of Friedman's demurrals, see Milton Friedman, *The Case for the Negative Income Tax: A View from the Right*, PROC. NAT'L SYMP. ON GUARANTEED INCOME 49–55 (1966), reprinted in *Collected Works of Milton Friedman Project* (Robert Leeson & Charles G. Palm, eds.), HOOVER INST. ARCHIVES, <http://miltonfriedman.hoover.org/objects/57681> [<http://perma.cc/6WKA-7WRV>].

²⁸ Address to the Nation on Domestic Programs, 324 PUB. PAPERS 640–41 (Aug. 8, 1969).

²⁹ See Ian Webster, \$1600 in 1970, CPI INFLATION CALCULATOR, <http://www.in2013dollars.com/us/inflation/1970?amount=1600> [<http://perma.cc/448X-LE53>].

³⁰ See BURKE & BURKE, *supra* note 6, at 108–10.

self-destruct. First, Nixon's welfare reform plan was a half-hearted one. His plan abolished only one welfare program ("AFDC"), not the welfare state *in toto* as Friedman, William F. Buckley, Jr., and other conservative proponents of a basic income had called for.³¹ At that time, for example, the Department of Health, Education, and Welfare ("HEW") was one of the largest agencies in the entire federal government, with 107,000 employees, a budget of nearly \$60 billion, 135 advisory boards, and more than 270 programs, covering everything from family planning to Social Security.³² Instead of dismantling this bureaucratic behemoth, Nixon's bill left HEW totally intact.³³ This omission would later cause Friedman, the intellectual author of the negative income tax, as well as Buckley, Jr., James J. Kilpatrick, and other leading conservative commentators, to withdraw their support of Nixon's guaranteed income plan.³⁴

Second, instead of showcasing the basic income aspect of his plan, Nixon buried it in the middle of his speech. Worse yet, Nixon bundled his guaranteed income proposal with several other cumbersome legislative proposals, including a costly revenue sharing proposal in which, in Nixon's words, "a set portion of the revenues from Federal income taxes [would] be remitted directly to the States"³⁵ In short, instead of using a negative income tax to replace existing welfare programs, Nixon was simply tacking his proposal on top of these existing programs.

Third, Nixon refused to call a spade a spade. He was unwilling to utter the words "negative income tax," and denied that he was proposing a guaranteed income. Instead, he coined the term "family assistance," called his plan a "floor," and tried to sell it as "workfare."³⁶ Although Nixon told the nation, "What I am proposing is that the Federal Government build a foundation under the income of every American family with dependent children that cannot care for itself—and wherever in

31 In the words of President Nixon, "Under [my] plan, the so-called 'adult categories' of aid—aid to the aged, the blind, the disabled—would be continued" See Address to the Nation on Domestic Programs, 324 PUB. PAPERS 640 (Aug. 8, 1969).

32 See Robert Sherrill, *The Real Robert Finch Stands Up*, N.Y. TIMES, July 5, 1970, at 122; see also MICHAEL KONCEWICZ, THEY SAID NO TO NIXON: REPUBLICANS WHO STOOD UP TO THE PRESIDENT'S ABUSES OF POWER 122 (2018).

33 See COMMITTEE ON WAYS AND MEANS, THE FAMILY ASSISTANCE ACT OF 1970, REPORT OF THE COMMITTEE ON WAYS AND MEANS ON H.R. 16311, H.R. NO. 91-904, at 6.

34 See *infra* Act III.

35 Address to the Nation on Domestic Programs, 324 PUB. PAPERS 643 (Aug. 8, 1969). According to one scholar, the real purpose of this revenue sharing proposal was to make sure that no current welfare recipient would be worse off under Nixon's guaranteed income plan than under the status quo. See Neuberger, *supra* note 9, at 37.

36 See BURKE & BURKE, *supra* note 6, at 111–12.

America that family may live.”³⁷ He then made the following clarification: “This national floor . . . is not a ‘guaranteed income.’ Under the guaranteed income proposal, everyone would be assured a minimum income, regardless of how much he was capable of earning, regardless of what his need was, regardless of whether or not he was willing to work.”³⁸

This subterfuge was no doubt motivated by politics. After all, how else could Nixon get conservative members of Congress to go along with his revolutionary guaranteed income proposal? As Vincent and Vee Burke wrote in their classic study *Nixon’s Good Deed*, “In public affairs the content of a proposal can be less important than the way it is perceived. Sometimes the label is the most important ingredient.”³⁹ But at the same time, calling his guaranteed income proposal “family assistance” invited a fundamental moral dispute over whose responsibility it was to provide support to children—the government or parents.⁴⁰

Furthermore, the label chosen must bear some relation to the content of one’s proposal. The work requirement in Nixon’s proposal was riddled with exemptions,⁴¹ while the guaranteed income aspect of the bill would more than double the number of families eligible for government assistance.⁴² Perhaps Nixon would be able to fool some members of Congress with his “workfare” subterfuge, but as we shall see in Act III, he would not be able to fool all of them.

Given these internal contradictions, our dramatic question now boils down to this: will Nixon’s call for a guaranteed income—now disguised as a “family assistance plan”—be enacted by the 91st Congress, or will this bill die in committee? Either way, Nixon’s FAP would unleash an epic, multi-year intellectual battle between competing political principles and conflicting ideological worldviews—between social liberals committed to the cause of eradicating poverty and fiscal conservatives opposed to government hand-outs and guaranteed minimum incomes.

The remainder of our story will mostly unfold in the bowels of Congress, specifically, in two of its most powerful congressional committees—the House Ways and Means Committee and the

³⁷ Address to the Nation on Domestic Programs, 324 PUB. PAPERS 640 (Aug. 8, 1969).

³⁸ *Id.* at 640–41.

³⁹ BURKE & BURKE, *supra* note 6, at 119.

⁴⁰ *See id.* at 161.

⁴¹ COMMITTEE ON WAYS AND MEANS, THE FAMILY ASSISTANCE ACT OF 1970, REPORT OF THE COMMITTEE ON WAYS AND MEANS ON H.R. 16311, H.R. NO. 91-904, at 4.

⁴² *See* BURKE & BURKE, *supra* note 6, at 110.

Senate Finance Committee.⁴³ The guaranteed income bill was referred to these committees because it was, technically speaking, a tax measure.⁴⁴ Therefore, our leading protagonists will now include two Southern Democrats: Wilbur Mills, the chairman of the House Ways and Means Committee, and Russell Long, the chairman of the Senate Finance Committee.⁴⁵ In their committees rested the fate of guaranteed income. Even though the 91st Congress was controlled by the Democratic Party, and even though the bill was promoted by a Republican president, the concept of a guaranteed income “was neither a conservative nor a liberal measure in the meanings intended by those terms.”⁴⁶ Would Democrats give Nixon a legislative victory? Would Republicans support a massive income redistribution bill?

ACT II: MILLS TO THE RESCUE

The second act, or middle section of a dramatic work, typically portrays a “*rising* conflict”—one in which the protagonist attempts to resolve the conflict created by the turning point in the first act, only to find himself in an ever-worsening situation.⁴⁷ Act II of Nixon’s guaranteed income bill, however, does not follow this tried-and-tested formulaic blueprint. Far from suffering an initial reversal of fortune, H.R. 16311 sailed through the House Ways and Means Committee by an overwhelming margin (21 to 3) and then sped through the full House of Representatives by a considerable margin (243 to 155).⁴⁸

These early legislative successes in the 91st Congress were due in large part to the skillful maneuvering and strategic tactics of Congressman Wilbur D. Mills, an Arkansas Democrat who was born in the town of Kensett, Arkansas (population 905) and who was first elected to Congress in 1939.⁴⁹ Although his political career would soon come to a crashing end,⁵⁰ at this

⁴³ See *Top Congressional Committees*, OPENSECRETS.ORG, <http://www.opensecrets.org/revolving/top.php?display=C> [<http://perma.cc/NH85-2DZ5>].

