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Corporate Masters & Low-Wage Servants: The Social Control of Workers in Poverty

*Nantiya Ruan**

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I. Introduction

“Keep them busy and they won’t have time to burn
your cars.”

—President Lyndon Johnson¹

The social control of poor people through state regulation is a constant theme throughout American history.² Examples abound.

1. JOSEPH A. CALIFANO, JR., *THE TRIUMPH & TRAGEDY OF LYNDON JOHNSON: THE WHITE HOUSE YEARS* 226 (1991).

2. See ELIZABETH A. SEGAL, *BROOKS/COLE EMPOWERMENT SERIES: SOCIAL*

As early as the late eighteenth century, poor people were incarcerated in “poorhouses” and forced to wear lettered badges on their clothes that clearly marked them as poor.³ In the early nineteenth century, “poor masters” auctioned off poor people to the highest bidder to be privately housed and fed in exchange for their labor.⁴ Throughout the rest of the century, poor women who received state assistance were under surveillance and subjected to heavily scrutinized in home visits by state agents for unseemly association with male company.⁵ In the twentieth century, poor women were routinely required to answer intrusive questions about their child rearing, intimate relationships, and were subjected to family caps, which prohibited cash benefits for children conceived while the mother received state assistance.⁶ Today, the policy and practice of arresting and jailing poor people for failure to pay legal debts they can never hope to afford (a.k.a., debtors’ prisons) continues unabated.⁷

Whether to demand their compliance through punitive measures, institutionalize them in poorhouses, or incarcerate them, the goal has been the same: reform and regulate poor people through state action.⁸ Scholars have pointed out that this

WELFARE POLICY AND SOCIAL PROGRAMS 65 (2012) (“Some theorists view the development of social welfare policy as a tool of social control.”).

3. See FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* (Vintage Books rev. ed. 1993) (1971) (explaining the way poor people were treated in the late eighteenth century).

4. See Linda M. Crannell, *Historical Overview of the American Poorhouse System: History of 19th Century American Poorhouses*, THE POORHOUSE STORY, <http://www.poorhousestory.com/history.htm> (last visited Nov. 21, 2017) (“People who could not support themselves . . . were put up for bid at public auction. In an unusual type of auction, the pauper was sold to the *lowest* bidder.”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

5. See JOHN GILLIOM, *OVERSEERS OF THE POOR: SURVEILLANCE, RESISTANCE, AND THE LIMITS OF PRIVACY* 66 (2001) (“[T]hey are all women, they are all mothers, they are all lower income . . . they are all receiving AFDC . . . and some combination of related social programs, and they are all, therefore, subject to the advance surveillance of welfare bureaucracy.”).

6. See generally *id.*

7. See Joseph Sharipo, *Supreme Court Ruling Not Enough to Prevent Debtors Prisons*, NPR (Mar. 21, 2014, 5:01 AM), <http://www.npr.org/2014/05/21/313118629/supreme-court-ruling-not-enough-to-prevent-debtors-prisons> (“And every day, people go to jail because they failed to pay their court debts.”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

8. See generally PIVEN & CLOWARD, *supra* note 3.

“regulation of the poor” works to enforce social control over a potentially disruptive population.⁹ By regulating them in this way, the state works to forestall social unrest and stymie civil disorder.¹⁰

More recent scholars have theorized that “disciplining the poor” has become the overriding state-led effort to bring competent worker citizens into the market.¹¹ We see this in action through the “welfare to work” movement and its efforts to uphold the moral dignity of work while simultaneously shrinking the welfare rolls.¹² Such policy reinforces the values of the American Dream: work hard and hard work will be an effective path out of poverty.¹³

For too many low-wage workers, the path out of poverty has not materialized.¹⁴ Former welfare recipients are pressed into the most low-paying, dead-end jobs without viable exits out of poverty.¹⁵

One example visits the story of Linda Tirado, a working mother living in poverty, who writes powerfully about her life and routine.¹⁶ Most days, Linda wakes up at six in the morning and

9. See *id.* at 47 (arguing that throughout history, state regulation of poor individuals is a way to exert social control).

10. See generally *id.*

11. See JOE SOSS ET AL., *DISCIPLINING THE POOR: NEOLIBERAL PATERNALISM AND THE PERSISTENT POWER OF RACE* 295 (2011) (describing the belief that regulation of poor people is a state effort to promote work compliance).

12. See *id.* at 272 (discussing how welfare-to-work programs are designed to “benefit the inmate and the employer in equal measures”).

13. See generally Heather Long, *The American Dream: Rich are fearful for its survival, but poor still believe*, CNN (Oct. 14, 2016 12:17 PM), <http://money.cnn.com/2016/10/14/news/economy/american-dream-poor-still-believe/index.html> (interviewing various low-income individuals and getting their opinion on the American Dream) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

14. See generally Carol Graham, *Is the American Dream Really Dead?*, *GUARDIAN* (June 20, 2017, 9:30 AM), <https://www.theguardian.com/inequality/2017/jun/20/is-the-american-dream-really-dead> (“While 90% of the children born in 1940 ended up in higher ranks of the income distribution than their parents, only 40% of those born in 1980 have done so.”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

15. See generally Heather Boushey, *Staying Employed After Welfare*, *ECON. POL’Y INST.* (June 1, 2002), http://www.epi.org/publication/briefingpapers_bp128/ (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

16. Linda Tirado, *This is Why Poor People’s Bad Decisions Make Perfect Sense*, *HUFFINGTON POST* (Nov. 22, 2013, 5:18 PM), http://www.huffingtonpost.com/linda-tirado/why-poor-peoples-bad-decisions-make-perfect-sense_b_4326233.html

goes to school online before reporting to her low-wage job.¹⁷ In the afternoon, Linda hustles to pick up her kids at school and her husband from work, which leaves her roughly thirty minutes to change and drive to her second job.¹⁸

Linda is lucky to have a second job: some low-wage jobs require “open availability” meaning workers are required to be available to come in at short notice to cover needed shifts, or sent home early when their labor is not needed.¹⁹ This practice limits workers’ ability to hold second jobs or attend school.²⁰

She works her second job until returning home after midnight, at which time she has to prepare for her online class, that will start in a matter of hours.²¹ Linda does not get to bed before 3:00 a.m.²² While she does have two days off a week from this grueling schedule, she uses those days off to clean her home, make time for her family, and study.²³ Linda never gets additional time off from her work schedule unless she is sick.²⁴ As she observed “[i]t doesn’t leave you much room to think about what you are doing, only to attend to the next thing and the next.”²⁵

Linda lives her life at the mercy of her employers. While the state has historically controlled and limited the lives of poor people, it is increasingly corporate masters (or low-wage employers) who monitor, undervalue, limit, and rob their low-wage servants of a working pathway out of poverty. What has emerged

?ncid=engmodushpmsg00000003 (last updated July 19, 2014) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

17. *Id.*

18. *Id.*

19. See Mitchell Hartman, *More People Need Second Jobs, Fewer Can Find Them*, MARKETPLACE (July 15, 2013, 2:07 PM), <https://www.marketplace.org/2013/07/15/wealth-poverty/more-people-need-second-jobs-fewer-can-find-them> (“[T]here’s been a sharp drop in the number of people who are holding down multiple jobs, and most of those are likely to be part-time, since there are only so many hours in a day.”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

20. See *id.* (explaining how employers ask employees to be on call to report to work or leave work early based on customer demand).

21. Tirado, *supra* note 16.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

in today's employment relationships are employers that closely monitor their contingent workforce, who keep them at the mercy of unpredictable scheduling practices, and pay them poverty wages—all of which rob low-wage workers of any opportunity to advance beyond their precarious situation.²⁶

Being controlled by their corporate masters in this way mirrors the social control previously asserted by the state in its constant surveillance and disrespectful and dehumanizing policies, which worked to limit poor people's ability to escape the "air-tight cage of poverty."²⁷ The poverty governance of the state is now subsumed in the master/servant employment relationship. And the cycle of dignitary harms suffered by poor people is continued.

For poor people, welfare reform and the corresponding shrinking of the welfare state has merely meant that these individuals have swapped one master for another. Government welfare programs work in collaboration with private employers to fuel their low-wage work needs, leading to an ever-increasing commodification of low-wage labor.²⁸ These forces converge to enhance and cultivate labor pools as the state strives to make "competent and compliant worker-citizens."²⁹ As welfare reform disciplined poor people into working any and all low-wage jobs, no matter the pay, and focused narrowly on changing poor people's behaviors, it failed to address exploitative employer practices.³⁰

Welfare reform extolled the moral dignity of work and the value of personal responsibility.³¹ Poverty regulation actively

26. See generally Hartman, *supra* note 19.

27. Letter from Martin Luther King, Jr. to Fellow Clergymen (Apr. 16, 1963), https://www.africa.penn.edu/Articles_Gen/Letter_Birmingham.html (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

28. See Mary Bryna Sanger, *When the Private Sector Competes: Providing Services to the Poor in the Wake of Welfare Reform*, BROOKINGS (Oct. 1, 2001), <https://www.brookings.edu/research/when-the-private-sector-competes-providing-services-to-the-poor-in-the-wake-of-welfare-reform/> (explaining how private companies would with government programs) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

29. SOSS ET AL., *supra* note 11, at 297.

30. See *id.* at 302 ("It fails low-income Americans today not just because of its misguided policy designs, but because it serves a labor market that is exploitative and unaccommodating, it is the creature of hierarchical political relations").

31. See *id.* at 9 ("In poverty governance today, interventions that punish the

pressed poor people into the worst jobs while asking nothing in return from the employers they serve.³² Such governance is neoliberal in its drive to bring discipline into the lives of individuals so they can become competent actors in the market, and paternalistic in its use of authority to manage and monitor poor people's behaviors.³³

This Article identifies and theorizes the latest step in poverty governance: privatizing poverty governance by enabling corporate masters to control the lives and shape the behaviors of their low-wage worker servants. The Article first outlines the history of American poverty governance, from the colonial poor houses and community "Poor Masters," to the moralistic campaigns of welfare caseworkers. This section includes an overview of the policy reforms of the 1930s, 1960s, and 1990s. Next, the Article provides context for understanding the state's focus on the creation of worker citizens, by exploring the neoliberal and paternalistic themes of poverty governance.

The Article then describes and analyzes how the state's control over low-wage workers has been relegated to private employers. The policies of these employers ensure that low-wage work is precarious, unpredictable, and insufficient. From this analysis, four themes of social control over poor people emerge, initially undertaken by the state and now by corporate masters: (1) constant monitoring; (2) undervaluing of their time; (3) limiting opportunity to escape economic dependence; and (4) robbing them of their dignity.

Low-wage employers, like the state in poverty governance, ensure that their servants are controlled and kept exactly where they want them: servicing their masters.

poor work hand in hand with efforts to support and incentivize the poor, collectively serving a broader disciplinary agenda that specifics the creation of compliant and competent worker-citizens as its ultimate end").

32. *See generally id.*

33. *See id.* ("Neoliberal paternalism is, in this sense, an effort to discipline governing authorities so that they can be relied on to carry out the work of disciplining the poor.").

II. Poverty Governance as a Means of Social Control

Those with limited means have been regulated by the state since the Colonial era.³⁴ This Section outlines the separate eras of American poverty governance, all of which reflect a sustained government effort to minimize social unrest and optimize the labor of poor people at the lowest public cost. This Article illustrates how government policies increasingly incorporate an authoritative and supervisory role of the state over the lives of poor people.

A Brief History of American Poverty Governance

1. Poor Masters and Poorhouses: Early Colonial America

The history of American poverty governance is one of social control. Beginning with the American Colonial period, the common social narrative was that poverty's misfortunes were not a failure of structural economic causes but of personal failings.³⁵ The original thirteen colonies regulated poor citizens through a sizeable body of laws modeled after the English Poor Laws.³⁶ From very early on in United States history, poor people were categorized as either "deserving" who are poor through no fault of one's own, such as widows or orphans, or "undeserving" who are poor through able-bodied idleness and "vagrancy."³⁷ The undeserving, unemployed men often faced indentured servitude, state-sanctioned beatings, forceful removal from communities, and incarceration.³⁸ In 1619, the Virginia Assembly pronounced that idle able-bodied persons should be bound over to compulsory

34. See generally MICHAEL B. KATZ, *THE UNDERCLASS DEBATE: VIEWS FROM HISTORY* (Michael B. Katz ed., 1993).

35. See generally *id.* at 6.

36. See William P. Quigley, *Reluctant Charity: Poor Laws in the Original Thirteen States*, 31 U. RICH. L. REV. 111, 116 (1997) (discussing the effects of being classified as an "undeserving" poor individual during the American Colonial Period).

37. *Id.* at 6–7; see JOEL F. HANDLER & YEHESEKEL HASENFELD, *THE MORAL CONSTRUCTION OF POVERTY: WELFARE REFORM IN AMERICA* 26 (1991) (describing the deserving/undeserving dichotomy).

38. See WALTER I. TRATTNER, *FROM POOR LAW TO WELFARE STATE: A HISTORY OF SOCIAL WELFARE IN AMERICA* 22–26 (5th ed. 1994) (1974) (discussing the regulation of poor people through English Poor Laws).

labor.³⁹ Similarly, the General Court of Massachusetts directed punishment for those that spent time “idly or unprofitably.”⁴⁰ In New Jersey, “vagrants” could be jailed, whipped, and banished.⁴¹ But while state governments legislated broad policy, local governments were primarily responsible for how dealing with their poorest citizens.⁴²

Widows, orphans, and elderly without family, life’s unlucky victims, were treated with a bit more kindness, and communities were more willing to take responsibility for their welfare.⁴³ But poor people who found themselves in a community where they had no social ties were shunted along and forcibly removed from their communities.⁴⁴ These actions were legally sanctioned. States implemented the “law of settlement” to exclude poor “outsiders” from receiving any assistance, which allowed the state to remove or banish poor individuals from the community.⁴⁵ As a result of these policies, the geographic mobility of poor people was severely limited, enforcing another aspect of social control.⁴⁶

This deserving/undeserving distinction in poverty governance grew stronger as the centuries turned.⁴⁷ The early nineteenth century was marked by industrialization, the mass production of

39. JOHN ICELAND, *POVERTY IN AMERICA: A HANDBOOK* 13 (3d ed. 2013) (2012).

40. TRATTNER, *supra* note 38, at 22.

41. Act of Mar. 11, 1774, *microformed on 22nd Assemb. N.J., 2d Sess., Fiche 1*, at 408, 418–19.

42. See Quigley, *supra* note 36, at 116 (stating local governments had the primary responsibility of creating policy on poverty).

