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WORK HIERARCHIES AND SOCIAL CONTROL OF LABORERS

NANTIYA RUAN[†]

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I. INTRODUCTION

Some labor dynamics transcend place and time: workers provide the labor; management oversees the work; owners capitalize on the fruits of that labor. This hierarchy repeats across nations, industries, and eras. The actors in these stories have set roles and a particular stage to act upon. We are familiar with a narrative wherein the worker is forced to toil under extreme conditions, the manager motivates the worker to produce faster and more, and the owner reaps the rewards. And we usually know where our sympathies lie.

Professor McMurtry-Chubb's latest book, *Race Unequals: Overseer Contracts, White Masculinities, and the Formation of Managerial Identity in the Plantation Economy*¹ (hereinafter, *Race Unequals*), drops her readers onto a particular stage that at first feels familiar: the American plantation of the South during the era of enslavement. We know that the workers are the enslaved laborers who represent the worst commodification of forced labor. We know that the overseers are the managers who wield power and use violence to force those enslaved to cruelly and inhumanely submit. And we know that plantation owners blithely accepted the privilege of exploiting that labor as their due. The genius of *Race Unequals* is this: asking readers to put aside what we know and witness a completely new narrative. What if the overseer was not just the punisher but also the worker acted

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1. TERI A. MCMURTRY-CHUBB, *RACE UNEQUALS: OVERSEER CONTRACTS, WHITE MASCULINITIES, AND THE FORMATION OF MANAGERIAL IDENTITY IN THE PLANTATION ECONOMY* (Lexington Books 2021).

upon? What if plantation owners were protecting not just their monetary benefits but also their own White, masculine social identities? What if another vulnerable and precarious worker in this particular worksite was the one tasked to enforce the worksite rules? A place where those rules happen to be the most atrocious worksite rules of all time?

It bears explicitly stating, here and in any discussion of the enslavement of Africans in this country, that the horrors of slavery know no bounds. As property and a commodity, the Black body was thoroughly dehumanized by the manifestation of white supremacy as law. While recognizing these truths, we can also study the enormous pressures—economically and socially—in place to keep all workers in their respective subservient class. This essay attempts to explore one of the many themes present in *Race Unequals*: worksite rules and norms that have the power to control lives, dictate futures, and shape societies.

II. HIERARCHIES AT WORK

In *Race Unequals*, Professor McMurtry-Chubb provides historical evidence for her interrogation of the enslaved labor/labor management/plantation owner hierarchy. Overseer contracts, plantation manuals, morality clauses, and labor regulations provide a basis for a new understanding of plantation managers (a.k.a. overseers) as not just instruments of owners to maximize production but also workers subverted in their attempts to achieve greater independence and capital. Overseers wanted what other managers want—a steady income to support oneself and family, a path to higher earnings, and ultimately, to own property themselves. But in this plantation culture, overseers also sought to break barriers into the landowner class and reach the next echelon. The book explores the many barriers to such advancement, including race, gender, and class identities. In fact, this particular workplace exists in a culture so steeped in strict social hierarchies that they are mostly impermeable. How the law—in the form of private contract and public regulation—props up this system is a major theme of the book.

Today, through scholarly examination of modern workplaces, we are familiar with workplace classes (or “castes”)² and the relatively

2. See, e.g., Sumi Cho, “Unwise,” “Untimely,” and “Extreme”: Redefining Collegial Culture in the Workplace and Revaluing the Role of Social Change, 39 U.C. DAVIS L. REV. 805, 809 (2006) (explaining how “[a] traditional, dominant culture definition of collegiality [in the workplace] fails to account for institutional sexism, homophobia, racism . . . and thus endorses and perpetuates existing cultural norms and castes”); Kathleen M. Sullivan, *Sins of Discrimination: Last Term’s Affirmative Action Cases*, 100 HARV. L. REV. 78, 81 (1986) (arguing that the promotion of “a variety of goals dependent

small number of winners of today's labor economy. We better understand how historical hierarchies persist at work. Workers on the lowest rung of the capitalist ladder are exploited by the top rung who monopolizes the vast majority of the capital. As one data point, in 2021, the top 1% owned a record 32.3% of the nation's wealth, while the share of wealth held by the bottom 90% of Americans has declined steadily and currently sits at 30.2%.³ Those that own the least wealth are housing insecure, without jobs that cover basic necessities, and without access to social safety nets that support health and wellbeing.