⁴⁴ See MOYNIHAN, *supra* note 7, at 352 (“Technically it was a tax bill, part of the social security system. . . . If approved it would be a permanent statute, financed by automatic claims on the Treasury.”).

⁴⁵ See MILLS, *Wilbur Daigh*, BIOGRAPHICAL DIRECTORY U.S. CONGRESS, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=M000778> [<http://perma.cc/K5R9-3SSC>]; see also LONG, *Russell Billiu*, BIOGRAPHICAL DIRECTORY U.S. CONGRESS, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=L000428> [<http://perma.cc/A4EL-C57F>].

⁴⁶ See MOYNIHAN, *supra* note 7, at 440.

⁴⁷ See, e.g., TROTTIER, *supra* note 16, at 15.

⁴⁸ See CONGRESSIONAL QUARTERLY, *supra* note 8, at 1032.

⁴⁹ See MILLS, *Wilbur Daigh*, *supra* note 45.

⁵⁰ See Richard D. Lyons, *Mills Quits as Chairman; Young Democrats Advance*, N.Y. TIMES, Dec. 11, 1974, at 93; see also Laura Smith, *In 1974, a stripper known as the “Tidal Basin Bombshell” took down the most powerful man in Washington*, TIMELINE (Sept. 18, 2017), <http://timeline.com/wilbur-mills-tidal-basin-3c29a8b47ad1> [<http://perma.cc/B9YZ-4BRC>].

time, Congressman Mills was still the chairman of the House Ways and Means Committee,⁵¹ and was thus considered to be the second-most powerful man in Washington, D.C., or in the memorable words of one fellow Congressman, “I never vote against God, motherhood, or Wilbur Mills.”⁵²

Mills’s power and influence were in large part a function of the committee he chaired since 1958, the House Ways and Means Committee. In brief, the Origination Clause of the Constitution requires that all bills regarding taxation must originate in the House of Representatives,⁵³ and the internal rules of the House, in turn, dictate that all taxation bills must pass through Ways and Means.⁵⁴ To this day, the Ways and Means Committee is still the chief tax-writing committee of the House, and the members of this key committee may not serve on any other House committee unless they are granted a waiver from their party’s congressional leadership.⁵⁵ So, when the original version of Nixon’s guaranteed income bill was first introduced into the 91st Congress on October 3, 1969, the first draft of the bill (H.R. 14173) was referred to Ways and Means.⁵⁶

Between October 15 and November 13, 1969, the House Ways and Means Committee held eighteen days of public hearings on the bill.⁵⁷ But then, on November 13, Chairman Mills abruptly concluded the public phase of his hearings and proceeded behind a special closed-door session.⁵⁸ This was the first of two pivotal procedural moves Chairman Mills would make. Rather than drag out consideration of Nixon’s guaranteed income bill and provide a public forum for opponents of the bill to raise their objections, the bill would remain under closed-door consideration until March of 1970.

⁵¹ See Lyons, *supra* note 50, at 1. Before his political downfall, Congressman Mills would become the longest-serving chairman of the House Ways and Means Committee. See Kay C. Goss, *Wilbur Daigh Mills*, CALS (Apr. 23, 2019), <http://encyclopediaofarkansas.net/entries/wilbur-daigh-mills-1715/> [<http://perma.cc/2LUA-KQGD>].

⁵² Smith, *supra* note 50.

⁵³ See U.S. CONST. art. I, § 7, cl. 1.

⁵⁴ See *Jurisdiction and Rules: Jurisdiction of the Committee on Ways and Means*, WAYS & MEANS COMM., <http://waysandmeans.house.gov/about/jurisdiction-and-rules/> [<http://perma.cc/8SPW-VRLR>].

⁵⁵ See *id.*

⁵⁶ See CONGRESSIONAL QUARTERLY, *supra* note 8, at 1031. A few days after Nixon’s guaranteed income bill was introduced in Congress, Chairman Mills called the first round of public hearings to order on October 15, 1969. See *id.* at 1032. In addition to Nixon’s income bill, the committee also considered a proposal to increase Social Security benefits (“H.R. 14080”). *Id.*

⁵⁷ See *id.* at 1031.

⁵⁸ For a helpful historical overview of closed-door activities in Congress, see WALTER J. OLESZEK, CONG. RESEARCH SERV., R42108, CONGRESSIONAL LAWMAKING: A PERSPECTIVE ON SECRECY AND TRANSPARENCY 2–5 (2011), <http://fas.org/sgp/crs/secrecy/R42108.pdf> [<http://perma.cc/9758-JN47>].

Chairman Mills had “indicated strong reservations about [Nixon’s] plan” on the final day of public hearings on November 13, 1969.⁵⁹ His hesitation was not surprising. After all, he was a Southern Democrat or “Dixiecrat,” and for various reasons, the South overwhelmingly opposed Nixon’s radical proposal.⁶⁰ Nevertheless, by April of 1970, Mills not only ultimately voted in favor of the bill, he also helped steer it through the House.⁶¹ What happened behind closed doors between November 13, 1969, the last day of public hearings, and April 16, 1970, the day the full House of Representatives approved the measure? In short, why did Chairman Mills change his mind?

One reason for Mills’s change of heart might have had to do with the changing winds of politics. On January 2, 1968, the outgoing president, Lyndon B. Johnson, had appointed a twelve-member presidential commission to study the feasibility of a negative income tax.⁶² This blue-ribbon committee, chaired by Ben W. Heineman, issued its report on November 12, 1969.⁶³ At this time, the House Ways and Means Committee was still holding public hearings on Nixon’s guaranteed income bill.⁶⁴ Although the Heineman commission’s negative income tax proposal ended up being more generous than Nixon’s FAP bill, the commission supported Nixon’s plan in principle.⁶⁵ Also, because the commission was appointed by a Democrat president, Heineman’s report gave Nixon’s guaranteed income bill a boost by putting “the national Democratic party more or less on record as favoring a proposal very like that of the president.”⁶⁶ Furthermore, in addition to the basic income guarantee, Nixon’s proposal incorporated other “liberal” features that would have appealed to progressives, including a complete federal take-over of social welfare.⁶⁷

Another reason for Mills’s change of heart was opportunism: Mills rewrote the bill to his liking. Most everyone at the time agreed that the current welfare system was broken,

⁵⁹ See CONGRESSIONAL QUARTERLY, *supra* note 8, at 1032.

⁶⁰ See BURKE & BURKE, *supra* note 6, at 146–50. When the bill went to the floor of the House on April 16, 1970, congressmen from the eleven states that made up the Old Confederacy voted against the bill by an overwhelming margin of 79 to 17. *Id.* at 147.

⁶¹ See *id.* at 162.

⁶² See POVERTY AMID PLENTY: THE AMERICAN PARADOX 78 (1969).

⁶³ See Jack Rosenthal, *Income Aid Plan Based on Need Proposed by Presidential Panel*, N.Y. TIMES, Nov. 13, 1969, at 1.

⁶⁴ See CONGRESSIONAL QUARTERLY, *supra* note 8, at 1031.