43. See TRATTNER, *supra* note 38, at 26 (explaining poor widows, orphans, and elderly were treated with more kindness than an average poor individual).

44. See MICHAEL B. KATZ, *THE UNDESERVING POOR: FROM THE WAR ON POVERTY TO THE WAR ON WELFARE* 6–7 (1989) [hereinafter KATZ, *THE UNDESERVING POOR*] (explaining that a poor individual with no social ties to a community was removed).

45. See Quigley, *supra* note 36, at 140–41 (“Early American poor laws continued . . . the law of settlement. Local responsibility for the poor was limited by the law of settlement to exclude poor people of other areas from any assistance and allowed non-local poor people to be expelled, removed, or banished from the community.”).

46. See *id.* at 140 (“As a result of the law of settlement, the geographic mobility of poor people was severely limited.”).

47. See generally MICHAEL B. KATZ, *IN THE SHADOWS OF THE POORHOUSE: A SOCIAL HISTORY OF WELFARE IN AMERICA* (2d ed. 1996) (1986) [hereinafter KATZ, *IN THE SHADOWS OF THE POORHOUSE*].

goods and mechanization of agriculture, which displaced workers across industries.⁴⁸ These displaced workers became the “floating proletariat” traveling to find jobs,⁴⁹ while others “tramped” their way across the country, unemployed and always on the move.⁵⁰

To deal with this transient population and other poor people, many towns designated an elected official, the town “Overseer of the Poor” or “Poor Master.”⁵¹ These officials determined whether a poor citizen required assistance in the form of “outdoor relief” (what we might call “welfare” today), and had a budget to provide those deemed deserving of assistance with food, fuel, clothing, or medical treatment to be distributed from tax collected funds.⁵²

These Poor Masters could also “auction” poor people to the winning bidder.⁵³ In this form of servitude, towns held public auctions for community members to bid on poor individuals and families, who would be fed and housed by the winner of the auction in exchange for the labor of the auctioned persons, as well as a stipend from the Poor Master.⁵⁴ Such arrangements, a “thinly

48. See *id.* at 156 (“In the late nineteenth and early twentieth century, American industrialization took place in cities, and industry replaced commerce as the economic base of most cities . . . [a]t the same time, technology at once integrated and splintered cities.”).

49. See ICELAND, *supra* note 39, at 13 (explaining what happened to many workers displaced by industrialization).

50. See Thomas J. Sugrue, *The Structures of Urban Poverty: The Reorganization of Space and Work in Three Periods of American History*, in THE UNDERCLASS DEBATE: VIEWS FROM HISTORY 91 (Michel B. Katz ed., 1993) (describing the “phenomenon of tramping,” which was “the most visible sign of the dislocation and geographic mobility of industrial American workers”).

51. See Crannell, *supra* note 4 (“Overseer of the Poor (sometimes also called a Poor Master)—an elected town official.”).

52. See Quigley, *supra* note 36, at 152 (“One way of caring for the poor was to give them, after due examination to determine their need and worthiness, a small weekly or monthly stipend. This method was called ‘outdoor relief,’ as it allowed the poor to live on their own, outside of institutions.”); see also Crannell, *supra* note 4 (“They were started as a method of providing a less expensive (to the taxpayers) alternative to what we would now days call ‘welfare’ - what was called ‘outdoor relief’ in those days.”).

53. See Quigley, *supra* note 36, at 153 (discussing New Jersey’s system of auctioning off their poor community members).

54. See RAYMOND A. MOHL, POVERTY IN NEW YORK, 1783–1825 (THE URBAN LIFE IN AMERICA) 23 (1971) (examining the auctioning of poor community members); see also *id.* at 152–53 (explaining the auction of poor individuals by “Poor Masters”).

disguised form of human slavery,”⁵⁵ were typically for a term of one year. Poor Masters could also auction groups to farms or larger homes, resulting in the first form of private institutionalization of poor people.⁵⁶

Up to this point, poverty was primarily a local concern, but as the need for poverty relief began to overwhelm local resources, towns and counties looked to their state governments for assistance.⁵⁷ In response, states began implementing laws to deal with poor citizens through “indoor relief” or “poorhouses”⁵⁸ to go along with the basic “outdoor relief” provided (in a limited fashion) by the Poor Masters.⁵⁹ Another idea taken from the English Poor Laws, poorhouses (also known as almshouses or workhouses) required their inhabitants, more accurately described as inmates, to work as a form of punishment, moral training, education, and reform.⁶⁰ The first institution of its kind opened in Boston in 1740, and by 1884, there were roughly 600 poorhouses in the northern states.⁶¹

Poorhouses were not kind, generous places and their purpose was to deter people from requesting help, to control their movement, and confine them to one place.⁶² Illustrating this social

55. Quigley, *supra* note 36, at 153 (quoting PAUL TUTT STANFORD, *GOVERNMENT AND THE NEEDY: A STUDY OF PUBLIC ASSISTANCE IN NEW JERSEY* 32 (1941)).

56. See ROBERT W. KELSO, *THE HISTORY OF PUBLIC POOR RELIEF IN MASSACHUSETTS, 1620–1920*, at 107–12 (1922) (describing Massachusetts’s practice of auctioning poor individuals in groups for farms or large homes).

57. See Quigley, *supra* note 36, at 116 (describing the shift of policy on poverty from a local to a state concern).

58. See KATZ, *IN THE SHADOWS OF THE POORHOUSE*, *supra* note 47, at 15 (discussing how towns and cities varied between providing indoor and outdoor relief and how every poorhouse was slightly different).

59. See Crannell, *supra* note 4 (“When people fell upon hard times and members of their family, friends or members of their church congregations could not provide enough assistance to tide them over, they made application to an elected local official called the Overseer of the Poor.”).

60. See KATZ, *IN THE SHADOWS OF THE POORHOUSE*, note 47, at 14 (“At first, the colonies more or less copied the major features of English legislation . . . In America, as in England, poor relief was a local . . . responsibility assigned to overseers of the poor.”).

61. See PIVEN & CLOWARD, *supra* note 3, at 47 (“The first almshouse opened in Boston in 1740. By 1884, there were about six hundred in New England.”).

62. See KATZ, *IN THE SHADOWS OF THE POORHOUSE*, *supra* note 47, at 34 (“They existed to deter the impotent as well as able-bodied poor from seeking their

control, these poorhouse inmates often had to wear some form of identification, indicating their poor status to signal their shameful status.⁶³ For example, in Delaware, the state passed “An Act for the better relief of the poor,”⁶⁴ erecting poorhouses in each county, which were required to “fully employ such of them as are able to work.”⁶⁵ Every resident of the Delaware poorhouses were mandated to “wear on his or her left arm, made of red cloth, in Roman characters, the letters ‘PN’ for New-Castle county; ‘PK’ for Kent county; and ‘PS’ for Sussex county.”⁶⁶ Similarly, in Maryland, each inmate of a poorhouse was required to wear cloth badges of the letter “P” and the first letter of their county on their shoulder; failure to wear the badge subjected the offender to even further reduction of the relief they received at the poorhouse, as well as whippings or hard labor.⁶⁷

Institutionalization of poor people in the form of poorhouses eventually fell out of fashion in the early twentieth century, as government officials recognized that institutionalizing poor citizens did not reduce poverty, but instead, was an expensive and harmful practice.⁶⁸

2. Moralistic Campaigns to Improve Poor People: Nineteenth Century and Early Twentieth Century Poverty Policy

Rapid industrialization and urbanization characterized the late nineteenth and early twentieth centuries.⁶⁹ During this period

shelter.”).

63. See generally Act of Jan. 29, 1791, reprinted in 2 THE FIRST LAWS OF THE STATE OF DELAWARE, PART I 988 (John D. Cushing ed., 1981).

64. *Id.*

65. *Id.* at 993.

66. *Id.* at 998.

67. Act of 1768, ch. XXIX, § XX, reprinted in THE FIRST LAWS OF THE STATE OF MARYLAND 18 (John D. Cushing ed., 1981).

68. See Crannell, *supra* note 4 (“By mid-century, people were beginning to question the success of the poorhouse movement . . . They had proven to be much more expensive than had been anticipated. And they had not significantly reduced the numbers of the ‘unworthy poor’ nor eliminated the need for ‘outdoor relief.’”).

69. See Jonathan Rees, *Industrialization and Urbanization in the United States, 1880–1929*, OXFORD RES. ENCYCLOPEDIAS (July 2016), <http://americanhistory.oxfordre.com/view/10.1093/acrefore/9780199329175.001.0001/acrefore>

of rapid growth, the regulation of poverty shifted from laws and structures to control individuals and families in small communities, to regulating the mass movements of poor people across regions. As Professor John Iceland, former analyst for the U.S. Census Bureau recognized, American cities increased in population from about twenty percent of the total U.S. population to over fifty percent.⁷⁰ Poverty in these burgeoning cities was cruel and punishing. A nineteenth century writer, S. Humphreys Gurteen, described poor urban neighborhoods in 1882, as:

Large families huddled together in tenements and shanties which barely afford protection from wind and storm; dwellings where the laws of health are defied, where the most ordinary sanitary arrangements are unknown, and where 'boards of health' fail to penetrate; . . . human forms, even those of children, shivering in rags; hunger written upon care-worn faces; and despair everywhere triumphant.⁷¹

Demographically, although these "slum" districts portrayed an exceedingly grim picture, cities were not as segregated by class as they are currently, and poverty was actually more prevalent in rural areas, especially in the South.⁷² The pervasiveness and harshness of Southern poverty lead to further urban growth, as African Americans from the South moved north in search of better lives.⁷³

Sharecroppers, largely concentrated in southern and rural areas and who were predominantly Black, faced severe economic hardship.⁷⁴ African Americans suffered poverty in staggering rates, as they faced disenfranchisement (as they were barred by law or custom from full-time employment in various industries)

-9780199329175-e-327 ("Between 1880 and 1929, industrialization and urbanization expanded in the United States faster than ever before.") (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

70. ICELAND, *supra* note 39, at 16.

71. KATZ, IN THE SHADOWS OF THE POORHOUSE, *supra* note 47, at 76 (citing S. HUMPHREYS GURTEEN, A HANDBOOK OF CHARITY ORGANIZATION 38 (1882)).

72. See ICELAND, *supra* note 39, at 14–15 (comparing the poverty in cities and rural areas from the nineteenth century to the present).

73. See *id.* at 14–15 (describing the demographic effects of the unique form of poverty in the South).

74. See *id.* (identifying the demographics of those hit hardest by poverty in the South).

and the racial violence endemic during this time.⁷⁵ Looking for better economic prospects, African Americans began migrating in significant numbers to northern cities, where they were employed as laborers and domestic servants, but were provided little opportunity for education, training, and advancement.⁷⁶ Faced with discrimination, daunting systemic barriers, and cultural challenges in these cities, African Americans were disproportionately more likely to receive public assistance.⁷⁷ Between the legacy of slavery, increased police presence in the urban centers, and Jim Crow laws, the state continued its work in controlling the lives of African Americans.

With regard to gender, throughout the nineteenth century, mother-only families were consistently the largest group receiving government aid.⁷⁸ By 1922, forty-two states had adopted so-called mothers' pensions, and ten years later, ninety thousand families received mothers' pensions, amounting to a total expenditure of thirty-three million dollars.⁷⁹ With these benefits came a cost, and

75. See *id.* at 14–15 (giving examples of how “African Americans in particular continued to face a severely constrained labor market throughout the nineteenth century”).

76. See *id.* (“As the new system of Jim Crow, disfranchisement, and racial violence escalated during the late nineteenth century, southern Blacks began to migrate to northern cities in growing numbers.”); see also HANDLER & HASENFELD, *supra* note 37, at 26 (“As part of the dominant social and economic order, welfare policy has served the societal values of racial hostility, discrimination, subordination, and exclusion.”).

77. ICELAND, *supra* note 39, at 14. American sociologist and historian W. E. B. Du Bois conservatively estimated in a study that nine percent of Black families were very poor and another ten percent were “simply poor,” earning less than \$5 per week. See W. E. B. DUBOIS, *THE PHILADELPHIA NEGRO* 171 (1899).

78. See Joanne L. Goodwin, *Employable Mothers' and 'Suitable Work': A Re-Evaluation of Welfare and Wage-Earning for Women in the Twentieth-Century United States*, 29 J. SOC. HIST. 253, 254 (1995) (“Throughout the nineteenth century, two groups made up the largest number of poor relief recipients. Mother-only families were consistently the single largest group using both public and private agencies.”).

79. See Jonathan L. Hafetz, “A Man’s Home Is His Castle?”: *Reflections on the Home, the Family, and Privacy During the Late Nineteenth and Early Twentieth Centuries*, 8 WM. & MARY J. WOMEN & L. 175, 216 (2002) (“By 1922, forty-two states had adopted some form of mothers’ pensions. By 1931, 90,000 families received mothers’ pensions, amounting to a total expenditure of thirty-three million dollars.” (citing Ann Vandepol, *Dependent Children, Child Custody, and the Mothers’ Pensions: The Transformation of State-Family Relations in the Early 20th Century*, 29 SOC. PROBS. 227, 231 (1982))); see generally Mark H. Leff, *Consensus for Reform: The Mothers’ Pension Movement in the Progressive Era*, 47

that price was paid in privacy and lack of freedom.⁸⁰ This high degree of social control “beset mothers’ pensions programs.”⁸¹ As Professor Frank Munger eloquently wrote:

Poor women’s subordination through intrusive surveillance resonates with experiences widely shared among citizens of the welfare state. The women’s lives are extraordinarily stressful and difficult, and their well-being as well as that of their children is vulnerable beyond the experience of most of us. Yet they exemplify a universal, identity-shaping attribute of welfare state citizenship--subordination to the regimes of surveillance required in exchange for the very means to maintain an ordinary and secure life.⁸²

Such surveillance and control began with social service caseworkers, precursors to the modern social workers, whose jobs were to investigate “any and all facts as to personal or family history, which, taken together, indicate the nature of a given client’s difficulty and the means for [its] solution.”⁸³ The stated goal was for the caseworker to get to know and assist a family on a one-on-one basis, but instead, such home visits became a vehicle for “snooping” in order to “control the needy.”⁸⁴ For example, archival records from the New York Charity Organization Society (NYCOS) reflect caseworkers scrutinizing recipients for deceit, “extravagant” expenditures, claims of entitlement, and association with “male company.”⁸⁵

SOC. SERV. REV. 397, 410 (1973).