In between these two poles sit the professional class: those that wish to secure enough wealth and reach the higher economic class but to do so, they must exploit the class of workers below them on the labor ladder. This professional worker class (the two to nine percenters) require childcare at a cut rate, domestic workers to clean their homes for (sub)minimum wages, meals prepared as cheaply as possible, and so on. These workers who sit in the comfortable middle position might wish to distance themselves as instrumental in stripping workers of their dignity, but in reality, they cannot ignore the fact that low-wage laborers prop up their lifestyle. Without this cheap supply of labor, the professional class could not live the lifestyle they desire. The low wages paid to childcare, health care, retail, and food industry workers allow the professional class to access comfortable homes, secure positions, and health-sustaining options, while simultaneously denies the same opportunities to those prohibited from accessing resources that lead to human dignity. While some social mobility is possible, the proverbial deck is stacked against them.

Viewed this way, the workplace hierarchies of today reflect those institutionalized in the historical South. The paradigm recognized in *Race Unequals* is the precursor to today's reality: to reach the next, higher class and secure more wealth, one must exploit the labor of those lower in the hierarchy in myriad, often immoral ways.

III. KEEPING THE WORKER DOWN AND IN THEIR PLACE

For the plantation economy to be profitable and support the land-owning class, who in turn employed the overseer managers, the farm work rested on the enslavement of humans. While those that were enslaved were the most powerless, and the plantation owner held the

on racial balance, from securing workplace peace to eliminating workplace caste" supports voluntary affirmative action).

3. The Fed. Rsv. Board, *Distribution of Household Wealth in the U.S. since 1989*, <https://www.federalreserve.gov/releases/z1/dataviz/dfa/distribute/chart/#range:2006.4,2021.4;quarter:129;series:Net%20worth;demographic:networth;population:all;units:levels> (last visited Nov. 2, 2022).

most power, the overseers had a job to do. And that job is the focus of *Race Unequals*, which explores the various ways the overseer himself was subject to interlocking society pressures of white supremacy, capitalism, and patriarchy, which worked in concert to keep him from the privileges of the higher class.⁴ As a workplace supervisor, the overseer was both subject to workplace pressures that operated to keep him in his place, as well as made him the actor of punitive labor management of the laboring class.

As an employee (or in today's terms, independent contractor) of the business owner, the overseer was paid only if and when the plantation realized profits and if it failed to do so, the overseer didn't get paid. The overseer therefore bore a portion of the risk that should have been shouldered solely by the business; the justification for higher profits of the owner is the risk it bears in operating the business. As a result, the overseer is in the precarious position of working without reliable income and at risk of not being paid at all. This kept them financially dependent, as well as limited their social mobility. Moreover, overseers were closely monitored for any perceived "moral failings," such as not maintaining sobriety or not exhibiting appropriate religious devotion. Failure to follow these moral strictures meant that the overseer could fail at his job by failing in his personal life to follow the moral code set by the owner. In these ways, overseers as plantation management employees were a class of vulnerable workers themselves controlled by the owner. Wage theft and being dependent on the personal whims of their employer subjected overseers to unstable and insecure employment.

At the same time, overseers were workplace supervisors; on a plantation, this meant the labor management of enslaved field workers, which Professor McMurtry-Chubb called a "gang system of labor organization."⁵ This was a "pushing system," meaning that the fastest field worker set the pace and was the benchmark for what the overseer expected from the other enslaved workers. Those that failed to keep up with the out-front worker were severely punished and this torture system operated despite the legal protections enacted to safeguard the planter's "property" against "mistreatment." In essence, overseers could (and did) severely mistreat the enslaved workers and were still considered a "good" supervisor in the eyes of the law (and owner) because they efficiently managed labor, maximized production, and ensured profits.