⁶⁵ Under the Heineman plan, for example, the guaranteed income floor for a family of four would be \$2,400, while under Nixon’s plan it was \$1,600. See MOYNIHAN, *supra* note 7, at 361.

⁶⁶ *Id.* at 364. For other possible reasons, see *id.* at 398–438.

⁶⁷ See *id.* at 134.

so “[i]f Congress spurned the Family Assistance Plan it would be responsible for perpetuating the discredited welfare system.”⁶⁸ Furthermore, as Vincent and Vee Burke note in their history of Nixon’s bill, although the term “negative income tax” was coined by the conservative economist Friedman, the idea of a guaranteed income was a Democratic idea.⁶⁹

But at the same time, Mills and his fellow Democrats had to grapple with the following dilemma: if they supported Nixon’s FAP, then Nixon would win a big legislative victory. Mills solved this problem by rewriting the bill to his own liking and making it his own. Specifically, he made two significant changes to the bill: (1) he added a new food stamp subsidy to the bill, and (2) he diverted a greater share of federal funds to the states.⁷⁰ As originally drafted, the bill required those states whose welfare programs paid out higher benefits to families than under Nixon’s proposal (forty-two states in all) to pay the difference.⁷¹ Now, under Mills’s revised bill, the federal government would agree to pay each state thirty percent of any additional benefits the states paid out to existing welfare recipients.⁷² With these revisions, H.R. 16311 or “The Family Assistance Act of 1970” was approved by the House Ways and Means Committee on February 26, 1970.⁷³ Mills’s Committee then reported a clean bill to the full House of Representatives on March eleventh.⁷⁴

Next, Chairman Mills, who “was known for his excessive caution, [his] fastidiousness about legislative details, and his moderation,” had another procedural tactic up his sleeve.⁷⁵ Once his bill was reported out of Ways and Means, he proposed a “closed rule” in order to prevent members of the House from offering any amendments to the bill on the floor.⁷⁶ (An “open

⁶⁸ See BURKE & BURKE, *supra* note 6, at 122.

⁶⁹ See *id.* at 123.

⁷⁰ See *id.* at 152.

⁷¹ See *id.* at 115.

⁷² See CONGRESSIONAL QUARTERLY, *supra* note 8, at 1032.

⁷³ MOYNIHAN, *supra* note 7, at 425.

⁷⁴ See COMMITTEE ON WAYS AND MEANS, THE FAMILY ASSISTANCE ACT OF 1970, REPORT OF THE COMMITTEE ON WAYS AND MEANS ON H.R. 16311, H.R. NO. 91-904. Only three members of Ways and Means voted against the bill: Al Ullman (D., Oregon), Phil M. Landrum (D., Georgia), and Omar Burleson (D., Texas). Among other things, the three dissenters objected to providing a minimum income to the poor: “We do not concur that the cash incentive approach to welfare is either proven or sound.” See CONGRESSIONAL QUARTERLY, *supra* note 8, at 1033.

⁷⁵ See Smith, *supra* note 50.

⁷⁶ See *Family Assistance Act of 1970: Hearing on H.R. 16311 Before the Comm. on Rules*, 91st Cong. 162 (1970).

rule,” by contrast, would have permitted any member of the House to propose any amendment to any part of that Act.⁷⁷)

One member of Congress, David W. Dennis protested that members were being asked to adopt one of the most far-reaching measures ever to come before it without the possibility “of being usefully heard or of changing a single thing on the floor.”⁷⁸ Representative Dennis said the closed rule procedure treated the members “as the idiot children of the whole political process,” while another opponent of the bill, H. Allen Smith, said an open rule would have permitted an effort on the floor by some members to raise the \$1,600 federal minimum benefit.⁷⁹ After the bill is passed, Smith said, the \$1,600 will “start growing and from then on the sky will be the limit.”⁸⁰

Wilbur Mills, however, did not back down. On behalf of the House Ways and Means Committee, Chairman Mills made his closed rule resolution “to provide for an orderly procedure” for consideration of H.R. 16311.⁸¹ Although the vote on April 15, 1970 to adopt the closed rule was a close one (205 to 183), Mills prevailed.⁸² The next day the bill went before the entire House of Representatives, and it passed by a two-to-one margin.⁸³

In short, Chairman Mills used his power and influence to write up his own bill and steer it through Ways and Means and the floor of the House, but his swift and skillful maneuvering may have created a false sense of security among proponents of the guaranteed income bill. A series of events would conspire to kill the measure in the Senate Finance Committee, the “graveyard” of H.R. 16311.⁸⁴ This historic bill would never make it out of this critical committee.

ACT III: DEATH BY COMMITTEE

The third act of a dramatic work usually features a climax or showdown, followed by the resolution of the story’s conflict situation.⁸⁵ The showdown, in turn, is the most consequential moment of the story—the sequence in which the conflict is brought to its most intense point and where the dramatic

⁷⁷ See *About*, HOUSE COMMITTEE ON RULES, <http://archives115-democrats-rules.house.gov/about> [<http://perma.cc/D88C-6D2G>].

⁷⁸ CONGRESSIONAL QUARTERLY, *supra* note 8, at 5.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 4.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ BURKE & BURKE, *supra* note 6, at 213.

⁸⁵ See TROTIER, *supra* note 16, at 16.

question posed by the story is answered, leaving the protagonist with a new sense of who they really are.⁸⁶

Once H.R. 16311 was approved by the House in April of 1970, Nixon's guaranteed income bill went to the Senate.⁸⁷ The fateful showdown will thus take place in the august halls and stately corridors of the United States Senate. In summary, this conflict will consist of a titanic intellectual battle between competing political principles and conflicting ideological worldviews—between social liberals committed to the cause of eradicating poverty, and fiscal conservatives opposed to government hand-outs and guaranteed minimum incomes. Victim to these powerful and irreconcilable political forces, the bill would languish in committee for months until its final defeat on November 20, 1970.⁸⁸

Why does our guaranteed minimum income story end this way? What happened between April 16, 1970, when H.R. 16311 sailed through the House, and November 20, 1970, when the guaranteed income bill finally died in committee? It turns out, however, that most commentators and scholars have been asking the wrong question.⁸⁹ Instead of asking, *what* killed the income bill, we should be asking *who* killed it?

Among the leading culprits is the Chairman of the Senate Finance Committee, the junior senator from the State of Louisiana, Russell B. Long. He delayed consideration of the bill for months on end, tenaciously outmaneuvered supporters of the bill on the floor of the Senate, and defeated the bill in the waning days of the 91st Congress.⁹⁰ This yellow dog Dixiecrat, renowned for his “sheer cleverness and cunning,” was the last scion of the legendary Huey P. Long, the populist politician who was assassinated in 1935.⁹¹

Russell B. Long was appointed to the Senate Finance Committee in 1953, where he served as chairman of the committee from 1966 to 1981.⁹² Like Wilbur Mills in the House, Chairman Long was a powerful political force to be reckoned with. In the words of one Congressman, “In the heyday of the

⁸⁶ *Id.* at 16–17.

⁸⁷ CONGRESSIONAL QUARTERLY, *supra* note 8, at 2.

⁸⁸ *Id.*

⁸⁹ *See, e.g.*, Kornbluh, *supra* note 12, at 136; Neuberg, *supra* note 9; MOYNIHAN, *supra* note 7, at 385; BURKE & BURKE, *supra* note 6, at 186–87.

⁹⁰ *See generally* Alan Ehrenhalt, *Senate Finance: The Fiefdom of Russell Long*, 35 CONG. Q. WKLY. REP. 1905 (1977).