80. See Hafetz, *supra* note 79, at 220 (describing that to “qualify for a mothers’ pension award, applicants had to undergo time-consuming and often humiliating investigations”).

81. *Id.* at 217.

82. Frank Munger, *Poverty, Welfare, and the Affirmative State*, 37 L. & SOC’Y REV. 659, 661 (2003) (reviewing JOHN GILLIOM, *OVERSEERS OF THE POOR: SURVEILLANCE, RESISTANCE, AND THE LIMITS OF PRIVACY* (2001)).

83. JOHN H. EHRENREICH, *THE ALTRUISTIC IMAGINATION: A HISTORY OF SOCIAL WORK AND SOCIAL POLICY IN THE UNITED STATES* 64 (1985) (quoting Jonathan L. Hafetz, “A Man’s Home Is His Castle?”: *Reflections on the Home, the Family, and Privacy During the Late Nineteenth and Early Twentieth Centuries*, 8 WM. & MARY J. WOMEN & L. 175, 219 (2002)).

84. TRATTNER, *supra* note 38, at 204 (quoting Jonathan L. Hafetz, “A Man’s Home Is His Castle?”: *Reflections on the Home, the Family, and Privacy During the Late Nineteenth and Early Twentieth Centuries*, 8 WM. & MARY J. WOMEN & L. 175, 219 (2002)).

85. Hafetz, *supra* note 79, at 218–19 (quoting NYCOS Case No. 167944

3. *Regulating the Poor in the Mid-Twentieth Century: Addressing Social Unrest*

As economic growth marked the early twentieth century, standards of living rose. The per capita income in 1929 was one and a half times greater than it was in 1900.⁸⁶ Despite this boom, “a large part of the workforce, especially those in peripheral industries, remained vulnerable to periodic and often severe downturns in the economy.”⁸⁷ Vulnerable parties were made even more so by the collapse of the stock market in October 1929, and the resulting Great Depression.⁸⁸

During this period, the regulation of poverty shifted again to aim more specifically on averting social unrest. Poverty scholars Professors Frances Fox Piven and Richard A. Cloward were the first to develop a comprehensive theory as to how welfare policy is built to regulate the behaviors of poor people.⁸⁹ Originally published in 1971, *Regulating the Poor: The Functions of Public Welfare*⁹⁰ theorizes that public relief was expanded in order to avert civil disorder during economic downturns, but then later constricted to pressure those receiving benefits into the work force.⁹¹

According to Piven and Cloward, the crisis that was the Great Depression had three main elements.⁹² First was widespread destitution: a quarter of all adults were unemployed,⁹³ and millions of families were impoverished while only a fraction of them received relief of any kind.⁹⁴ In most communities, that aid

(1912); NYCOS Case No. 2910 (1910)).

86. ICELAND, *supra* note 39, at 16.

87. *Id.*

88. *See id.* (“The collapse of the stock market in October 1929 and the ensuing Great depression, which stretched throughout the 1930s brought economic hardship to nearly all corners of the county, through rural areas were often hit the hardest.”).

89. *See* PIVEN & CLOWARD, *supra* note 3, at xiii (overviewing Piven and Cloward’s basic theories on poverty and social unrest).

90. *Id.*

91. *See id.* (describing the basic principles of the book).

92. *See id.* at 66–67 (breaking down the crisis of the Great Depression into three major impacts and describing their effects).

93. *See id.* at 16 (“In 1933 a full quarter of the labor force was unemployed.”).

94. *See id.* at 66 (finding that four million received some sort of relief).

was only in the form of food—a necessary resource but one that was not fully responsive to the range of needs of the masses of people losing their homes and their farms. Illness and malnutrition increased in alarming rates.⁹⁵ One community council described their community as experiencing “slow starvation and the progressive disintegration of family life.”⁹⁶

Second, this grim destitution was compounded by the fiscal insolvency of localities across America.⁹⁷ Cities and towns were on the verge of bankruptcy brought about by the cost of providing relief services to their starving constituents.⁹⁸ Prior to receiving federal aid, many local governments had to either stop public services, stop paying their government employees, or default on their bonds.⁹⁹

Third, with these pressures mounting, the discontent of the populace grew. Economic distress resulted in unprecedented civil disarray; “the specter of cataclysmic disorder” loomed large.¹⁰⁰ Piven and Cloward describe “Communist-led rallies and marches in New York City [that] drew thousands of people”¹⁰¹ and episodes in which “[f]armers in Iowa overturned milk trucks in a desperate demand that the price they received at market cover at least their cost of production.”¹⁰² In Chicago, where half of working adults were unemployed, mass demonstrations led the Mayor to plead with the federal government not to send federal troops, but

95. *See id.* (citing the United Hospital Fund of New York City’s response to President Hoover’s statements on the improvement of public health).

96. *See id.* (citing the Philadelphia Community Council describing the crisis of a destitute nation).

97. *See id.* (“Compounding the calamity of mass destitution was the fiscal plight of localities; many had been brought to the verge of bankruptcy by relief costs.”).

98. *See id.* (describing actions cities were forced to take in the face of increasing relief costs).

99. *See id.* (“The City of Chicago, for example, owed its schoolteachers 20 million dollars in back pay.” (citing HARRY L. HOPKINS, SPENDING TO SAVE: THE COMPLETE STORY OF RELIEF 92–93 (1936))).

100. *Id.* at 67.

101. *Id.*

102. *See id.* (“By the summer of 1932, protests by farmers were escalating rapidly. To stem the fall in farm prices, some farmers organized strike actions to keep their products off the market. Trucks bound for market were blocked by spiked logs and threshing cables laid across roads.”).

instead, \$150 million for relief.¹⁰³ By early 1932, riots broke out in coal-mining communities of Kentucky.¹⁰⁴

“Taken together, these events signaled political disaffection on a scale unparalleled in the American experience.”¹⁰⁵ The mounting unrest threatened political instability and the federal government finally responded.¹⁰⁶ The Federal Emergency Relief Administration (FERA) broke with precedent and, for the first time, the federal government assumed responsibility for public relief.¹⁰⁷ Substantial federal funds were appropriated: half spent on matching state grants, and the remainder authorized by Congress for unencumbered grants to meet the needs of the most desperate.¹⁰⁸ For the first time, relief was directed not just to the “deserving” widows, veterans, and orphans, but to all needy unemployed persons and their dependents.”¹⁰⁹

While FERA was focused on reaching the most needy, many New Deal programs did not challenge, but instead worked within the prejudices and discrimination of the day.¹¹⁰ For example, the National Recovery Administration permitted racial differentials in wages, and the Tennessee Valley Authority refused to hire African Americans.¹¹¹ Because New Deal programs left African Americans

103. *See id.* (“In Chicago, where half the working force was unemployed and socialists and Communists were organizing mass demonstrations, the Mayor pleaded for the federal government to send 150 million dollars for relief immediately.”).

104. *See id.* at 67–68 (“By the spring of 1932, riots had broken out in the coal-mining areas of Kentucky, and the Administration was being warned of the imminent.”).

105. *Id.* at 68.

106. *See generally id.*

107. *See id.* at 74 (“The Federal Emergency Relief Administration (FERA) broke all precedents in American relief-giving.”).

108. *See id.* (“While half of these monies were to be spent through matching state grants, the federal administrator was authorized by Congress to use the remainder for unencumbered grants to states where the need was great.”).

109. *Id.*

110. *See IRA KATZNELSON, WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA* 17 (2006) (noting that “the wide array of significant and far-reaching public policies that were shaped and administered during the New Deal and Fair Deal era of the 1930s and 1940s were crafted and administered in a deeply discriminatory manner”).

111. *See PIVEN & CLOWARD, supra* note 3, at 76 (“The National Recovery Administration, seeking to placate organized employers and organized labor, permitted racial differentials in wages to be maintained. The Tennessee Valley

out of the recovery picture, FERA or direct relief was their sole remaining option: by 1935, thirty percent of the Black population ended up on the welfare rolls.¹¹²

The focus of the New Deal, however, was work stimulus.¹¹³ As Piven and Cloward recognized, no one at the time liked direct relief: “not the President who called for it, the Congress that legislated it, the administrators who operated it, the people who received it.”¹¹⁴ Piven and Cloward explain:

Direct relief was viewed as a temporary expedient, a way of maintaining a person’s body, but not his dignity; a way of keeping the populace from shattering in despair, discontent, and disorder, at least for a while, but not of renewing their pride, of bringing back a way of life. For their way of life had been anchored in the discipline of work, and so that discipline had to be restored.¹¹⁵

Accordingly, the focus at the time was to move quickly from direct relief to work relief.¹¹⁶ Through its New Deal work programs, the federal government became the employer of millions¹¹⁷ and “disorder, disarray, and panic that gripped the nation subsided.”¹¹⁸ In October 1934, President Roosevelt publicly stated for the first time that direct relief should be terminated: “Continued dependence upon relief induces a spiritual and moral disintegration fundamentally destructive to the national fiber.”¹¹⁹ The 1.5 million people receiving federal aid that could not work

Authority deferred to local prejudice by not hiring blacks.”).

112. *Id.* (citing ARTHUR M. SCHLESINGER, JR., *THE POLITICS OF UPHEAVAL: 1935-1936, THE AGE OF ROOSEVELT*, VOL. III 43 (1960)).

113. *See New Deal*, ENCYCLOPEDIA.COM (2003), <http://www.encyclopedia.com/history/united-states-and-canada/us-history/new-deal> (“With 13 million people, or one-quarter of the workforce, unemployed, and the local and private means relied upon to help the victims nearing collapse, the general public was ready for the torrent of legislation that flowed immediately from the White House and its congressional allies.”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

114. PIVEN & CLOWARD, *supra* note 3, at 80.

115. *Id.*

116. *See id.* (“From the very start of federal relief, there had been efforts to shift from direct relief to work relief.”).

117. *Id.* at 98.

118. *Id.*

119. *Id.* at 94.

due to age or ability were directed back to the states and localities for relief, just as the systems worked prior to the New Deal.¹²⁰ But those that could work, must, and the Works Progress Administration (WPA) provided subsidized jobs for one in four unemployed Americans.¹²¹ “By once more enmeshing people in the work role, the cornerstone of social control in any society, [the federal government] went far towards moderating civil disorder.”¹²²

According to Piven and Cloward, the cycle was complete: turbulence produced massive federal direct relief; direct relief was converted into work relief; once the turbulence dissipated a bit, work relief was cut back; and the unemployed were directed back to the states, which in turn reduced aid to the able-bodied in part or whole.¹²³ Of course, this cycle would repeat in the 1960s.¹²⁴

The 1960s was another era marked by civil disorder.¹²⁵ But its story must begin a decade or more back, with the continued modernization of Southern agriculture—the impact of which was felt most acutely by African Americans, who were first displaced from their agricultural homes in the South, and then faced enormous employment barriers and continued discrimination in cities across the nation.¹²⁶ Sociologists believe this combination led to substantial weakening of social controls and outbreaks of social disorder: “[f]or if unemployment and forced migration altered the geography of Black poverty, it also created a measure of Black power.”¹²⁷ “In the 1960s, the growing mass of Black poor in the cities emerged as a political force for the first time, both in the voting booths and in the streets.”¹²⁸

120. *See id.* (describing that under the Social Security Act “local relief costs for unemployables would be shared by the federal government”).

121. *Id.* at 97.

122. *Id.*

123. *See id.* at 117. (“Turbulence had produced a massive federal direct relief program direct relief had been converted into work relief; then work relief was cut back and the unemployed were thrown upon state and local agencies.”).

124. *See generally id.*

125. *See id.* at 227 (“In the 1960s, disorder worsened substantially.”).

126. *See id.* at 336 (“During the 1950’s, when the employment situation in Southern agriculture was rapidly worsening and migration was mounting.”).

127. *Id.* at 196.

128. *Id.*

The Civil Rights Movement—its marches, civil disobedience, and media coverage—drew attention to unconscionable inequities and civil unrest made governments uneasy. To address that unrest, and control the turbulent masses, public aid was liberalized. According to Piven and Cloward, it was not coincidence that what immediately preceded this civil unrest was unprecedented welfare enrollment.¹²⁹ Public relief in the form of Aid to Families with Dependent Children (AFDC) rose only seventeen percent, aiding 110,000 families, in the 1950s.¹³⁰ But from 1960 to 1969, roughly 800,000 additional families received AFDC—a 107 percent increase in less than ten years.¹³¹ This “welfare explosion” was striking because it happened all at once: seventy-one percent of the welfare increase took place in the four years after 1964.¹³²

As Piven and Cloward explained, the mounting social unrest of the 1950s and 1960s was the necessary and direct precursor to the welfare explosion.¹³³ They recognized that “the relationship between increasing Black power and the expanding welfare rolls is not altogether obvious.”¹³⁴ However, history revealed that economic disturbance that produce civil unrest led to liberalization of aid and relief.¹³⁵ Twenty years after World War II, with the rise of modernization and migration, unemployment grew and “mass disorder” began.¹³⁶ Only in the wake of this mass disorder, did the welfare rolls begin to explode in 1964.¹³⁷ “It was not until this mass of unintegrated people finally became turbulent that both local

129. *See id.* at 184 (detailing that “as costs rose, the relief system once again became a major public issue”).

130. *Id.* at 183.

131. *Id.*

132. *Id.* at 187.

133. *See id.* at 196 (expressing the idea that the relief system was a response to social unrest).

134. *See id.* at 197.

135. *See id.* at 196–98 (providing examples showing how increasing social unrest directly led to the increasing availability of welfare).