As such, *Race Unequals* unveils the overseer management class as both actors in extolling hardship and suffering, while also subject to

4. McMURTRY-CHUBB, *supra* note 1, at 31.

5. *Id.*

employment practices that kept them in precarious and vulnerable positions. It is a striking insight because the ways in which workplace scholars write about precarious work and vulnerable workers do not typically include middle management. We write about gig workers without workers' compensation and health care; retail workers without control of their schedules and forced to work debilitating numbers of hours; immigrant workers exploited based on their legal status; and prison laborers paid pennies for menial labor.⁶

In *Corporate Masters & Low Wage Servants*, I describe the neoliberal paternalism that undergirds our labor market.⁷ I argue that similar to how the state has controlled poor people's lives for decades, the lives of low-wage workers are now controlled by their private employers (a.k.a., corporate masters). This takes several forms. First, low-wage workers are under near-constant surveillance and monitoring by their employers in ways designed to control their behavior, both on and off site. On demand scheduling, call-in policies, drug testing, clothing/hair mandates, and lack of job security are just a few examples. The precarious nature of low-wage work makes this control easier because such violations largely go unchallenged by workers with little to no economic or legal power. Second, low-wage workers' time is undervalued and unappreciated by their employers. Because low-wage work is unpredictable, without set salaries or schedules, their lives are dictated by the need to secure more hours, more gigs, or more part-time jobs. The goal of our nation's labor movement to respect the need for personal time (such as a Monday through Friday, weekends off schedule) for the health and wellness of all workers has gone unfilled for these workers. Third, low-wage workers are provided a limited opportunity to escape their economic dependence on dead-end jobs. Low-wage work is simply too poorly compensated to be self-sustaining and rarely provide a path out of poverty. And promotion to higher paid, more secure positions is often limited. Low-wage workers

6. See, e.g., Wendi S. Lazar & Nantiya Ruan, *Is There a Future for Work?*, 25 GEO. J. ON POVERTY L. & POL'Y 343 (2018); Nantiya Ruan, *Corporate Masters & Low-Wage Servants: The Social Control of Workers in Poverty*, 24 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 103 (2017); Charlotte Alexander et al., *Stabilizing Low-Wage Work: Legal Remedies for Unpredictable Work Hours & Income Stability*, 50 HARV. C.R.-C.L.L. REV. 1 (2015); Nantiya Ruan & Nancy Reichman, *Hours Parity as the New Pay Equity*, 59 VILL. L. REV. 35 (2014); Nantiya Ruan, *Same Law, Different Day: A Survey of the Last Thirty Years of Wage Litigation and its Impact on Low-Wage Workers*, 30 HOFSTRA LAB. & EMP. L.J. 355 (2013); Nantiya Ruan, *What's Left to Remedy Wage Theft? How Arbitration Mandates that Bar Class Actions Impact Low-Wage Workers*, 2012 MICH. ST. L. REV. 1103 (2012); Scott A. Moss & Nantiya Ruan, *The Second-Class Class Action: How Courts Thwart Wage Rights by Misapplying Class Action Rules*, 61 AM. UNIV. L. REV. 523 (2012); Nantiya Ruan, *Facilitating Wage Theft: How Courts Use Procedural Rules to Undermine Substantive Rights of Low-Wage Workers*, 63 VAND. L. REV. 727 (2010).

7. *Corporate Masters & Low-Wage Servants*, *supra* note 6, at 129–33.

are robbed of human dignity and kept subservient by their insecure jobs, their unpredictable work schedules, and threats of wage theft of their minimum wages. These factors are interlocking, working synchronously to control low-wage workers and keep them servicing their corporate masters.

More and more, similar types of social control at the hands of private employers are impacting the professional, mid-tiered class. Growth in technological advancement and work-from-home arrangements have allowed increased surveillance and monitoring of professionals. Many professional employees are being tracked, recorded, and ranked by computer software installed to gauge employee work.⁸ Denied an ability to physically watch their employees working in offices or other worksites, employers are motivated to use new technologies to surveil their employees in an effort to maximize productivity. A recent New York Times investigation found that eight of the ten largest private U.S. employers tracked individual employee productivity using worker surveillance technology.⁹

The resulting effect is a continued erosion of the line between work and personal time, as well as the privacy expectations we have in our homes and lives. Similar to what poor citizens and low-wage workers have experienced for years, the constant monitoring and surveillance (and resulting erosion of privacy and choice) comes with an underappreciation for a professional worker's control over one's time and how it's spent. When all aspects of work time are tracked, recorded, and ranked against others, the incentives become perverse and damaging. Working longer hours at the expense of one's health and welfare becomes increasingly paramount, despite indicators that working more is not necessarily working better or more efficiently. Those unable to work longer hours (or to effectively game the technological system to increase whatever outputs are expected) because of family obligations, personal limitations, or different abilities are disadvantaged as compared to those with the tools and options to do so.