⁹¹ *See id.*

⁹² *See The Russell Long Chair*, LSU LAW, <http://www.law.lsu.edu/ccls/about/russelllongchair/> [<http://perma.cc/66NB-W5RW>].

Southern chairmen, [Long] was at the top of the list of big, strong figures representing the South who were national leaders that every president had to deal with. . . . Nothing could happen without them.”⁹³

Chairman Long called the Senate Finance Committee to order on April 29, 1970.⁹⁴ Would history be made? Would the Senate Finance Committee rise to the occasion? After all, during the presidency of Lyndon B. Johnson, Chairman Long was his party’s Senate floor leader, who helped enact many of President Johnson’s “Great Society” poverty-relief programs, including the creation of the Medicare program in 1965.⁹⁵ But as we shall soon see, it was one thing to provide *services* to the poor; a *guaranteed income* was a whole different ball game.

Not a single senator spoke a single sentence in support of the guaranteed income bill.⁹⁶ The guaranteed income bill was dead on arrival,⁹⁷ or in the words of Daniel Patrick Moynihan, “The hearings were a calamity. The senators had all but made up their minds that [H.R. 16311] would provide disincentives to work”⁹⁸ Indeed, by the second day of hearings, Chairman Long was asking, “Why don’t we junk the whole thing and start all over again?”⁹⁹

The then-Secretary of HEW, Robert H. Finch, testified before the members of the Senate Finance Committee during this first round of hearings.¹⁰⁰ His testimony lasted three days, and during these three days, leading Democrats and Republicans on the Committee voiced their opposition to the bill. Social liberals like Abraham A. Ribicoff did not like the bill because they thought the \$1,600 benefit level was set too low, while fiscal conservatives like John J. Williams did not like the bill because they thought it was too costly.¹⁰¹ In the end, H.R. 16311 would die a slow and painful death, death by delay. Although some last-ditch efforts were made to save the bill in the final days of the 91st Congress, it was a classic tale of too little, too late.¹⁰²

⁹³ See John H. Cushman, Jr., *Russell B. Long, 84, Senator Who Influenced Tax Laws*, N.Y. TIMES (May 11, 2003), <http://www.nytimes.com/2003/05/11/us/russell-b-long-84-senator-who-influenced-tax-laws.html> [<http://perma.cc/MMY4-5QP4>] (quoting Representative Billy Tauzin).

⁹⁴ See MOYNIHAN, *supra* note 7, at 453.

⁹⁵ See Karen Sparks, *Russell Billiu Long*, ENCYC. BRITANNICA (Oct. 30, 2019), <http://www.britannica.com/biography/Russell-Billiu-Long> [<http://perma.cc/T9S5-HSPR>].

⁹⁶ See MOYNIHAN, *supra* note 7, at 473.

⁹⁷ *Id.* at 453.

⁹⁸ *Id.* at 469.

⁹⁹ CONGRESSIONAL QUARTERLY, *supra* note 8, at 6.

¹⁰⁰ See *id.* at 5.

¹⁰¹ *Id.*

¹⁰² *Id.* at 12.

What happened? What went wrong?

In chapter five of his book, *The Politics of a Guaranteed Income*, Moynihan identifies three political blocs the guaranteed income bill would have to win over in order to become enacted into law: “The Liberal Democrats,” “The Conservative Republicans,” and the “Southerners.”¹⁰³ From a purely Machiavellian or political perspective, it might not have been in the interest of Democrats to allow a Republican president to outdo them in social policy.¹⁰⁴ For their part, most conservatives supported the idea of welfare reform and might be expected to support the president’s bill out of loyalty to the president. But what about the third bloc identified by Moynihan, Southerners? In the House, congressmen from the eleven states that made up the Old Confederacy voted against the bill by a margin of 79 to 17.¹⁰⁵

That the Senate Finance Committee was chaired by Russell B. Long, a Dixiecrat out of Louisiana, thus did not bode well for H.R. 16311.¹⁰⁶ Even before he had called his committee to order to debate the merits of H.R. 16311, Chairman Long had criticized the bill’s cost and perverse incentive structure in a speech on the floor of the Senate on April 23, 1970:

Senators should be aware that the welfare bill before the Finance Committee today does not solve the problem—it just makes it cost \$4 billion more. Under the bill, a fully employed father of a family of four with low earnings could increase his family’s total income if he quit work¹⁰⁷

Furthermore, Chairman Long was not alone in seeing the bill in moral terms. Another member of the Senate Finance Committee, Herman Talmadge, a Georgia Democrat who was the bill’s staunchest opponent, framed guaranteed income as “a work dis-incentive.”¹⁰⁸ In his view, a guaranteed income “would undermine the best qualities of this nation.”¹⁰⁹ Senators Long and Talmadge were traditional Democrats; they saw themselves as representing “the *working* man.”¹¹⁰

Furthermore, if Chairman Long was opposed to the guaranteed income bill as a matter of first moral principles, many Republican members of the committee were also worried

¹⁰³ See MOYNIHAN, *supra* note 7, at 352–75.

¹⁰⁴ *Id.* at 441.

¹⁰⁵ BURKE & BURKE, *supra* note 6, at 147. Southern Democrats opposed the bill 60 to 11, while Southern Republicans opposed it 19 to 6. *Id.*

¹⁰⁶ See MOYNIHAN, *supra* note 7, at 393.

¹⁰⁷ *Id.* at 459.

¹⁰⁸ *Id.* at 378.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 362.

about the mechanical nuts and bolts of the bill. During the second day of hearings (April 30, 1970), Senator John J. Williams, a former chicken-feed dealer who was set to retire from politics at the end of the 91st Congress, pointed out a potential problem with the guaranteed income bill.¹¹¹ Based on a series of flawed and misleading cost-benefit calculations, Senator Williams, the ranking member of Senate Finance, concluded that the bill contained perverse anti-work incentives: people would rationally choose not to work under the bill.¹¹²

Stated in simple terms, the problem was this: persons who received a guaranteed income were also eligible to receive additional welfare benefits from the government, such as Medicaid, food stamps, and public housing, but those additional benefits would be lost in their entirety if one's income exceeded a certain threshold.¹¹³ At the margin, an increase in earnings of one dollar would result in a decrease of income of more than one dollar for many individuals.¹¹⁴

Would the Senate Finance Committee tinker with the bill or try to fix these problems, or would those problems be used as a pretext for inaction? Now that Nixon had proposed and the House had passed a guaranteed income bill, four possible strategies were available to the members of the Senate Finance Committee: cooperate, deny, realign, or outbid.¹¹⁵ The most vocal champion of the strategy to outbid the President was Senator Fred Harris, a Democrat from Oklahoma. Although Senator Harris supported the idea of a guaranteed income in principle, he would repeatedly try to outbid Mills and the House's guaranteed income bill, though he ended up voting against the bill.¹¹⁶ Why? Because the House bill did not go far enough. For him, the glass was half-empty.

Another possibility was cooperation. Senator Abraham Ribicoff, for example, a liberal Democrat from Connecticut, was willing to swallow his political pride and cooperate with the President and the House to get some form of guaranteed income enacted into law.¹¹⁷ Indeed, when it became clear that the bill might die in committee, Ribicoff offered an amendment to salvage the bill, proposing a "twelve-month period of 'field

¹¹¹ See BURKE & BURKE, *supra* note 6, at 155.

¹¹² See *id.* at 154–56.

¹¹³ See *id.*

¹¹⁴ See *id.* at 156.

¹¹⁵ MOYNIHAN, *supra* note 7, at 446–52.

¹¹⁶ See *id.* at 451–52.