136. *See id.* at 198 (“After World War II produced mass disorder, and so the relief rolls did not rise appreciably until after 1964.”).

137. *See id.* at 196 (“71 per cent of the welfare rise in the 1960’s took place after 1964.”).

government and the federal government began to register and react to their presence.”¹³⁸

While some commentators of this time explain the welfare explosion as a result of continued migration and “the presumed deterioration of the ‘Negro family,’”¹³⁹ Piven and Cloward convincingly argue otherwise.¹⁴⁰ The counter theories depend on the flawed premise that welfare rolls increase when the pool of individuals eligible for relief grew.¹⁴¹ But the data did not support these assertions. If those theories fully explained the explosion, welfare increases would have occurred concurrently with the location and period of time where the pool of eligible persons grew, but Piven and Cloward empirically demonstrated the falsity of the hypothesis.¹⁴² Instead, the welfare explosion was a result of the government’s attempt to ease civil unrest and also the repetition of the historical cycle, which directed the unemployed back to the states, and reduced aid to the able-bodied.¹⁴³

4. “Ending Welfare as We Know It” a.k.a. “Making America Great Again”: Welfare Policy and Reform in the last half of the Twentieth Century

As the welfare rolls exploded, poverty and social welfare became an increasing topic of concern in American politics.¹⁴⁴ The

138. *Id.* at 198.

139. OFF. POL’Y, U.S. DEPT’ LABOR., THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION 14 (1965) (describing Black single-mother homes as hindering the progress of economic and political equality).

140. See PIVEN & CLOWARD, *supra* note 3, at 192–93 (arguing against the conclusion that the structure of Black families was responsible for the rise in welfare rolls).

141. See *id.* at 189 (“[T]he presumed deterioration of ‘the Negro family’ . . . [is] based on the extremely doubtful premise that the relief rolls automatically grow when the pool of people eligible for relief grows.”).

142. See generally *id.* at chapter 6.

143. See *id.* at 198 (“[W]e shall argue . . . that the contemporary relief explosion was a response to the civil disorder caused by rapid economic change . . .”).

144. See generally Jerry D. Marx, *American Social Policy in the 1960’s and 1970’s*, VCU SOC. WELFARE HIST. PROJECT, <https://socialwelfare.library.vcu.edu/war-on-poverty/american-social-policy-in-the-60s-and-70s/> (last visited on Nov. 22, 2017) (“Also, the Kennedy Administration increased federal funding to local welfare departments for casework, job training, and job placement through

Civil Rights Movement put economic injustice and racial prejudice in front of the American public.¹⁴⁵ President John F. Kennedy's campaign in West Virginia "opened his eyes" to white poverty, and *The Other America*,¹⁴⁶ written by Michael Harrington, received critical and popular acclaim.¹⁴⁷ The War on Poverty began in earnest following President Kennedy's assassination, with President Lyndon Johnson asking Kennedy's brother-in-law, R. Sargent Shriver, to spearhead the legislative movement.¹⁴⁸ Just six weeks later, in March 1964, a comprehensive bill was sent to Congress, and on August 20, President Johnson signed the Economic Opportunity Act into law, including a variety of programs that required significant time and resources to make operational.¹⁴⁹ Head Start, Legal Services Corporation, Job Corps, were all a part of the package, but it also included programs like the Social Security Act, which established Medicare and Medicaid.¹⁵⁰ The historic Civil Rights Act of 1964, Voting Rights Act of 1965, Fair Housing Act of 1968, and various community development programs were all part of the Great Society movement.¹⁵¹ It was a time of truly historic progress on civil rights and poverty alleviation.¹⁵²

As a result of these efforts, poverty rates were cut in half between 1959 and 1973.¹⁵³ While legislative action was part of the

passage in 1962 of the Public Welfare Amendments to the Social Security Act (also known as the 'Social Service Amendments'.") (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

145. See PETER EDELMAN, *SO RICH, SO POOR: WHY IT'S SO HARD TO END POVERTY IN AMERICA* 14 (2013) (explaining why income disparities are now greater than at any point since the Great Depression).

146. MICHAEL HARRINGTON, *THE OTHER AMERICA: POVERTY IN THE UNITED STATES* (1962).

147. See EDELMAN, *supra* note 145, at 14 ("John F. Kennedy's campaign in West Virginia is said to have opened his eye to white poverty, and Michael Harrington's now-classic *The Other America* captured a surprising degree of attention.").

148. *Id.* at 15.

149. *Id.*

150. *Id.* at 15–18.

151. *Id.* at 18.

152. See *id.* ("The 1960s were truly a historic decade of progress on civil rights and poverty.").

153. *Id.*

reduction, the liberalizing of welfare was a major factor.¹⁵⁴ In 1960, three million people were on the welfare rolls; in 1970, that number jumped to 8.5 million.¹⁵⁵ While benefits did not lift a family straight out of poverty, it supplemented where needed and contributed to the reduction of African American poverty, a group which had been systemically denied assistance.¹⁵⁶

With the welfare explosion came a significant backlash.¹⁵⁷ The backlash simmered with President Richard Nixon's "dog whistle" race-coded election strategy,¹⁵⁸ followed quickly by the 1972 Congressional debates to overhaul the "broken" welfare system.¹⁵⁹ It grew with President Ronald Regan's "welfare queen" rhetoric,¹⁶⁰ and flourished along with President George H.W. Bush's specter of "Willie Horton."¹⁶¹ The 1970s to 1990s can be characterized as a time of rising incarceration rates and welfare cutbacks.¹⁶² But this

154. See *id.* at 18–20 (describing the factors that contributed to the decreased poverty levels between 1959 and 1973).

155. *Id.* at 19.

156. See *id.* (explaining the effect on a group of Americans that disproportionately had been denied assistance over the years).

157. See generally EDELMAN, *supra* note 145, at 20 (explaining the "political backlash against welfare that brought the Reagan cuts of 1981").

158. See IAN HANEY LÓPEZ, *DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS* 23–27 (2014) (tracing how subtle racialized rhetoric creates enthusiasm for policies that harm the middle class).

159. See Kaaryn Gustafson, *The Criminalization of Poverty*, 99 J. CRIM. L. & CRIMINOLOGY 643, 654 (2009) ("In 1972, when President Richard Nixon was considering an overhaul of the welfare system, Senator Russell Long of Louisiana declared that 'the welfare system, as we know it today, is being manipulated and abused by malingerers, cheats and outright frauds.'" (citing RUSSELL B. LONG, S. COMM. ON FINANCE, 92D CONG., 2D SESS., WELFARE CHEATING (Comm. Print 1972))).

160. See Michele Estrin Gilman, *The Return of the Welfare Queen*, 22 AM. U.J. GENDER SOC. POL'Y & L. 247, 259 (2014) ("The attacks against welfare reached a frenzy in the 1980s, particularly when President Reagan famously attacked welfare recipients and Cadillac driving 'welfare queens.'").

161. See Anthony Cook, *The Ghosts of 1964: Race, Reagan, and the Neo-Conservative Backlash to the Civil Rights Movement*, 6 ALA. C.R. & C.L.L. REV. 81, 104 (2015) (referencing the inconsistencies and cynicism of H.W. Bush's exploitative campaign against Governor Dukakis (citing *George Bush and Willie Horton*, N.Y. TIMES (Nov. 4, 1988), <http://www.nytimes.com/1988/11/04/opinion/george-bush-and-willie-horton.html>)).

162. See SOSS ET AL., *supra* note 11, at 295 ("Mass incarceration, penal logics, and policing have become defining elements of poverty governance.").

anti-welfare rhetoric did not match the impact such programs had on the federal budget.¹⁶³ Although benefit programs never rose above one percent of the federal budget, “egged on by the multi-decade right-wing attack on welfare, voters were angry that a substantial number of individuals who could and should be working for a living, as they saw it, were getting something for nothing.”¹⁶⁴

Enter Governor Bill Clinton, who campaigned for the presidency with a promise to “end welfare as we know it.”¹⁶⁵ With the presidency won, and working cooperatively with Congressional Republicans, President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), its hallmarks being: replacing AFDC with Temporary Assistance to Needy Families (TANF); replacing cash assistance with block grants to states and granting states wide discretion in determining whom and how to provide assistance; implementing a five-year lifetime limit on the use of federal funds for a particular family; and, requiring half of welfare caseloads be enrolled in work programs, including sanctions for noncompliance.¹⁶⁶

This seismic shift in welfare policy was met with both optimism and skepticism along the political spectrum, mirroring the reaction of mainstream America.¹⁶⁷ Senator Bob Dole boasted, “[w]e are not only fixing welfare; we are revolutionizing it. We are

163. See EDELMAN, *supra* note 145, at 86 (“The election of Reagan brought leadership for the anti-welfare campaign to the White House. There were too many people on welfare, but was never a fiscal drain, it never amounted to more than 1 percent of the federal budget.”).

164. *Id.*

165. *Id.*; see also Jason DeParle, *From Pledge to Plan: The Campaign to End Welfare—A Special Report*, N.Y. TIMES (July 15, 1994), <http://www.nytimes.com/1994/07/15/us/pledge-plan-campaign-end-welfare-special-report-clinton-welfare-bill-long-stormy.html?pagewanted=all> (“And they said that only a bold break with the past would satisfy the President's famous pledge—not to reduce but to ‘end welfare as we know it.’”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

166. See *id.* at 87 (discussing the distinctive features of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996); see also Alana Semuels, *The End of Welfare as We Know It*, ATLANTIC (Apr. 1, 2016), <https://www.theatlantic.com/business/archive/2016/04/the-end-of-welfare-as-we-know-it/476322/> (describing key features of the Clinton era welfare reform) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

167. See generally R. Shep Melnick, *Federalism and the New Rights*, 14 YALE L. & POL'Y REV. 325, 347–48 (1996).

writing truly historic landmark legislation, legislation that ends--ends--a sixty-year entitlement program.”¹⁶⁸ In stark contrast, Senator Carol Moseley-Braun cast dire predictions that America was going “back to the days of street urchins and friendless foundlings and homeless half-orphans.”¹⁶⁹

The decade that followed the 1996 welfare reform was a period of sustained economic growth, which contributed to the number of individuals leaving public assistance: between 1996 and 2005, welfare rolls declined by about sixty percent.¹⁷⁰ Today, the number of those receiving public assistance is a fraction of what it was when the PRWORA was passed.¹⁷¹ But poverty persisted and “[a]lmost every state now serves a lower percentage of its poor families with children than it did under AFDC and pays a benefit that is less than its benefit in the early 1990s, which was in turn lower than it paid in the 1970s.”¹⁷² Those facing barriers to work—the disabled, aged, single parents of young children—were left without much of a safety net.¹⁷³

Welfare reform stressed the moral dignity of work as “workfare” became the new norm.¹⁷⁴ Welfare offices became labor training organizations with the goal of training welfare recipients

168. *Id.* at 347 (quoting Remarks from the Floor, 53 CONG. Q. WKLY. REP. 2909 (1995)).

169. *Id.* at 347–48.

170. THE BROOKINGS INSTITUTION, TESTIMONY OF RON HASKINS 1 (July 19, 2006), <https://www.brookings.edu/wp-content/uploads/2016/06/20060719.pdf> (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

171. See EDELMAN, *supra* note 145, at 154 (discussing how people that left welfare rolls during the change did not go on to secure alternative forms of support).

172. See *id.* at 90.

173. See *id.* at 131, 139–42 (describing the groups that tend to fall through the welfare safety net).

174. See Elizabeth G. Patterson, *Mission Dissonance in the TANF Program: Of Work, Self-Sufficiency, Reciprocity, and the Work Participation Rate*, 6 HARV. L. & POL’Y REV. 369, 374 (2012) (identifying relief programs that require recipients to perform work in exchange for aid as workfare programs); see also Julie A. Nice, *Forty Years of Welfare Policy Experimentation: No Acres, No Mules, No Politics, No Rights*, 4 NW. J. L. & SOC. POL’Y 1, 10 (2009) (describing the added insult of increased surveillance of recipients in the new workfare regime); see also Cynthia A. Bailey, *Workfare and Involuntary Servitude—What You Wanted to Know But Were Too Afraid to Ask*, 15 B.C. THIRD WORLD L.J. 285, 318 (1995) (comparing working in certain industries peonage).

into becoming competent worker citizens.¹⁷⁵ Poor people were actively and affirmatively pressed into work as welfare sites became low-wage work sites.¹⁷⁶ With the purported goal of helping recipients find work and thus begin their pathway out of poverty, aid was structured in a way to make it worse than the worst possible job.¹⁷⁷

In this way, current welfare programs push poor people into low-paying, dead-end jobs that put them at the mercy of corporate employers.¹⁷⁸ The state then becomes complicit in the shift to private regulation of poverty.

B. The Social Control of Poor People: Disciplining the Poor and How Neoliberal Paternalism Got Us Here

Prior eras of poverty governance reflect a sustained government effort to both minimize social unrest and optimize the labor of poor people at the lowest public cost.¹⁷⁹ The poverty-focused social policies of the last fifty years (the “post-civil rights era”) are designed to further social control of poor people, as government policies establish an increasing authoritative and supervisory role of the state over the lives of poor people.¹⁸⁰

Poverty policy develops alongside broader political agendas.¹⁸¹ Professors Joe Soss, Richard C. Fording, and Sanford F. Schram, social science academics, contextualize poverty governance within

175. See SOSS ET AL., *supra* note 11, at 50 (discussing a business mentality that doubly imposes directive and supervisory forms of market discipline onto governing authorities and poor people alike).

176. See Ahmed A. White, *Capitalism, Social Marginality, and the Rule of Law's Uncertain Fate in Modern Society*, 37 ARIZ. ST. L.J. 759, 783–84 (2005) (examining welfare as a form of social control).