These new workplace norms parallel the observations made in *Race Unequals*. The planter class controlled the private lives of overseers through morality clauses, strict record-keeping demands, and 24/7 work schedules, with punitive measures swiftly taken for "slacking off."¹⁰ Overseers lived where they worked, and if they had families, so did they. Overseers had to keep detailed, daily logs of work performed and record the minutiae of the state of the plantation.

8. See Jodi Kantor & Arya Sundaram, *The Rise of the Worker Productivity Score*, N.Y. TIMES (Aug. 14, 2022), <https://www.nytimes.com/interactive/2022/08/14/business/worker-productivity-tracking.html?searchResultPosition=2>.

9. *Id.*

10. McMURTRY-CHUBB, *supra* note 1, at 103.

These strictures encroached on overseers' lives and worked to keep this middle-tier of workers in their assigned class.

It is unarguable that the human degradation and violence suffered by the enslaved laborers was of a magnitude incomparable to the pressures placed upon the overseer management class, who themselves were not enslaved or physically harmed. It also is an unassailable fact that the human indignities of poor citizens and low-wage workers outstrips the harms suffered by the professional class, who have homes, resources, and societal support denied to their counterparts lower on the work hierarchy. While recognizing these truths, there is room to appreciate the enormous pressures—economically and socially—in place to keep all workers in their respective subservient class.

IV. LAW AS A TOOL TO ENFORCE THE WORKPLACE HIERARCHY AND MAINTAIN SOCIAL CONTROL

Relying upon extensive, original archival research, *Race Unequals* introduces to the reader the formal employment agreements between the planter class and their overseer managers to deepen our understanding of how the plantation economy blocked overseers' access to the social elite. Overseer contracts and plantation management manuals obligated the overseer to bear responsibility and risk for the profitability of the farming business. If the plantation failed, the overseer did not get paid. If the overseer did not push the enslaved labor to exhaustive limits or in any way "mismanaged the property," the overseer did not get paid. An overseer's food and housing costs were deducted from earned wages and if the plantation failed to be profitable, the overseer remained obligated to the owner for those costs at the end of the season, resulting in a substantial debt. This nonpayment of wages and resulting debt meant that the overseer could rarely obtain the capital necessary to move above its ranks and therefore was blocked from climbing the economic and social ladder. These contracts also contained morality clauses that obligated the overseer to conform to the social norms of the planter class: Christian observance and strict sobriety. As such, these are contracts not just dictating employment terms and conditions but of social control. As Professor McMurry-Chubb writes, these agreements not only limited economic mobility, but kept overseers from capitalizing on the Male Whiteness coopted by the plantation owning class.

Race Unequals also uncovers that the legal avenues for redress of nonpayment or unfair debt under overseer employment contracts were mostly foreclosed. Litigation for breach of contract or wage theft rarely resulted in the overseer gaining recompense. And the overseer

bore significant risks of both losing the lawsuit and suffering retaliation for suing because the owner had deeper pockets to countersue. Moreover, property laws in the South provided for offsetting compensation for “mismanagement of the plantation”—an ambiguous legal concept that led to rulings against the overseer who originally brought suit for unpaid wages.