¹¹⁷ *Id.* at 453.

testing,”¹¹⁸ and President Nixon issued a public statement supporting Ribicoff’s amendment.¹¹⁹

Yet another possibility was realignment. After all, it was Nixon, a polarizing Republican president, who was proposing one of the most radical income redistribution programs in United States history, and it was the House of Representatives, which was controlled by the Democratic Party, that had just approved a bill based on Nixon’s historic proposal. But in the end, most of the members of the Senate Finance Committee would choose to defect. Simply put, they were openly opposed to the bill on moral grounds. Why? Because many senators thought that a guaranteed income would destroy the moral dignity of work—an ethic that was at the very foundation of Chairman Long’s own worldview.

After this disastrous start in the Senate Finance Committee, it became clear that no member of Long’s committee supported H.R. 16311. In fact, Chairman Long suspended the hearings on the third day and asked Secretary Finch to submit a revised bill to the committee.¹²⁰ Alas, Finch was put in an impossible position, for there was no way of solving the work incentive problem to everyone’s satisfaction. On the one hand, eliminating Medicaid, food stamps, and public housing was not politically feasible. Democrats would not allow that to happen, and Democrats were the majority party. A cutoff would have to be drawn somewhere. But where? Any cutoff line would produce a perverse incentive effect.

Worse yet, in the days and weeks after Chairman Long had suspended the hearings, a series of external events would conspire to doom whatever slim chances the bill may have still had in the Senate. Among other things, Daniel Patrick Moynihan, Nixon’s leading spokesman and political strategist in favor of the bill, would privately offer to resign; Robert Finch would suffer a mental health breakdown and would resign as Secretary of HEW; and last but not least, after several conservative voices would begin to turn against the bill, President Nixon himself would begin to waver. The cumulative effect of these tumultuous events—along with Chairman Long’s shrewd delay tactics—would conspire against H.R. 16311, putting the fate of this historic bill into jeopardy.

First, one of Nixon’s domestic-policy advisors, Daniel Patrick Moynihan, quietly offered his resignation on May thirteenth in

¹¹⁸ *Id.* at 520.

¹¹⁹ *Id.* at 521.

¹²⁰ See CONGRESSIONAL QUARTERLY, *supra* note 8, at 6; see also Frank C. Porter, *Hill Unit Sends Welfare Bill Back to Finch for Overhaul*, WASH. POST, May 2, 1970, at A5.

order to resume his academic position at Harvard in the fall.¹²¹ According to one historian, Nixon asked Moynihan to stay until the summer in order “to help get [the guaranteed income bill] through the Senate.”¹²² But with Moynihan’s impending departure, the bill would lose one of its most eloquent supporters.

Second, another champion of the bill, Secretary of HEW Robert Finch, would resign from his post after suffering a mental health breakdown in May 1970.¹²³ According to Haldeman, Finch had agreed to resign as early as June 5, 1970.¹²⁴ (For what it is worth, Nixon may have flirted with the idea of appointing Moynihan as Finch’s replacement at HEW. Although Moynihan expressed an interest in serving as Secretary of HEW,¹²⁵ Nixon eventually appointed Boston-native Elliott Richardson to this position.) But Finch’s departure and Moynihan’s impending resignation were not the only bad omens. One of the intellectual authors of the negative income tax, the conservative economist Friedman, openly withdrew his public support of the bill and applauded Senator Long’s decision to suspend the hearings.¹²⁶

¹²¹ STEPHEN HESS, *THE PROFESSOR AND THE PRESIDENT: DANIEL PATRICK MOYNIHAN IN THE NIXON WHITE HOUSE* 129 (2015).

¹²² *Id.* This account is confirmed by a diary entry of H.R. Haldeman. Haldeman, who served as President Nixon’s Chief of Staff, kept a daily diary throughout his entire career in the Nixon White House (January 18, 1969 to April 30, 1973). An abridged version of these diaries was published as *The Haldeman Diaries* after Haldeman’s death. See *H. R. Haldeman Diaries*, RICHARD NIXON PRESIDENTIAL LIBR. & MUSEUM, <http://www.nixonlibrary.gov/h-r-haldeman-diaries> [<http://perma.cc/ATK8-BT5D>] [hereinafter *Haldeman Diaries*]. According to Haldeman’s entry for May 13, 1970:

[Nixon] met privately with Moynihan, who said he feels he has to leave. Wants to go July 1, but President got him to stay until August. Will then return to Harvard—on grounds his two years will be up soon and he wants to start the fall semester. President appears more relieved than concerned to have him go, and this timing should work out pretty well because he always said he was only here for two years.

Haldeman Diaries (May 13, 1970), <http://www.nixonlibrary.gov/sites/default/files/virtuallibrary/documents/haldeman-diaries/37-hrhd-journal-vol05-19700513.pdf> [<http://perma.cc/XPB2-RCWR>].

¹²³ Haldeman’s May 21, 1970 diary entry states that “[Nixon was] concerned regarding Finch’s health problem, and [is] now convinced he should move out of HEW. Wants Tkach to sell [Finch] on the basis of health. [Finch] is going to Florida to try to recuperate.” *Haldeman Diaries* (May 21, 1970), <http://www.nixonlibrary.gov/sites/default/files/virtuallibrary/documents/haldeman-diaries/37-hrhd-journal-vol05-19700521.pdf> [<http://perma.cc/KHY9-PX32>].

¹²⁴ Haldeman’s June 5, 1970 diary entry begins with the words “Finch day.” Haldeman then goes on to write: “Ehrlichman and I met with [Finch] in morning, and I made pitch regarding need for him to move out of HEW now. . . . He was obviously ready for it, and went along completely. He felt it should be done as fast as possible—so we went to work on a successor.” *Haldeman Diaries* 1 (June 5, 1970), <http://www.nixonlibrary.gov/sites/default/files/virtuallibrary/documents/haldeman-diaries/37-hrhd-journal-vol05-19700605.pdf> [<http://perma.cc/838V-9ZQ4>].

¹²⁵ *Id.* at 2.

¹²⁶ See Milton Friedman, *Welfare: Back to the Drawing Board*, NEWSWEEK, May 18, 1970, at 89.

In his *Newsweek* column of May 18, 1970, Friedman identified several problems with the House version of his negative income tax proposal.¹²⁷ But the most fundamental objection Friedman raised was this: “A negative income tax—which is what the Family Assistance plan is—makes sense only if it replaces at least some of our present rag bag of programs. It makes no sense if it is simply piled on other programs.”¹²⁸ Moreover, Friedman was not the only conservative public intellectual to defect. On April 15, 1970, the conservative commentator William F. Buckley explained in his nationally-syndicated newspaper column why he too was casting a “reluctant ‘nay’” against the bill.¹²⁹ Although Buckley was at first open to the idea of a guaranteed income, he had now decided that Nixon’s bill was a bad idea.¹³⁰ According to Buckley, the bill was adding a new and costly welfare program on top of existing social welfare programs, such as public housing, Medicaid, etc., instead of sweeping these old programs away.¹³¹ In addition, Buckley saw through the bill’s watered-down work requirement, disparaging it as “merely . . . boob-bait for conservatives.”¹³²

Another leading conservative commentator, James J. Kilpatrick, went even further. In his syndicated “Conservative View” column of January 15, 1970, Kilpatrick not only retracted his initial praise of Nixon’s proposal; he referred to welfare recipients as “parasites”:

If the Nixon plan were adopted, the present \$5 billion in annual federal payments would at least double. . . . Instead of 9.6 million persons on welfare, we would have nearly 22 million. . . . These would be the permanent poor feeding like parasites on the body politic unto the end of time.¹³³