177. See *id.* at 784 (describing the program's dehumanizing effects).

178. See *id.* (recognizing that recipients avoid destitution only by submitting to an exploitive labor market).

179. See *id.* at 781–84 (detailing the relationship between social control and capitalism).

180. See *id.* at 782–83 (discussing the state's role in shaping social control through poverty policy).

181. See SOSS ET AL., *supra* note 11, at 19 (“The ambitious new schemes devised for the poor have reflected broader societal agendas; their success can be traced to larger changes in political mobilization and the organization of American politics.”).

the broader political sphere of the times in their book, *Disciplining the Poor: Neoliberal Paternalism and the Persistent Power of Race*.¹⁸² *Disciplining the Poor* persuasively builds on Piven and Clowards' work by studying the impact of welfare policy on labor markets.¹⁸³ Soss, Fording, and Schram's studies provide evidence that welfare programs operate as "derivative institutions" shaped by pressures from "the polity and market."¹⁸⁴ Specifically relevant to the arguments advanced by this Article, Soss, Fording, and Schram clarify the political rationality underpinning poverty policy by identifying and evaluating the themes of neoliberalism and paternalism inherent to the development of these government programs.¹⁸⁵

Neoliberalism, according to these authors, "is an intellectual and political movement that emerged in the late twentieth century to advance a radical market-centered agenda."¹⁸⁶ Like classical liberalism, its hallmarks are prizing the "possessive individual," and privileging "freedoms associated with private property, market relations, and trade across nations."¹⁸⁷ Neoliberalism goes further than classical liberalism in two distinct ways: (1) it privileges economic freedoms at the expense of political freedoms; and (2) it supports the state as a quasi-market operator by actively constructing and extending markets to new arenas.¹⁸⁸ Instead of letting markets successfully develop by leaving them alone and letting them follow a natural course, neoliberalism supports an economy that "must be directed, buttressed, and protected by law and policy as well as social norms designed to facilitate competition, free trade, and rational economic action"¹⁸⁹

182. *Id.*

183. *See id.* at 294–95 (explaining that the book's arguments "builds most directly on the scholarship of Frances Fox Piven and Richard Cloward (1971) and Loïc Wacquant (2009)").

184. *Id.* at 295.

185. *See id.* at 19 (describing the relationship between poverty governance and political mobilization).

186. *Id.* at 20.

187. *Id.*

188. *See id.* at 20–21 (identifying the fundamental differences between neoliberalism and classic liberalism).

189. *Id.* at 21 (citing Wendy Brown, *Neoliberalism and the End of Liberal Democracy*, 7 *Theory & Event* 2, *3 (2003)).

Pursuant to neoliberalism ideals, citizens are reimagined as primarily functioning as consumers, workers, and taxpaying customers of the state.¹⁹⁰ The epitome is a “competent and self-reliant market actor—working, investing, choosing, and assessing returns . . .”¹⁹¹ In stark contrast, the “bad” citizen makes poor personal life decisions, and it is the task of the state to bring discipline to these lives of these individuals in order to effectuate their participation in the economy.¹⁹²

Soss, Fording, and Schram link this neoliberal turn with the rise of a new paternalism, where the state is the authoritative “father” figure, using its legitimate authority to direct and supervise the subordinate.¹⁹³ In contrast to classical liberalism, new paternalism interrupts individual liberty, but for the good of the political order.¹⁹⁴ Harkening back to the Poor Masters of yesteryear, new paternalism emphasizes “civic obligations as a justification for enforcing behavioral expectations.”¹⁹⁵ But unlike the colonial era, this new paternalism “is a project of civic incorporation that aims to draw its targets toward full citizenship.”¹⁹⁶ The government only gives social rights as an extension of social obligations:

[Paternalism] focuses on segments of the poor who are identified as being too irresponsible ‘to merit the esteem of others [or make] a community of equal citizens imaginable—people such as ‘the homeless, criminals, drug addicts, deadbeat dads, unmarried teenage mothers, and single mothers claiming welfare-benefits who have by their behavior indicated that they

190. *See id.* at 22 (explaining that a “democratic citizen, positions as one who must act in concert with others to achieve preferred outcomes, is redefined as a consumer, worker, and taxpaying customer of the state”).

191. *Id.*

192. *See id.* at 22–23 (describing the neoliberal view that it is the state’s obligation to correct the behavior of citizens that lack self-discipline).

193. *See id.* at 23–24 (relating the state to a father and discussing a father’s duties to a child and a father’s responsibilities to “help her or him to flourish” even if it entails punishing a child).

194. *See id.* at 24 (explaining how “liberal political thinkers have consistently viewed paternalism as a violation of individual liberty that can be justified only in exceptional cases”).

195. *Id.* at 25.

196. *Id.*

do not display the minimal level of self-control expected of decent citizens.¹⁹⁷

Neoliberalism and paternalism, as Soss, Fording, and Schram explain, combine in modern poverty governance to manage poor people.¹⁹⁸ Under this combined view, the state must regulate the poor in a way that brings discipline to the lives of impoverished people so that they can become what they were meant to be: competent actors in the marketplace.¹⁹⁹ Together, these concepts support tailored, local forms of supervision (paternalism) in order to set the groundwork for greater innovation and competition (neoliberalism).²⁰⁰ They converge also to support a knowledge-gathering function of the state that involves greater surveillance, documentation, and reporting of poor people's lives.²⁰¹

Importantly, Soss, Fording, and Schram recognize neoliberal paternalism as the driving force behind a government effort to ensure that poor people are available to employers on terms set by the market for low-skilled labor.²⁰² Welfare programs are structured as institutions to serve labor markets with neoliberalism "blurr[ing] the boundary between the two, making welfare offices into helpmates for the labor market."²⁰³ The authors explain:

When adults, mostly single mothers, apply for public aid today, they enter an arena that is organized to serve employers: Its purpose is to groom clients for employment, offer them up for hire, and press them into available jobs Work activities in the TANF program function today as just one element of a

197. *Id.* (citing James Q. Wilson, *Paternalism, Democracy, and Bureaucracy*, in *THE NEW PATERNALISM: SUPERVISORY APPROACHES TO POVERTY* 340–41 (Lawrence M. Mead ed., 1997)).

198. *See id.* ("The poor are subjected to directive and supervisory governance not just for their own good, but equally for the good of society and democracy.").

199. *See id.* at 27 (explaining that neoliberalism and paternalism define a strong state-led effort to discipline the lives of poor citizens for their own good and that of society).

200. *See id.* (discussing how paternalism and neoliberalism converge in modern poverty governance).

201. *See id.* (articulating the profiling of poor peoples' lives).

202. *See id.* (describing how neoliberalism and paternalism converge in an agenda for poverty governance).

203. *Id.* at 46.

broader regime of classes, incentives, penalties, and supports designed to create more attractive and compliant workers.²⁰⁴

Welfare programs thus work in tandem with low-wage employers towards an increasing commodification of low-wage labor.²⁰⁵ They come together to enhance and cultivate labor pools for low-wage employers as the state strives to make “competent and compliant worker-citizens.”²⁰⁶ But as seen in the next section, a system where poverty regulation pushes poor people into low-wage jobs but asks nothing in return from the employers it serves results in the privatization of the social control of the poor. In doing so, the social control of poor people become the province of low-wage employers, transforming them into corporate masters.

III. Today’s Low-Wage Workers Serving the Corporate Master

*A. What Low-Wage Work Is Today*²⁰⁷

Paid work looks very different today from how it did even just a few decades ago.²⁰⁸ From remote work to 24/7 accessibility, technological advances and market forces shape how we work in ways that were inconceivable fifty years ago.²⁰⁹ The work of low-wage jobs has also changed over the last decades; manufacturing

204. *Id.*

205. *See id.* (explaining how the purpose of welfare programs is to hasten poor women into low-wage jobs).

206. *Id.* at 297.

207. This section reflects ideas of the author pursued in other articles, including 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) [hereinafter Ruan, *Same Law, Different Day*]; Nantiya Ruan & Nancy Reichman, *Hours Equity Is the New Pay Equity*, 59 VILL. L. REV. 35 (2014) [hereinafter Ruan & Reichman, *Hours Equity*]; Charlotte Alexander, Anna Haley-Lock & Nantiya Ruan, *Stabilizing Low-Wage Work*, 50 Harv. C.R.-C.L. L. Rev. 1, 9 (2015) [hereinafter *Stabilizing Low-Wage Work*].

208. *See* Ruan, *Same Law, Different Day*, *supra* note 207, at 356 (“Paid work looks very different today from how it did thirty years ago.”).

209. *See generally id.* at 362 (“As technology evolves, its advancement challenges courts as they attempt to apply long-standing legal doctrines to modern workplaces. Emerging technological advances, such as laptops, smartphones, and Internet-capable devices, have become relatively inexpensive investments for companies that want their workers available and accessible to work around the clock.”).

jobs have moved overseas while America needs more workers in healthcare, childcare, retail, building services, construction, and hospitality.²¹⁰ Typically, employers in these industries offer fewer benefits and too often cut costs by exploiting its workforce.²¹¹

As the U.S. Department of Labor's (DOL) Bureau of Labor Statistics recognizes, "low-wage jobs have undergone marked growth as a proportion of the U.S. labor market."²¹² Low-wage jobs include: "food service; housekeeping; low-level healthcare positions, such as nursing assistants; and low-level retail positions, such as cashiers."²¹³ While there is no one agreed upon definition of low-wage work, the DOL's calculation considers the threshold at which wages lift workers out of poverty.²¹⁴ Using that

210. See Catherine Ruckelshaus, *Labor's Wage War*, 35 FORDHAM URB. L.J. 373, 374 (2008) ("As we lose manufacturing jobs to overseas markets, the jobs left behind—health care, child care, retail, building services, construction, and hospitality—are not good jobs.").

211. See *id.* at 379 (explaining how outsourcing workers through subcontracting allows companies to "dodge responsibility" for wages and overtime).

212. Vincent Fusaro & H. Shafer, *How Should We Define "Low-Wage" Work? An Analysis Using the Current Population Survey*, MONTHLY LAB. REV. 2 (U.S. Bureau of Lab. Stat., Oct. 2016), <https://www.bls.gov/opub/mlr/2016/article/pdf/how-should-we-define-low-wage-work.pdf> (citing David H. Autor & David Dorn, *The Growth of Low-Skill Service Jobs and the Polarization of the US Labor Market*, 103 AM. ECON. REV. 1553, 1553–97 (2013); Sheldon Danziger & David Ratner, *Labor Market Outcomes and the Transition to Adulthood*, 20 FUTURE OF CHILD 138, 138–55 (2010)) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

213. *Id.*

214. See *id.* at 1 ("Low-wage work is a central concept in considerable research, yet it lacks an agreed-upon definition."). The DOL defines low-wage work using:

[T]hree different hourly wage cutoffs based on the federal poverty guidelines: a wage lifting a family of two (one adult and one child) above the official poverty threshold, a wage lifting a family of three (one adult and two children) above the threshold, and a wage bringing a family of three to 125 percent of the threshold. For the year 2013, these cutoffs are associated with wages of \$9.25 per hour, \$10.75 per hour, and \$13.50 per hour. These wage levels are the basis for determining, both cross-sectionally and longitudinally, the prevalence of low-wage work within the larger workforce, defined here as all wage and salary workers. The cutoffs are also used to define three mutually exclusive categories of low-wage workers: those paid \$9.25 per hour or less; those paid \$9.26 per hour, up to \$10.75 per hour; and those paid \$10.76 per hour, up to \$13.50 per hour (inclusive). The discrete categories allow us to identify how the characteristics of low-wage

measuring tool, the U.S. government found that close to thirty percent of the workforce are low-wage workers.²¹⁵ These workers make on average between \$9.25 per hour (for a household of two) and \$13.50 per hour (for a household of four).²¹⁶

Many low-wage workers are hourly employees, and the number of hours they receive from their employers is key to their self-sufficiency.²¹⁷ In low-wage work, the high number of part-time workers is striking: between thirty-two and fifty-two percent of low-wage workers work part-time, defined by the DOL as less than thirty-five hours of work per week.²¹⁸ Many of these part-time workers desire full-time work, but are unable to find such work, and thus are relegated to part time labor by default.²¹⁹ Moreover, the number of part-time workers has steadily increased over the last decade, with involuntary part-time workers (those forced to downgrade from full time to part time when they lose their jobs) numbering 5.6 million, and the total number of part-time workers roughly 26.3 million.²²⁰

This section analyzes the features and vulnerabilities of low-wage workers by noting three characteristics of their work

workers change under each possible cutoff.

Id. at 3–4 (citations omitted).

215. *See id.* at 4 (explaining that 29.54 percent of the 36 million workers are low-wage).

216. *See id.* at Table 1 (providing data on the percentage and population count of low-wage workers among all age and salary workers ages eighteen to sixty-four).

217. *See* Pamela Loprest et al., *Who Are Low-Wage Workers?*, U.S. DEPT HEALTH & HUM. SERV. (Feb. 28, 2009), <https://aspe.hhs.gov/basic-report/who-are-low-wage-workers> (“But much of this employment is in the low-wage labor market. As such, it is of great interest to policy makers to understand better the low-wage labor market and the factors that help low-wage workers attain higher wages and become self-sufficient.”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

218. *See* Fusaro & Shaefer, *supra* note 212, at 7 (explaining the statistics and reasons behind low-wage workers being employed in part time work).

219. *See id.* (“Many of these part-time workers are in such status involuntarily, desiring full-time work but not working full time (in the CPS, these workers are coded as ‘working part time for economic reasons’).”).

220. *See Table A-8: Employed Persons by Class of Worker and Part-Time Status*, U.S. BUREAU OF LAB. STAT., <https://www.bls.gov/news.release/empsit.t08.htm> (last modified Oct. 6, 2017) (providing statistics on class of worker and part-time status) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

experiences: the precarious nature of low-wage work; the unpredictability of low-wage jobs; and the failure to be self-sufficient with low-wage jobs.

1. Low-Wage Work is Precarious

Today's workforce is filled with contingent workers who provide work other than on a long-term, full-time basis.²²¹ The contingent workforce includes contract workers, independent contractors, temporary workers, and part-time workers.²²² Recent research indicates that, over the last ten years, the number of workers employed in these types of alternative work arrangements has increased in the U.S. by more than sixty-six percent.²²³ Other research suggests that the contingent workforce is likely to capture fifty percent of the entire workforce by 2020.²²⁴ The U.S. General Accounting Office issued a report finding that while contingent workers were a growing sector of the working population, their

221. See James E. Holloway, *A Primer on Employment Policy for Contingent Workforce: Less Employment Regulation Through Fewer Employer-Employee Relations*, 20 T. MARSHALL L. REV. 27, 33 (1994) ("Contingent work is not traditional, secure, long-term employment. Much contingent work consists of short durations, fewer hours, less security and employment relationships that have fewer long-term employment commitments.").