Recently, the ways in which our nation’s laws advantage the “haves” and exclude the “have nots” are more widely understood.¹¹ One starting place in recognizing the role law plays in supporting inequality is to understand how wide the gap actually is. Disparities between households with means and those without, especially Black, Latinx, Asian, and Indigenous households, reflect the compound negative effects of discrimination and lack of employment opportunity experienced by communities of color since the start of our nation. Importantly here, the lack of economic opportunity for Black Americans began with centuries of enslavement and grew with:

Congressional mismanagement of the Freedman’s Savings Bank (which left 61,144 depositors with losses of nearly \$3 million in 1874), the violent massacre decimating Tulsa’s Greenwood District in 1921 (a population of 10,000 that thrived as the epicenter of African American business and culture, commonly referred to as ‘Black Wall Street’), and discriminatory governmental policies, including the Jim Crow Era’s ‘Black Codes’ strictly limiting opportunity in many southern states, the GI bill, the New Deal’s Fair Labor Standards Act’s exemption of domestic agricultural and service occupations, and redlining. Wealth was taken from these communities before it had the opportunity to grow.¹²

Although such disparities are more widely discussed today, righting the wrongs of centuries of public and private racism and discrimination, sanctioned by formal and informal law, is the crucible this nation has yet to reckon with.

Today, the racial wealth gap in America remains wide and persistent. Long-standing and substantial wealth disparity between Black and White households is simply astounding. In 2019, the typical White household had *eight* times the wealth of the typical Black household,¹³ and the median Black family had \$3,600 in wealth, while the median White family had \$147,000, making the median Black

11. Marc Galanter, *Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change*, 9 L. & SOC’Y REV. 1 (1974).

12. Kriston McIntosh et al., *Examining the Black-white Wealth Gap*, BROOKINGS (Feb. 27, 2020), <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/>.

13. Neil Bhutta et al., *Disparities in Wealth by Race & Ethnicity in the 2019 Survey of Consumer Finances*, FED. RES. (Sep. 28, 2020), <https://www.federalreserve.gov/econ->

family wealth just 2% of White family wealth.¹⁴ Again, the shadow of the enslavement of Africans in our nation's history is long and keenly felt today.

If the growing wealth disparity is but one indication, legal protections for civil rights in employment is severely lacking. Or, put another way, those seeking legal protections are not able to access them. One cause continues to be the access to justice problems of our legal system. But also, the rising civil rights case dockets of federal courts¹⁵ and the growing number of civil rights plaintiffs' cases dismissed before trial¹⁶ tell a tale of legal barriers and judicial hostility towards civil rights plaintiffs. The role law plays in keeping the poor poorer and making low-wage work unescapable cannot be denied and is the scholarly focus of many, including myself.¹⁷

Race Unequals is a call to action for us: writers and advocates who care about those most marginalized by our unjust systems. There is much to be admired in this book, from the sheer breadth of the original research, to reminding readers that villains can also be victims and that the law is supported to serve both, from its connections between seemingly disparate theories and themes, to its concise retelling of a story previously thought to be well understood. What it reminds scholars is that we can look afresh at what we think we know, roll up our sleeves, and do the hard work of uncovering new truths and narratives. I will revisit the book when I need further inspiration to do just that.

res/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm.

14. Chuck Collins et al., *Ten Solutions to Bridge Racial Wealth Divide*, INST. FOR POL'Y STUD. (2019), <https://ips-dc.org/report-racial-wealth-divide-solutions/>.

15. See Patricia W. Hatamyar Moore, *The Civil Caseload of the Federal District Courts*, 2015 U. ILL. L. REV. 1177, 1221–22 (2015) (“Civil rights cases were negligible in 1960 (when there were 280 case filings) but increased rapidly as Congress enacted civil rights statutes in the decade that followed. By 1970, the Annual Report remarked that the ‘rise in actions under special federal statutes explains a good part of our overall growth in [civil] filings.’ By 1986, they constituted 8% of all civil filings. . . . The percentage of civil rights cases has continued to increase, up to 12% of all civil filings in 2013, which makes civil rights cases the third most prevalent case type.”) (internal citations omitted).

16. Alexandra D. Lahav & Peter Siegelman, *The Curious Incident of the Falling Win Rate: Individual vs System-Level Justification and the Rule of Law*, 52 U.C. DAVIS L. REV. 1371, 1426 (2019) (noting that civil rights employment cases decreased from an 18.8% “win rate” in 1984 to 8.1% in 2016, a 57% decrease).

17. See, e.g., *Poverty Law Research Guide*, GEO. L. LIBR., <https://guides.ll.georgetown.edu/poverty>.