To make matters worse, Nixon himself may have turned against his own guaranteed income bill. According to his loyal Chief of Staff, H. R. Haldeman, by July of 1970 Nixon had come to the realization that his bill was too costly. The entry in Haldeman’s diary for Monday, July 13, 1970 states, “Regarding Family Assistance Plan, [Nixon] wants to be sure it’s killed by Democrats and that we make big play for it—but don’t let it pass,

¹²⁷ *Id.* According to Friedman, one problem with Chairman Mill’s version of the bill was his decision to reinsert food stamps into the plan instead of abolishing the food stamp program altogether. The other problem, which echoed Senator Williams’s objection during the initial Senate Finance hearings, had to do with the phasing out of state supplemental payments under the House bill. Instead of phasing out these supplemental payments incrementally as the income of an eligible family went up, these payments were phased out too drastically. *Id.*

¹²⁸ *Id.*

¹²⁹ MOYNIHAN, *supra* note 7, at 370.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ BURKE & BURKE, *supra* note 6, at 134.

can't afford it."¹³⁴ Although Haldeman's diary entry does not specify whether the bill was too costly in political terms (the potential loss of support from working class voters), or too costly in financial terms (the bill's price tag), or both, Chairman Long's delay tactics, Finch's abrupt resignation, and Moynihan's impending departure would conspire to defeat the bill by the end of the year.¹³⁵

In any case, on the same day that Chairman Long suspended the hearings (May 2, 1970), President Nixon appointed a special committee to revise the guaranteed income bill.¹³⁶ The revisions, which were announced on June tenth, were a mishmash of costly measures that would fail to appease social liberals or mollify social conservatives.¹³⁷ Among other things, the food stamp program was expanded.¹³⁸ Additionally, "[t]he penalty for 'Refusal to Register for or Accept Employment or Training' was increased from \$300 to \$500."¹³⁹ A "hold harmless" provision was added, such that no state would be required to spend more on welfare than under the existing system.¹⁴⁰ But the most significant change to the bill was a proposed comprehensive, compulsory, single-payer Family Health Insurance Program, which would have been "the nation's first federally subsidized system of health insurance for the poor."¹⁴¹

In short, instead of streamlining or simplifying the guaranteed income bill, HEW had decided to superimpose a grab bag of costly programs and cumbersome requirements on the old

¹³⁴ *Haldeman Diaries* (July 13, 1970), <http://www.nixonlibrary.gov/sites/default/files/virtuallibrary/documents/haldeman-diraries/37-hrhd-journal-vol05-19700713> [<http://perma.cc/57PJ-A9FA>].

¹³⁵ In public, however, Nixon continued to profess his support of the bill. On August 28, 1970, for example, Nixon agreed to a proposal by Senator Abraham A. Ribicoff (D., Conn.) to test the plan for one year in three areas of the country. "In a statement issued at San Clemente, Calif., Mr. Nixon said, 'The present legislation is too far advanced, the need for reform is too great,' for time to run out on the proposal." CONGRESSIONAL QUARTERLY, *supra* note 8, at 5–6. In addition, Nixon invited several key members of the Senate Finance Committee and their wives to the "Western White House" in San Clemente, California, and to an official State Dinner at the Hotel Del Coronado in San Diego, California on September 3, 1970, including three Democrats—Chairman Russell Long (D., La.), Harry Byrd (D., Va.), and Abraham Ribicoff (D., Conn.), and three Republicans—Wallace Bennett (R., Utah), Jack Miller (R., Iowa), and Paul Fannin (R., Ariz.). Richard Nixon, *President Richard Nixon's Daily Diary*, RICHARD NIXON PRESIDENTIAL LIBR. & MUSEUM (Sept. 3, 1970), <http://www.nixonlibrary.gov/sites/default/files/virtuallibrary/documents/PDD/1970/035%20September%201-15%201970.pdf> [<http://perma.cc/N85Z-EVWN>].

¹³⁶ MOYNIHAN, *supra* note 7, at 490.

¹³⁷ See Neuberger, *supra* note 9.

¹³⁸ MOYNIHAN, *supra* note 7, at 493.

¹³⁹ *Id.* at 495.

¹⁴⁰ See ADMINISTRATIVE CONFERENCE OF THE UNITED STATES: RECOMMENDATIONS AND REPORTS 83 (1979).

¹⁴¹ MOYNIHAN, *supra* note 7, at 490.

system.¹⁴² When the hearings finally resumed on July 21, 1970, Chairman Long concluded, to no one's surprise: "In significant respects the new plan is a worse bill—and a more costly bill than the measure which passed the House."¹⁴³ Suffice it to say, Long's committee would never report this now-monstrous bill to the floor of the Senate. Instead, the chairman devised a devious strategy to kill the measure: unceasing delay via endless public scrutiny.¹⁴⁴

In fact, when the Senate Finance hearings resumed in July 1970, Chairman Long had decided from the get-go to further delay consideration of the revised bill until after the midterm elections.¹⁴⁵ The Senate, in the cynical words of Senator Long, would be able to "give the plan more thoughtful consideration in the public interest if the bill came up in November."¹⁴⁶ More importantly, in contrast to the bill's swift and stealthy approval in Wilbur Mills's Ways and Means Committee, consideration of the bill in the Senate Finance Committee remained open to the public. By extending the hearings for weeks on end and inviting dozens of witnesses to testify before the committee, the sundry imperfections of the bill came to the fore.

Long's devious delay tactics would seal H.R. 16311's fate. Long's committee called over two dozen public officials representing a wide variety of local and state governments, as well as a long laundry list of representatives from the business world, labor unions, and other public interest groups.¹⁴⁷ The

¹⁴² *Id.* at 503.

¹⁴³ *Id.* at 506.

¹⁴⁴ Or, in the words of Daniel Patrick Moynihan, "Delay now became an open tactic of those opposed to [the guaranteed income bill] and time the greatest enemy of those who supported it." *Id.* at 512.

¹⁴⁵ Recall that Chairman Long had suspended the hearings on May 1, 1970. CONGRESSIONAL QUARTERLY, *supra* note 8, at 6–7.

¹⁴⁶ *Id.* at 5. For his part, Moynihan had been hoping for Senate action before Congress recessed on October fifteenth for the midterm election campaign. See MOYNIHAN, *supra* note 7, at 521.

¹⁴⁷ CONGRESSIONAL QUARTERLY, *supra* note 8, at 9–13. In all, the following individuals representing the following organizations testified before the Senate Finance Committee between July 21 and September 10, 1970: James D. Hodgson, Secretary of Labor; John O. Wilson, Director, Office of Planning, Research and Evaluation, Office of Economic Opportunity ("OEO") (Wilson was asked to testify on the New Jersey graduated work incentive project being conducted by the OEO); Keith E. Marvin, Associate Director, Office of Policy and Special Studies, General Accounting Office; John V. Lindsay, Mayor of New York City; W. D. Eberle, President of American Standard and Co-Chairman of Common Cause (a new citizens' lobby formed by the leaders of the National Urban Coalition); Leonard Lesser, Committee for Community Affairs (a nonprofit corporation representing community organizations of the poor); Harold W. Watts, Professor of Economics and Director, Institute for Research on Poverty, University of Wisconsin; Mrs. Richard M. Lansburgh, President, Day Care and Child Development Council of America Inc.; Mrs. Edward F. Ryan, National Congress of Parents and Teachers; Andrew J. Biemiller, Director of legislation, AFL-CIO; Whitney M. Young Jr., Executive Director, National Urban League, and President, National Association of Social Workers; John E.

cumulative effect of all this nitpicking public testimony was to slow down the bill's momentum and reinforce the senators' various biases against the bill. Given the sheer number of witnesses and the diversity of opinion expressed by them, the bill suffered a death by a thousand cuts in Chairman Long's Finance Committee. Unable to survive the glare of public scrutiny or the paralysis of the delay, H.R. 16311 would eventually die in committee.¹⁴⁸

The irony of the situation is that President Nixon probably had enough votes in the full Senate to get his guaranteed income bill approved. According to Moynihan, at least sixty senators would have voted for the bill had it reached the floor of the Senate.¹⁴⁹ If there were only a way to get the bill to the floor of the Senate.