222. See *id.* at 29 (describing factors to be considered in defining contingent work).

223. See Lawrence F. Katz & Alan B. Krueger, *The Rise and Nature of Alternative Work Arrangements in the United States, 1995–2015*, at 8 (2016), https://krueger.princeton.edu/sites/default/files/akrueger/files/katz_krueger_cws_-_march_29_20165.pdf (providing statistics on the increase in alternative work arrangements) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

224. See Christopher J. Dwyer, *The State of Contingent Workforce Management 2015-2016: The Future of Work is Here* 36 (Ardent Partners, 2015) http://resources.fieldglass.com/rs/655-SDM567/images/Ardent_Partners_The_State_of_CWM_2015_Fieldglass.pdf?mkt_tok=3RkMMJWWfF9wsRoiVKzLZKXo njHpfsX67%2BQqWq%2B1MI/0ER3fOvrPUfGjI4ES8RnI%2BSLDwEYGJlv6SgFTLXAMbNk17gIXRY%3D (explaining that the path to having a fifty percent contingent work force is in the near future) (on file with the Washington & Lee Journal of Civil Rights & Social Justice); see also INTUIT, INTUIT 2020 REPORT: TWENTY TRENDS THAT WILL SHAPE THE NEXT DECADE 21 (Oct. 2010), http://http-download.intuit.com/http.intuit/CMO/intuit/futureofsmallbusiness/intuit_2020_report.pdf ("In the U.S. alone, contingent workers will exceed 40 percent of the workforce by 2020.") (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

income lagged behind the rest of the workforce.²²⁵ These workers are at the mercy of their supervisors regarding the amount, type, and future of their work.²²⁶

Many employers have converted what were formerly full-time positions into either part-time, temporary, or contract jobs to save on costs, while others outsource these positions to third-party contractors (“temp” agencies).²²⁷ These jobs offer, typically, lower wages without benefits, including lack of health insurance, pensions, and job security.²²⁸ Contingent workers are less expensive for employers, as they are often paid less than full time workers, do not receive the same benefits of full time workers, and the employer only pays for the labor it needs.²²⁹

What contingent workers have in common is their job insecurity.²³⁰ While work in the mid-twentieth century was generally described as long-term with security, the work of the twenty-first century is shaping up to be one of “on demand” work in the “gig” economy.²³¹ The precarious nature of their work leaves them vulnerable to workplace exploitation for fear of losing the

225. See U.S. GENERAL ACCT. OFF., *Contingent Workers: Income and Benefits Lag Behind Those of Rest of Workforce* 10 (2000) (explaining that “workers in most of the categories that could be considered part of the contingent workforce share a common characteristic: they are more likely to have low incomes than similar workers in traditional full-time work arrangements”).

226. See generally *id.* at 8 (explaining how the employer oversees decisions regarding what benefits their employers receive).

227. See Vicki Schultz, *Life’s Work*, 100 COLUM. L. REV. 1881, 1925 (2000) (discussing how companies are turning to various forms of nonstandard contingent work (citing LAWRENCE MISHLE ET AL., *THE STATE OF WORKING AMERICA*, 1998–99, at 8 (1999))).

228. See *id.* (articulating nonstandard contingent job benefits).

229. See Richard S. Belous, *The Rise of the Contingent Work Force: The Key Challenges and Opportunities*, 52 WASH. & LEE L. REV. 863, 873 (1995) (explaining the benefits employers receive from contingent work systems).

230. See Peggie R. Smith, *Contingent Workers: Lesson 5: Proceedings of the 2001 Annual Meeting of the Association of American Law Schools Section on Labor Relations and Employment Law*, 5 EMP. RTS. & EMP. POL’Y J. 661, 661–62 (2001) (“The Department of Labor . . . regards a low degree of job security as the hallmark of contingency and classifies contingent workers as individuals who do not have an explicit or an implicit contract of employment for an ongoing basis.” (citing Anne E. Polivka & Thomas Nardone, *On the Definition of Contingent Work*, 112 MONTHLY LAB. REV., 9, 10 (1991))).

231. See Orly Lobel, *The Gig Economy & the Future of Employment and Labor Law*, 51 U.S.F. L. REV. 51 (2017) (providing background on the rise of the gig economy).

“gig.”²³² “The [g]ig [e]conomy emerged in a perfect storm of several interrelated developments. Advances in digital technologies, the widespread availability of handheld devices, and ever-increasing high-speed connectivity have combined with the realities presented by several cycles of economic downturn, shifts in lifestyle, and generational preferences.”²³³ The gig economy describes a way of work, rather than a type of work. A gig is “a single project or task for which a worker is hired.”²³⁴ One survey estimates that twenty to thirty percent of today’s workers participate in the gig economy, with almost half of those relying upon gig work as their primary source of income.²³⁵

In, and out of, the gig economy, contingent work includes workers who are hired as temporary from the outset, and therefore more vulnerable than their counterparts.²³⁶ Outsourcing workers to third-party contractors or “subcontracting” parties allows companies to argue that it is the intermediary “temp agency” or “subcontractor” who is the sole employer on the hook for wage violations, such as unpaid minimum wage or overtime.²³⁷ These agencies are often unstable enterprises without the deep pockets to pay for back wages.²³⁸ Lacking a legal basis for establishing that

232. *See id.* at 52 (describing the legal issues that come with a gig economy).

233. *Id.*

234. Elka Torpey & Andrew Hogan, *Working in a Gig Economy*, U.S. BUREAU OF LAB. STAT. 1 (May 2016), <https://www.bls.gov/careeroutlook/2016/article/pdf/what-is-the-gig-economy.pdf> (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

235. *See* JAMES MANYIKA ET AL., *INDEPENDENT WORK: CHOICE, NECESSITY, AND THE GIG ECONOMY* 1 (McKinsey & Co. eds., Oct. 2016) (“[S]ome 20 to 30 percent of the working-age population in the United States and the EU-15 countries are engaged in some form of independent earning today. More than half of them use independent work to supplement their income rather than earning their primary living from it.”).

236. *See id.* at 51 (“There is growing concern that the expansion of temporary work is simply leading to the proliferation of low-wage, insecure jobs.”).

237. *See* Ruckelshaus, *supra* note 210, at 379 (explaining how classifying workers as independent contractors make it more difficult to enforce labor laws).

238. *See* Bruce Goldstein et al., *Enforcing Fair Labor Standards in the Modern American Sweatshop: Rediscovering the Statutory Definition of Employment*, 46 UCLA L. REV. 983, 995 (1999) (providing examples of real-life situations where contracting agencies lacked the ability to pay); *see also* Reyes v. Remington Hybrid Seed Co., 495 F.3d 403, 405 (7th Cir. 2007) (holding under the Fair Labor Standards Act that the company benefiting from the contract work as well as the recruiting company are joint employers).

temp agencies are joint employers with the companies who primarily benefit from the labor they provide, contingent workers can be unsuccessful from recovering unpaid wages.²³⁹

The increase in America's contingent workforce contributes to the continued wage gap between men and women,²⁴⁰ and between white workers and workers of color.²⁴¹ While "[b]oth men and women in all types of nonstandard work (except contracting) are more likely to receive poverty-level hourly wages than workers with similar personal and job characteristics employed in regular full-time jobs,"²⁴² it is women, of all races, and minority men who occupy the lowest-paying contingent jobs.²⁴³

Lastly, these precarious jobs are also disproportionately filled by immigrant labor, many unauthorized to work, who have continued to look for work in the U.S. and fill the need to staff these jobs.²⁴⁴ Near the end of the 1980s, there were an estimated four million undocumented persons present in the U.S.; roughly two decades later, there were approximately twelve million undocumented immigrants.²⁴⁵ The workforce participation rates

239. See, e.g., *Ansoumana v. Gristede's Operating Corp.*, 255 F. Supp. 2d 184, 186 (S.D.N.Y. 2003) (finding that both the temp agency and the company who benefited from the contract worker were joint and severally obligated for the underpayment of minimum wage and overtime owed to the contract workers).

240. See Ruan & Reichman, *Hours Equity*, *supra* note 207, at n.67 (explaining how part-time works contributes to pay inequality); see also Martina Morris & Bruce Western, *Inequality in Earnings at the Close of the Twentieth Century*, 25 ANN. REV. SOCIOLOGY 623, 627–28, 640–41 (1999) (analyzing earnings trends in the twentieth century).

241. See Fusaro & Shaefer, *supra* note 212, at 5 (noting a majority (50.82 percent) of workers in the lowest category of low-wage workers are non-White).

242. Schultz, *supra* note 227, at 1925.

243. *Id.* at 1925–26.

244. See Michael J. Wishnie, *Prohibiting the Employment of Unauthorized Immigrants: The Experiment Fails*, 2007 U. CHI. LEGAL F. 193, 206–07 (2007) (discussing the effects and consequences of the Immigration Reform and Control Act of 1986); see also Ruben J. Garcia, *Across the Borders: Immigrant Status and Identity in Law and Latcrit Theory*, 55 FLA. L. REV. 511, 516 (2003) ("Although workplace law barely recognizes them, immigrants form the backbone of our economy and are a substantial presence in U.S. unions.").

245. See Jeffrey S. Passel, *The Size and Characteristics of the Unauthorized Migrant Population in the United States*, PEW HISP. CTR. (Mar. 7, 2006), <http://www.pewhispanic.org/files/reports/61.pdf> (providing an overview of the unauthorized migrant population in the United States) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

for undocumented workers are high, particularly for men, yet they are mostly concentrated in low-wage jobs.²⁴⁶ The workplace abuses faced by immigrants are well documented and severe, including physical intimidation, harassment, and retaliation, as well as unpaid work.²⁴⁷

2. Low-Wage Work is Unpredictable.

Low-wage jobs often provide little predictability, which negatively impact hourly workers both financially and personally.²⁴⁸ As Professor Nancy Reichman and this author recognized in their collaborative work on “scheduling shortfalls”: “[l]ow-wage workers across a range of work settings rarely have the luxury to ‘choose’ a work schedule that suits their needs, and instead, find themselves hostage to the specific hours assigned by their employer supervisor.”²⁴⁹ One problem is rigid schedules, where supervisors dictate a set schedule with no control over the number of hours they work or their starting and stopping times, often with punitive consequences for failure to adhere to the scheduling demands.²⁵⁰ Rigid schedules make it extremely difficult for hourly workers to handle unexpected child care or

246. See *id.* at 9–10 (providing labor force characteristics).

247. See generally *Unintended Consequences: Limiting Workers’ Compensation Benefits for Undocumented Workers Exposes Workers to Greater Risks of Injury, Business to Greater Costs*, NAT’L EMP’T L. PROJECT 1 (Jan. 2011), <http://www.senate.michigan.gov/committees/files/2011-SCT-REFORMS-11-22-1-11.PDF> (describing the application of workers’ compensation law to undocumented workers) (on file with the Washington & Lee Journal of Civil Rights & Social Justice); see also Ruben J. Garcia, *Ghost Workers in an Interconnected World: Going Beyond the Dichotomies of Domestic Immigration and Labor Laws*, 36 U. MICH. J.L. REFORM 737, 753–54 (2003) (discussing the legal barriers preventing undocumented workers from unionizing or improving work conditions).

248. See Ruan & Reichman, *Hours Equity*, *supra* note 207, at 38 (explaining how employees are stuck with rigid schedules assigned by employers, thereby giving employees little time to arrange necessary care for their families).

249. *Id.* (citing Elaine McCrate, *Flexibility for Whom? Control over Work Schedule Variability in the US*, 18 FEMINIST ECON. 1, 39 (2012)).

250. See *id.* at 39 (“[R]esearch suggests that they face ‘repercussions in the form of reduced hours or being assigned undesirable shifts when they took advantage of policies allowing them to request scheduling preferences.’”).

transportation breakdowns.²⁵¹ This is especially true in today's corporate climate where low-wage, hourly employees rarely have access to leave policies that would allow flexibility for these types of contingencies.²⁵² In 2005, seventy-five percent of low-wage workers had no access to paid sick leave, and those who have paid leave may not be able to use it until they have worked for their employer for an extended period.²⁵³ Moreover, forty percent of low-wage workers reported having no paid sick days, vacation days, or personal days.²⁵⁴

But a second, pervasive scheduling problem that contributes to the unpredictability of low wage work is *variable* schedules: when hours are assigned with no advance notice to the worker; instead, they are expected to regularly check the ever-changing schedule or are "on call" and must wait to be contacted by their supervisors to come in at any time.²⁵⁵ Such variability wreaks havoc on a worker's ability to hold a second job (which is needed when wages are low and hours scarce), pursue education opportunities, or manage family responsibilities.²⁵⁶

251. See *id.* ("Rigid schedules do not allow workers to handle the unexpected, including sick children, babysitters who are late or fail to show up, or transportation malfunctions, without fear of losing their job.").

252. See *id.* at 38 ("Low-wage workers across a range of work settings rarely have the luxury to 'choose' a work schedule that suits their needs and, instead, find themselves hostage to the specific hours assigned by their employer supervisor.").

253. See Robert C. Bird, *Precarious Work: The Need for Flextime Employment Rights and Proposals for Reform*, 37 BERKELEY J. EMP. & LAB. L. 1, 5 (2016) ("In 2005, seventy-five percent of low-income workers had no access to paid sick leave."); see also Robin R. Runge, *Redefining Leave from Work*, 19 GEO. J. ON POVERTY L. & POL'Y 445, 451 (2012) ("In 2005, seventy-five percent of low-income workers had no access to aid sick leave and approximately forty percent of low-income working parents had no paid leave of any kind.").

254. Bird, *supra* note 253, at 5.

255. Françoise Carré & Chris Tilly, *America's Biggest Low-Wage Industry: Continuity and Change in Retail Jobs* 29 (Ctr. for Soc. Pol'y Publ'ns, Working Paper No. 2009-6, 2008); see Liz Watson & Jennifer E. Swanberg, *Flexible Workplace Solutions for Low-Wage Hourly Workers: A Framework for a National Conversation*, 3 AM. U. LAB. & EMP. L. F. 380, 406-07 (2013) (discussing statistics on employees with variable work schedules).