With time running out and just a few weeks left in the 91st Congress, Senators Ribicoff and Bennett signaled their intention to offer a guaranteed income bill as a floor amendment to a different bill that would reach the full Senate, an omnibus Social Security bill providing a ten percent across-the-board increase in Social Security payments.¹⁵⁰ But in addition to the Ribicoff-Bennett amendment, many other controversial legislative proposals were added to the Social Security bill, including a supplemental authorization for additional foreign aid as well as a new protectionist trade policy with import quotas on foreign goods.¹⁵¹ These additional amendments would seal the fate of the guaranteed income bill.

When Chairman Long introduced the Social Security bill on December sixteenth, Senators Ribicoff and Bennett announced their intention to offer their guaranteed income amendment to the bill the next day during floor debate. The Vice President was even put on alert in case of a tie.¹⁵² Alas, it was not to be. A filibuster broke out

Cosgrove, U.S. Catholic Conference, testifying for the Conference, the National Council of Churches and the Synagogue Council of America; Howard Rourke, Director of the Department of Social Services, Ventura County, California, testifying for the National Association of Counties; Carl B. Stokes, Mayor of Cleveland, testifying for the National League of Cities and the U.S. Conference of Mayors; Karl T. Schlotterbeck, U.S. Chamber of Commerce; A. L. Bolton Jr., President of Bolton-Emerson Inc., Lawrence, Mass., representing the National Association of Manufacturers; William C. Fitch, Executive Director, National Council on the Aging; Frederick S. Jaffe, Vice President, Planned Parenthood-World Population; Warren E. Hearnes, Governor of Missouri and chairman of the National Governors' Conference; Tom McCall, Governor of Oregon; George McGovern, a U.S. Senator from South Dakota; Joseph C. Wilson, Chairman of the board, Xerox Corporation, testifying for the Committee for Economic Development. *Id.*

¹⁴⁸ The final vote in the Senate Finance Committee was 10 to 6 against the bill. *Id.* at 13. Since Chairman Long was able to cast his vote last, he voted for the bill knowing full well that it lacked sufficient votes to be reported out of committee. *Id.*

¹⁴⁹ MOYNIHAN, *supra* note 7, at 518, 525.

¹⁵⁰ *Id.* at 537.

¹⁵¹ *Id.* at 537-38.

¹⁵² *Id.* at 538.

over the foreign aid amendment, and another filibuster was threatened over the import quotas.¹⁵³ In the end, the Ribicoff-Bennett amendments were never voted on.¹⁵⁴ Their last-ditch efforts failed. Time ran out, and the bill perished in the Senate on the last days of the 91st Congress.¹⁵⁵ Guaranteed income was dead.

EPILOGUE

This Article retold the story of H.R. 16311, “The Family Assistance Act of 1970,” the historic guaranteed income bill proposed by President Nixon in the summer of 1969 and enacted by the House in April of 1970, only to die in the Senate in the last days of the 91st Congress. To provide structure to this story, this Article presented the rise and fall of the guaranteed income bill in three dramatic acts featuring such *dramatis personae* as Milton and Rose Friedman, Wilbur Mills, and Russell Long, all of whom played leading roles in this legislative morality play. Here, however, I want to conclude this compelling story by asking a normative question. Specifically, why should the ill-fated history of H.R. 16311 matter to us today? After all, this political theater took place several generations ago; the leading players are all dead. What lessons, if any, can we learn from this legislative debacle?

A lot! Given the resurgence of Universal Basic Income (“UBI”) proposals in our day,¹⁵⁶ the rise and fall of H.R. 16311 offers a compelling case study into the politics of guaranteed income. As Moynihan taught us long ago, “income redistribution goes to the heart of politics: who gets what and how . . .”¹⁵⁷ So, if you are a proponent of UBI or are merely sympathetic to this idea, you will want to avoid repeating the mistakes of the past. But, by the same token, if you are opposed to UBI or are just skeptical of this idea, the story of H.R. 16311 provides an instructive political playbook for how to defeat such proposals.

Although the idea of a basic income or UBI can be located “at almost any point on a spectrum ranging from a prudent and cautious [i.e., incremental] reform of welfare payments to a climactic abolition

¹⁵³ *Id.*

¹⁵⁴ Although the Senate unanimously approved the omnibus Social Security bill—without the import quotas, foreign aid, or guaranteed income amendments—on December 29, 1970, the bill died in conference committee. *Id.* at 538 n.1.

¹⁵⁵ *Id.*

¹⁵⁶ See, e.g., Howard Reed & Stewart Lansley, *Universal Basic Income: An Idea Whose Time Has Come?*, COMPASS (May 23, 2016), <http://www.compassonline.org.uk/wp-content/uploads/2016/05/UniversalBasicIncomeByCompass-Spreads.pdf> [<http://perma.cc/9E38-BC3K>]; see also Jurgen De Wispelaere & Lindsay Stirton, *The Many Faces of Universal Basic Income*, 75 POL. Q. 266, 266 (2004).

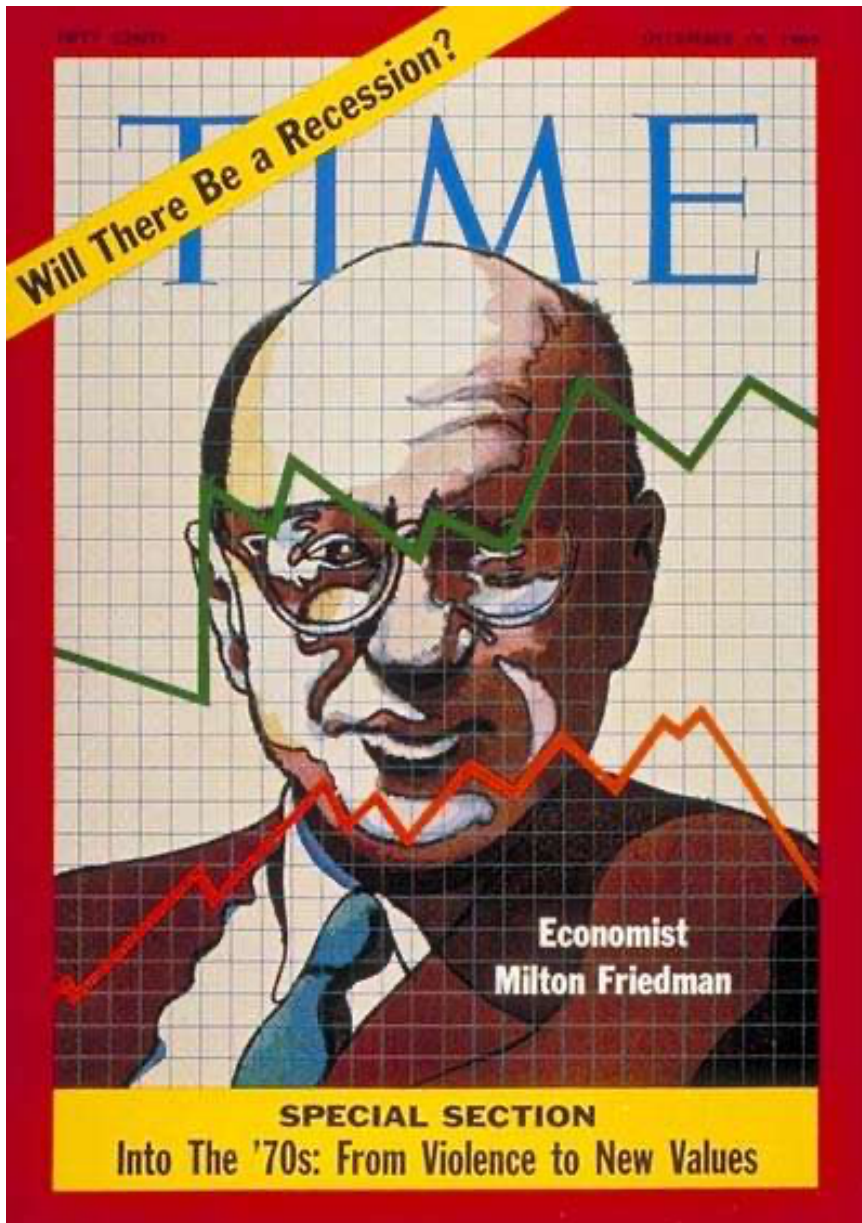
¹⁵⁷ *Id.* at 355.