256. See Carré & Tilly, *supra* note 255, at 29 ("Scheduling issues, both the short weekly hours and the expectation of flexibility and availability for weekend and evening work, pose particular challenges for workers with family responsibilities.").

Scheduling shortfalls are increasingly common employer practices made possible with certain technological advances, such as scheduling software, 24/7 access on smartphones, and tracking software, which allows employers to monitor consumer demand as it relates to labor costs.²⁵⁷ Tracking software allows employers to track activities in fifteen-minute or fewer increments and to adjust staffing levels daily to respond “just-in-time.”²⁵⁸ For example, if a restaurant is slow on a particular day, the tracking software will alert the manager, who will send kitchen or wait staff home.²⁵⁹ As Professor Susan Lambert has studied, excess labor in the form of worker hours in retail or service industries pressures employers “to quickly adjust work hours to demand.”²⁶⁰ The shift to just-in-time scheduling and the hours instability it creates is most prevalent for workers in retail, where businesses are expected to be open most days and “nonstandard (and indeed variable) working hours are the norm.”²⁶¹

Such scheduling shortfalls have a disparate impact on female workers. A recent study by the Pew Research Center revealed that forty percent of all households with children under the age of eighteen include mothers who were either the sole or primary source of income for the family, compared to eleven percent in 1960.²⁶² Sixty-three percent of the so-called “breadwinner moms” were single mothers.²⁶³ Professors Budig and Hodges find the

257. See *Stabilizing Low-Wage Work*, *supra* note 207, at 9 (describing methods of customer demand tracking (citing Gary M. Thompson, *Labor Scheduling, Part 4: Controlling Workforce Schedules in Real Time*, 40 CORNELL HOTEL & RESTAURANT ADMIN. Q. 85, 86–95 (1999))).

258. *Id.*

259. See generally *Stabilizing Low-Wage Work*, *supra* note 207, at 9.

260. See Susan J. Lambert, *Passing the Buck: Labor Flexibility Practices that Transfer Risk onto Hourly Workers*, 61 HUM. REL. 1203, 1209 (2008) (suggesting managerial scheduling practices are a destabilizing risk to workers in hourly jobs).

261. See Francoise Carré & Chris Tilly, *Short Hours, Long Hours: Hour Levels and Trends in the Retail Industry in the United States, Canada, and Mexico* 2 (Upjohn Inst. for Emp’t Res., Working Paper No. 12-183, 2012) (distinguishing the retail sector as having a high rate of part-time employment).

262. Wendy Wang et al., *Breadwinner Moms*, PEW RES. CTR. 1 (May 29, 2013), http://assets.pewresearch.org/wpcontent/uploads/sites/3/2013/05/Breadwinner_moms_final.pdf (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

263. *Id.*

“motherhood penalty” to be largest among the lowest-wage workers, also explained, in part, by hours.²⁶⁴ As noted above, the number of part-time workers in the U.S. has steadily increased.²⁶⁵ Of those, two-thirds of part-time workers are women, and as the Congressional Joint Economic Committee has recognized, the gender pay gap is partly driven by the earning penalty for part-time work, which pays less per hour than equivalent work done by full-time workers.²⁶⁶ A U.S. Government Accountability Office (GAO) analysis of the gender pay gaps among low-wage workers found that while hourly wages were similar for men and women in 2009, the annual personal earnings of women were less than men, regardless of marital status or the presence of children in the household, in part because women worked fewer hours.²⁶⁷

Employers utilizing variable schedules are likely to argue that such unpredictability is the necessary analogue to “workplace flexibility” that part-time workers, especially working mothers, desire.²⁶⁸ But empirical data suggest otherwise. Professor Swanberg’s studies suggest that thirty-three percent of full-time and forty-three percent of part-time workers would like to work more hours.²⁶⁹ These workers work fewer hours either because they are not offered to them or they must turn them down because they cannot be planned for in advance.²⁷⁰ As Professors Susan Lambert and Elaine Waxman have noted, this flexibility can be

264. See Michelle J. Budig & Melissa J. Hodges, *Differences in Disadvantage: Variation in the Motherhood Penalty Across White Women’s Earnings Distribution*, 75 AM. SOC. REV. 705, 707 (2010) (“Differences in work hours and weeks worked per year will therefore account for a larger proportion of the motherhood wage gap at the lower end of the women’s earning distribution.”).

265. See Fusaro & Shaefer, *supra* note 212, at 5 (illustrating the consistent increase of low-wage work from 1990–2013).

266. See JOINT ECON. COMM., 111th Cong., THE EARNINGS PENALTY FOR PART-TIME WORK: AN OBSTACLE TO EQUAL PAY 3 (Comm. Print 2010) (“Evidence shows that part of the long-run earnings gap between men and women may be explained by the longer time that women . . . spend working part time.”).

267. See U.S. GOV’T ACCOUNTABILITY OFF., GAO-12-10, GENDER PAY DIFFERENCES: PROGRESS MADE, BUT WOMEN REMAIN OVERREPRESENTED AMONG LOW-WAGE WORKERS 24 (2011) (observing the considerable hour disparities between men and women and that many more women worked part-time than men).

268. See generally Watson & Swanberg, *supra* note 255, at 23.

269. *Id.*

270. See *id.* (interpreting common reasons to support proffered data).

extremely detrimental “[w]ithout control, variations in work hours are better characterized as introducing instability rather than flexibility into workers’ lives.”²⁷¹

These scheduling contingencies not only negatively impact a worker’s ability to coordinate the other important aspects of their lives; as described in the next section, they often lead to shortfalls in the number of hours she works, leading to significant hardships resulting from insufficient means.

3. *Low-Wage Work is Not Self-Sustaining*

Earning a wage that meets one’s needs was the backbone of the main federal wage and hour legislation, the Fair Labor Standards Act of 1938 (FLSA), passed over eighty years ago.²⁷² Part of the New Deal legislation outlined above, the FLSA had two purposes: addressing unemployment and job insecurity, while also protecting workers from chronic overwork.²⁷³ The legislature meant to spread work by employing more people working non-abusive hours. As President Roosevelt testified in support of the Act: “A self-supporting and self-respecting democracy can plead no . . . economic reason for chiseling workers’ wages or stretching workers’ hours.”²⁷⁴

271. *Stabilizing Low-Wage Work*, *supra* note 207, at 13 (quoting Susan J. Lambert & Elaine Waxman, *Organizational Stratification: Distributing Opportunities for Work-Life Balance*, in *WORK AND LIFE INTEGRATION: ORGANIZATION, CULTURAL, AND INDIVIDUAL PERSPECTIVES* 103, 115 (Ellen Ernst Kossek & Susan J. Lambert eds., 2005)).

272. See Fair Labor Standards Act of 1938, 29 U.S.C. § 206 (2016) (providing the minimum hourly wage employers are required to pay employees per hour).

273. See Scott Miller, *Revitalizing the FLSA*, 19 HOFSTRA LAB. & EMP. L.J. 1, 2–3 (2001) (“Workers desired more freedom (time) from their jobs for personal, home, community, and cultural life. They were also concerned about unemployment, arguing that employers should ‘spread the work’ by employing more people working shorter hours, rather than employing fewer people working longer hours.”).

274. Jonathan Grossman, *Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage*, U.S. DEPT. LABOR, <https://www.dol.gov/oasam/programs/history/flsa1938.htm> (last visited Nov. 22, 2017) (quoting FRANKLIN D. ROOSEVELT, *THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT* 209–14 (Random House, 1937)) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

The FLSA was designed to address those concerns by regulating both a minimum wage and overtime.²⁷⁵ First, it established a federal minimum wage “floor” meant to ensure that low-income workers earn sufficient wages. The minimum wage was intended to lift the earnings of workers by preventing market forces from driving down the wages of the least-educated and least-skilled workers in the labor force.²⁷⁶ In this, the FLSA was not successful.²⁷⁷ After compromises were made to enable passage, the floor set by Congress still constituted poverty wages.²⁷⁸ Moreover, the FLSA left millions of workers unprotected—including the most vulnerable and exploited.²⁷⁹ “The FLSA was politically crafted in such a way as to leave many workers out of its coverage, particularly women and African-American Southern workers by excluding from the statute’s definition of covered employee such occupations as agricultural workers, domestic workers and others.”²⁸⁰

275. See *Wages and Hours Worked: Minimum Wage and Overtime Pay*, U.S. DEP’T LABOR (Dec. 2016), <http://webapps.dol.gov/elaws/elg/minwage.htm> (“The Fair Labor Standards Act (FLSA or Act) is administered by the Wage and Hour Division (WHD). The Act establishes standards for minimum wages, overtime pay, recordkeeping, and child labor.”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

276. See William Quigley, *Full-Time Workers Should Not Be Poor: The Living Wage Movement*, 70 MISS. L.J. 889, 910 n.88 (2001) (“The Conference Committee Report on the FLSA pointed out that the legislation was needed because of ‘labor conditions detrimental to the maintenance of the minimum standards of living necessary for health, efficiency and general well-being.’” (quoting CONF. COMM. REP. NO. 2738, at 28 (1938))).

277. See *id.* at 911 (“The FLSA was politically crafted in such a way as to leave many workers out of its coverage, particularly women and African-American Southern workers by excluding from the statute’s definition of covered employee such occupations as agricultural workers, domestic workers and others.”).

278. Stephanie Wagner, *Big Box Living Wage Ordinances: Upholding Our Constitutive Commitment to A Remunerative Job*, 15 GEO. J. ON POVERTY L. & POL’Y 359, 369–70 (2008) (“In the end, coverage under the FLSA was greatly reduced such that it applied primarily to industrial laborers (generally white males) and the wage minimum that was ultimately passed in the final legislation was much lower than the promised living wage.”).

279. See Quigley, *supra* note 276, at 12 (“Another major deficiency was that the FLSA excluded millions of workers from its protection, many of whom needed the protection the most.”).

280. *Id.*

The value of the federal minimum wage has varied over time.²⁸¹ In the 1960s, using the minimum wage as a tool to alleviate poverty reflected the policy goal of the time.²⁸² The real value of the minimum wage reached its peak in 1968, but sharp declines followed:

In the 1980s, the real value of the minimum wage plummeted in response to a period of high inflation and an increasing federal debt and deficit. Currently, the real value of the minimum wage is thirty percent below its 1968 peak. Along with these changes in the real value of the minimum wage, the income of a full-time worker earning the minimum wage in relation to the poverty-threshold income has changed over time, with the income of a full-time worker earning the minimum wage decreasing in relation to the poverty-threshold income since 1968. Although a living wage provided through the FLSA has been a purported goal of the U.S. Congress ever since the FLSA was enacted, the minimum wage is not sufficient to keep a worker with a family above the poverty threshold.²⁸³

The second major policy goal of the FLSA was to address the “evils of overwork”²⁸⁴ by mandating premium overtime pay for work exceeding forty hours in a workweek.²⁸⁵ The law is meant to encourage spreading employment to more workers by placing financial pressure on employers and compensating workers for the burden of extra hours beyond the considered norm.²⁸⁶ In doing so, the FLSA exempted executive, administrative, and professional

281. See generally WILLIS J. NORDLUND, *The Quest for a Living Wage: The History of the Federal Minimum Wage Program* (1997).

282. See *id.* at 151 (“[T]he secretary argued that the minimum wage was one tool in the range of social policies to attach the problems of low wages and poverty.”).

283. Rachel Harvey, *Labor Law: Challenges to the Living Wage Movement: Obstacles in A Path to Economic Justice*, 14 U. FLA. J. L. & PUB. POL’Y 229, 241–42 (2003) (citations omitted) (citing ROBERT POLLIN & STEPHANIE LUCE, *THE LIVING WAGE: BUILDING A FAIR ECONOMY* 46 (1998)).

284. *Overnight Motor Transp. Co. v. Missel*, 316 U.S. 572, 577–78 (1942).

285. See 29 U.S.C. §§ 207, 213 (2012) (providing respectively for overtime pay and exemptions from minimum wage and overtime requirements for certain white-collar professions).

286. See Ruan, *Same Law, Different Day*, *supra* note 207, at 361 (“The FLSA’s overtime provisions were put into place to encourage spreading employment to more workers by placing financial pressure on employers and compensating workers for the burden of extra hours beyond the considered norm to keep at bay the ‘evil’ of ‘overwork.’”).

employees—employees who already enjoyed higher wages and benefits and required less protection than lower-wage workers.²⁸⁷

Today, the need to regulate overwhelming overtime workloads continues to be an important concern, as witnessed by the increasing number of wage and hour collective action lawsuits filed in the last twenty years.²⁸⁸ For hourly workers, premium overtime pay is an important part of one's take home pay for those that are given those valuable hours.²⁸⁹ However, for many hourly workers, "undertime," not overtime, is the growing concern."²⁹⁰

As addressed above, too many hourly workers are not getting the full-time hours they need to support themselves and the variability of schedules has negative financial impacts.²⁹¹ As currently structured, the FLSA fails to address this need because of its focus on compensation for "work performed" as opposed to addressing "work promised" or "work needed."²⁹²

287. See *id.* (identifying why Congress exempted certain categories of employees).

288. See Nantiya Ruan, *Facilitating Wage Theft: How Courts Use Procedural Rules to Undermine Substantive Rights of Low-Wage Workers*, 63 VAND. L. REV. 727, 735 (2010) ("Over 1,600 FLSA suits were filed in federal court in 1997. Ten years later, in 2007, the number of FLSA suits filed in federal court jumped to 7310. In just one year, from 2006 to 2007, the number of LKSA cases filed increased by 73 percent.").

289. See Ruan & Reichman, *Hours Equity*, *supra* note 207, at 51 (distinguishing between primary concerns of salaried workers and primary concerns of hourly workers regarding overtime).

290. *Id.*

291. See *id.* (explaining a failure exposed in the structure of the FLSA).

292. See *id.* at 51–52 (discussing how the FLSA currently "fails to address the 'hours' need" because it focuses on hours performed). Ruan and Reichman explain:

State laws go only part way in filling this gap in wage and hour protection. For hourly workers that are scheduled and report to work just to be summarily sent home, some states provide a minimum number of hours to be paid to those workers. While over a dozen states have such "reporting pay" statutes, most provide only minimum coverage (e.g., two hours at minimum wage) and cover a narrow worker population. Similarly, a smaller handful of states provide a minimum number of hours for workers who are not scheduled but called in to work during their "off days."