of the wage system,”¹⁵⁸ in the end H.R. 16311 was negatively framed by its opponents in moral terms: the bill paid people not to work. As a result, the leading lesson of this affair is: any realistic UBI proposal must somehow find a way of passing an impossible political test before it will ever be enacted into law. How can a government provide a meaningful income to the poor, let alone a universal income to all persons, without distorting work incentives and without breaking the bank, so to speak?

Stated bluntly, what is the optimal amount of income that each person should be entitled to? Consider for the last time “The Family Assistance Act of 1970.” Was the proposed \$1,600 annual cash stipend for a family of four—the centerpiece of the bill—too generous and costly, or was it too stingy and miserly? This inherent contradiction, not to mention the delicate questions of race and class looming in the background, cursed H.R. 16311 from the get-go; this contradiction also bedevils all universal basic income schemes today. Supporters of contemporary UBI schemes should take this inherent tension to heart. Unless they can solve this puzzle (how to finance such schemes without distorting the incentive to work), any attempt to enact a universal basic income is most likely doomed to fail.

¹⁵⁸ MOYNIHAN, *supra* note 7, at 441.

Appendix A¹⁵⁹



159 TIME MAGAZINE, Dec. 19, 1969 (noting the presence of Milton Friedman on the cover).

Appendix B¹⁶⁰**A STATEMENT BY ECONOMISTS ON INCOME
GUARANTEES AND SUPPLEMENTS**

May 27, 1968

The statement below was circulated in May of 1968 to 275 universities and research organizations. More than 1,000 economists from 125 universities signed the statement.

The undersigned economists urge the Congress to adopt this year a national system of income guarantees and supplements.

The Poor People's Campaign in Washington is demanding a guaranteed minimum income for all Americans. The Kerner Commission on Civil Disorders called for a national system of income supplements. A group of business leaders recently advocated a "negative income tax." These proposals are all similar in design and purpose.

Like all civilized nations in the twentieth century, this country has long recognized a public responsibility for the living standards of its citizens. Yet our present programs of public assistance and social insurance exclude millions who are in need and meet inadequately the needs of millions more. All too often these programs unnecessarily penalize work and thrift and discourage the building of stable families.

The country will not have met its responsibility until everyone in the nation is assured an income no less than the officially recognized definition of poverty. A workable and equitable plan of income guarantees and supplements must have the following features. (1) Need, as objectively measured by income and family size, should be the sole basis of determining payment to which an individual and/or family is entitled. (2) To provide incentive to work, save and train for better jobs, payments to families who earn income should be reduced by only a fraction of their earnings.

Practical and detailed proposals meeting these requirements have been suggested by individual sponsors of this statement and by others. The costs of such plans are substantial but well within the nation's economic and fiscal capacity.

As economists we offer the professional opinion that income guarantees and supplements are feasible and compatible with our economic system. As citizens we feel strongly that the time for action is now.

Source: "Economists' Statement on Guaranteed Annual Income," 1/15/1968—4/18/1969 folder, General Correspondence Series, Papers of John Kenneth Galbraith, John F. Kennedy Presidential Library.

¹⁶⁰ Income Maintenance Programs: Hearings Before the Subcomm. on Fiscal Policy of the J. Econ. Comm., 90th Cong. 676-90 (1968).

Appendix C¹⁶¹

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, DECEMBER 21, 1970

1683

I remember back in the Depression years—and if this dates me, if you can remember, you can remember, too—of the 1930's, how deeply I felt about the plight of those people my own age who used to come into my father's store when they couldn't pay the bill, because their fathers were out of work, and how this seemed to separate them from others in our school.

None of us had any money in those days, but those in families where there were no jobs and there was nothing but the little that relief then offered suffered from more than simply going without. What they suffered was a hurt to their pride that many carried with them for the rest of their lives.

I also remember my older brother. He had tuberculosis for 5 years. The hospital, the doctor bills were more than we could afford.

In the 5 years before he died, my mother never bought a new dress. We were poor by today's standards, and I suppose we were poor even by Depression standards.

But the wonder of it was that we didn't know it. Somehow my mother and father, with their love, their pride, their courage and their self-sacrifice, were able to create a spirit of self-respect in our family so that we had no sense of being inferior to others who had more.

Today's welfare child is not so fortunate. His family may have enough to get by on and, as a matter of fact, they may have even more in a material sense than many of us had in those Depression years. But no matter how much pride and courage his parents have, he knows they are poor and he can feel that soul-stifling patronizing attitude that follows the dole.

Perhaps he watches while a caseworker—a caseworker who himself is trapped in a system that wastes on policing talents that could be used for helping—he watches while this caseworker is forced by the system to poke around in the child's apartment, checking on how the money is spent, or whether his mother might be hiding his father in the closet.

This sort of indignity is hard enough on the mother. It is enough of a blow to her pride and to her self-respect. But think of what it must mean to a sensitive child.

We have a chance now to give that child a chance—a chance to grow up without having his schoolmates throw in his face the fact that he is on welfare and without making him feel that he is therefore something less than other children.

Our task is not only to lift people out of poverty but from the standpoint of the child our task is to erase the stigma of welfare, illegitimacy, and of apatness, and to restore pride, dignity, and self-respect for every child in America.

I don't contend before this sophisticated audience of critics that our Family Assistance Plan is perfect. Secretary Richardson, who has been before the Senate, will be able to answer questions that you may put to him because he has been before a very, very critical body.

But I am only going to suggest this: In this confused, complex, and intensely human area no perfect program is possible, and certainly none is possible that will please everybody. But this is a good program, and a program immensely better than what we have now, and vastly important to the future of this country—and especially to the neediest of our children. It is time to get rid of the present welfare program and get a new one, and now is the time to do it.

¹⁶¹ Richard M. Nixon, *Remarks at the Opening Session of the White House Conference on Children*, 6 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 1677, 1683 (Week Ending Saturday, Dec. 19, 1970).