Id.

IV. Poverty Regulation Parallels: The Four Pillars of Social Control of Poor People

Upon review of the historic development of poverty governance and its role in the social control of poor people, four themes stand out. First, poor people have historically been under constant surveillance and treated as subordinate to their state master.²⁹³ This continues with how corporate masters monitor and invade the privacy of their worker servants.²⁹⁴ Second, poor people's time is undervalued and unappreciated first by the state and now by their low-wage employers. Corporate masters undervalue their worker servants time through unnecessarily restrictive scheduling practices.²⁹⁵ Third, poor people are provided a limited opportunity *to escape* their economic dependence. Low-wage servants are kept from escaping poverty through their low-wage status and lack of promotion opportunity.²⁹⁶ Fourth, poor people are robbed of dignity and kept subordinate by state action. Today, low-wage servants lack dignity in their work and face anxiety and depression in their relentless cycle of poverty.²⁹⁷ All four combine to exercise social control and minimize social unrest of poor citizens.

293. See generally Leo E. Strine, Jr., *A Job Is Not A Hobby: The Judicial Revival of Corporate Paternalism and Its Problematic Implications*, 41 J. CORP. L. 71 (2015).

294. See generally Kaveh Waddell, *Why Bosses Can Track Their Employees 24/7*, ATLANTIC (Jan. 6, 2017), <https://www.theatlantic.com/technology/archive/2017/01/employer-gps-tracking/512294/> (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

295. See generally Ruan & Reichman, *Hours Equity*, *supra* note 207.

296. See Harry J. Holzer, *Encouraging Job Advancement Among Low-Wage Workers: A New Approach*, BROOKINGS (May 1, 2004), <https://www.brookings.edu/research/encouraging-job-advancement-among-low-wage-workers-a-new-approach/> (discussing how very few low-wage workers have ever left the bottom quartile of firms and the majority of low-wage workers remain at the bottom) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

297. See *Why Low-Income and Food-Insecure People are Vulnerable to Poor Nutrition and Obesity*, FOOD RES. & ACTION CTR., <http://frac.org/obesity-health/low-income-food-insecure-people-vulnerable-poor-nutrition-obesity> (last visited Dec. 2, 2017) [hereinafter *Why Low-Income and Food-Insecure People are Vulnerable*] (“Members of low-income families, including children, may face high levels of stress and poor mental health (e.g., anxiety, depression) due to the financial and emotional pressures of food insecurity, low-wage work, lack of access to health care, inadequate transportation, poor housing, neighborhood violence, and other factors.”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

A. Constant Surveillance and Monitoring of Poor People's Lives

1. The Privacy Violations of Poor People on State Assistance.

Poor people's lives are not private.²⁹⁸ As they live their lives under constant public scrutiny, their lives are under the government's attempts to control their choices and behaviors.²⁹⁹ First, poor women routinely labor outside their own homes and inside the homes of families not their own, often as full-time domestic servants, where they have limited privacy and unsupervised time.³⁰⁰ Moreover, from the earliest years of our country, caseworkers or the equivalent intruded into the homes of poor families receiving "outside relief" as a condition of receiving aid.³⁰¹ Poor families were under scrutiny to live a "moral life," and little privacy was afforded to those receiving "inside relief" in poorhouses.³⁰² Poor Masters auctioned poor families to the lowest bidder in public open auctions in front of the entire the community, and kept track of the poor people's movements.³⁰³

These degradations continued under AFDC and later TANF.³⁰⁴ Under these programs, poor women and children have suffered unannounced home inspections by government officials, exhaustive questioning, and fingerprinting.³⁰⁵ Counties routinely

298. See generally Adam Liptak, *Full Constitutional Protection for Some, but No Privacy for the Pool*, N.Y. TIMES (July 16, 2007), <http://www.nytimes.com/2007/07/16/us/16bar.html> ("In San Diego, poor people who want public benefits must give up their privacy.") (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

299. See generally *id.*

300. See MIMI ABRAMOVITZ, *REGULATING THE LIVES OF WOMEN: SOCIAL WELFARE POLICY FROM COLONIAL TIMES TO THE PRESENT* 29 (1988) (distinguishing between the experiences of middle-class, white women and women living in poverty who are from different backgrounds).

301. See Michele Estrin Gilman, *Welfare, Privacy, and Feminism*, 39 U. BALT. L. F. 1, 6 n.30 (outlining the historical intrusions on poor women).

302. *Id.*

303. See ABRAMOVITZ, *supra* note 300, at 86 ("Like undeserving males, undeserving poor white women also were auctioned-off to the lowest town bidder, sent to work outside the home in a manufactory, or placed in the early poorhouse or workhouse.")

304. See Gilman, *supra* note 301, at 4–6 (assessing the various ways that TANF and AFDC invade privacy).

305. See *id.* at 6 n.30 (upholding San Diego's conditioning of welfare benefits on consent to suspicionless home visits (citing *San Diego v. Sanchez*, 464 F.3d 916

sent investigators into the homes of welfare applicants to verify eligibility information and the “investigators scour[ed] the premises, including closets, medicine cabinets, and laundry baskets, looking for proof of who lives in the home.”³⁰⁶

Throughout American history, poor women have also been closely monitored with regard to their sexuality. Beyond caseworkers looking for the presence of “stray men” in their homes, poor women receiving public aid are routinely required to answer intrusive questions about their child rearing and intimate relationships.³⁰⁷ Moreover, welfare policy also frequently imposed family caps,³⁰⁸ which typically prohibited cash benefit increases for children conceived while the mother was on welfare.³⁰⁹ Many localities offered birth control bonuses, which covered the cost of implanted, long-term contraceptive devices for welfare mothers, sometimes with an additional cash award.³¹⁰ In addition, many

(9th Cir. 2006)); see also Krystle Maki, *Neoliberal Deviants and Surveillance: Welfare Recipients Under the Watchful Eye of Ontario Works*, 9 (1/2) SURVEILLANCE & SOC'Y 47, 51 (2011) (“The use of surveillance by social services is not new and there have been a plethora of ways in which the state has surveilled recipients in the past from home visits by social workers and doctors, sexual regulation and case reviews.” (citing FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* (Vintage Books rev. ed. 1993) (1971))); see also Amy Mulzer, Note, *The Doorkeeper and the Grand Inquisitor: The Central Role of Verification Procedures in Means-Tested Welfare Programs*, 36 COLUM. HUM. RTS. L. REV. 663, 675 (2005) (discussing verification procedures used by government agencies “to stigmatize and embarrass claimants, not merely to reduce the number of completed applications, but seemingly for the sake of stigma itself.” (citing Nina Bernstein, *New Hurdle for Some Seeking Medicaid: Home Inspections*, N.Y. TIMES (Sept. 20, 1998), <http://www.nytimes.com/1998/09/20/nyregion/new-hurdle-for-some-seeking-medicaid-home-inspections.html>)).

306. Gilman, *supra* note 301, at 6.

307. See Anna Marie Smith, *The Sexual Regulation Dimension of Contemporary Welfare Law: A Fifty State Overview*, 8 MICH. J. GENDER & L. 121, 127 (2002) (summarizing the arguments proposed to justify limiting benefits to women).

308. See *id.* at 173–77 (presenting a chart illustrating family cap provisions).

309. See Rebekah J. Smith, *Family Caps in Welfare Reform: Their Coercive Effects and Damaging Consequences*, 29 HARV. J.L. & GENDER 151, 165–67 (2006) (discussing the various ways that states implement caps on welfare benefits to women).

310. See *id.* at 169 (“[S]everal states have adopted a companion policy called “Norplant bonuses,” in which a state covers not only the cost of implanting Norplant, a contraceptive capsule surgically inserted into a woman’s arm, but also offers welfare recipients a cash bonus of up to \$500 for undergoing the

social service workers required mothers on welfare to provide unsolicited family planning advice through “counseling sessions, family planning classes, pamphlets, and encouragement to give their children up for adoption.”³¹¹

2. *The Privacy Violations of Low-Wage Servants.*

Similar to these historical privacy violations of poor people, today, low-wage workers are routinely monitored by their employers, both in the workplace and in their personal lives. And because low-wage work is precarious, such privacy violations go unchecked. Technological advances have made monitoring and control of employees easier, but these did not start with computers and mobile technology.³¹² “Corporate paternalism” has a long and storied American history.³¹³ Company towns were common practice years ago in certain industries, such as coal mining, steel, and manufacturing, where employers paid workers in scrips, redeemable only at the company store.³¹⁴ By paying workers in scrip, the employer controlled where and how the workers lived.³¹⁵ As Justice Strine explained in his article on corporate paternalism, employers who developed company towns wanted to control workers’ lives to the point of even requiring them to attend church

procedure.”); see also Jeanne L. Vance, Note, *Womb for Rent: Norplant and the Undoing of Poor Women*, 21 HASTINGS CONST. L. Q. 827, 831 (1994) (“All states include Norplant in their Medicaid services or have created direct funding programs to afford access to the drug to poor women.”); see also David S. Coale, Note, *Norplant Bonuses and the Unconstitutional Conditions Doctrine*, 71 TEX. L. REV. 189, 190 (1992) (“Some states may go beyond simply reimbursing the cost of Norplant. In 1991, a new kind of assistance program appeared: a ‘bonus’ program that both reimburses the full cost of Norplant and gives a cash bonus to women receiving public assistance who accept the device.”).

311. Gilman, *supra* note 301, at 7.

312. See Strine, *supra* note 293, at 76 (“Employers are limiting the privacy of workers through technology—such as workplace phone and computer monitoring, cameras, or drug and nicotine testing—for bottom line, business reasons.”).

313. See *id.* at 77–80 (outlining the historical concept of corporate paternalism).

314. See *id.* at 78 (examining company stores as a structure for “wage slavery”).

315. See *id.* (examining the abuses perpetrated by a company store monopoly (citing *Industrial and Labor Conditions: Company Stores and the Scrip System*, 41 MONTHLY LAB. REV. 45, 45 (1935))).

on Sunday, a practice which fed the religious revivals of the late nineteenth century.³¹⁶ Many of these employers, such as the Pullman Palace Car Company, also banned liquor, gambling, and brothels.³¹⁷

While company towns fell out of fashion in the early twentieth century, their legacy of corporate control did not.³¹⁸ For example, Henry Ford implemented a “Sociological Department” at his automobile company, which investigated workers to ensure that the worker “must show himself sober, saving, steady, industrious and must satisfy the superintendent and staff that his money will not be wasted in riotous living.”³¹⁹ To that end, investigators interviewed families, conducted interviews, and inspected their homes.³²⁰ Workers even had to prove marital relations and bodily cleanliness.³²¹ Similar to welfare recipients subjected to the investigations of case workers, corporate investigators searched the corners of employees’ homes looking for evidence of immoral behavior.³²²

Today, most would agree that such privacy violations seem extraordinary and ill-suited to an employer’s role. But most do not give much thought to the extent to which employers still monitor the lives of their workers, including low-wage hourly employees. Pagers, smart phones, laptops, and their corresponding connectivity enable employers to contact their workers at any time, as well as monitor their work and how far they are from designated worksites.³²³ For many workers, they are expected to be constantly

316. *Id.* at 78–79.

317. *See id.* at 78–79 (citing Almont Lindsey, *Paternalism and the Pullman Strike*, 44 AM. HIST. REV. 272, 276 (1939)); *see also* M. Todd Henderson, *The Nanny Corporation*, 76 U. CHI. L. REV. 1517, 1541 (2009) (listing activities monitored by employer investigators).

318. *See* Henderson, *supra* note 317, at 1538 (“Corporate nannyism in company towns ended when company towns fell out of fashion.”).

319. *Id.* at 1540–41 (citing FORD R. BRYAN, *HENRY’S LIEUTENANTS* 207 (Wayne State 1993)).

320. Strine, *supra* note 312, at 81.

321. *Id.* at 81–82 (citing Matthew W. Finkin, *Employee Privacy, American Values, and the Law*, 72 CHI. KENT L. REV. 221, 251 n.152 (1996)).

322. *Id.* at 81.

323. *See* Waddell, *supra* note 294 (“In fact, businesses track their employees’ locations all the time. Often, it’s to keep an eye on their equipment, like company vans or employer-issued cellphones.”).

available for check-ins and shift changes for changing employer needs, as the just-in-time workplace demands.

Workplace monitoring is not confined to staying connected and being constantly available. Many workers are also subject to drug testing, both random and scheduled, and are disciplined for noncompliance with corporate policy that dictates off-duty behavior.³²⁴ Others are required to sign lifestyle covenants or morals clauses, which mandate certain lifestyle choices or moral decisions that are personal in nature and not directly related to the duties of the employee's job.³²⁵ Workers are also frequently subject to strict company policies regarding their clothing, hair, jewelry, makeup, tattoo, and piercing choices.³²⁶

Along with these paternal policies of employers and the changing just-in-time workplace, the increased carceral state makes employer monitoring more prevalent. The concentrated incarceration of impoverished communities, and the devastation imprisonment has had on African American men particularly, has

324. See *Drug Testing in the Workplace*, NAT'L WORKRIGHTS INST., <http://workrights.us/?products=drug-testing-in-the-work> (last visited Nov. 22, 2017) (arguing that drug testing in the workplace is both unfair and unnecessary) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

325. See Donald J. Smythe, *Liberty at the Borders of Private Law*, 49 AKRON L. REV. 1, 51 n.242 (2016) ("The systematic use of lifestyle covenants and morals clauses dates at least to the middle of the twentieth century [S]ome important cases arose during the McCarthy era, when film directors, writers, and actors were alleged to have violated morals clauses through their political associations." (citing Dustin Siggins, *Catholic Archdiocese Expands Morality Clause for School Employees After Losing Lawsuit*, LIFESITENEWS.COM (Mar. 10, 2014, 2:47 PM), <http://www.lifesitenews.com/news/catholic-archdiocese-expands-morality-clause-for-school-employees-after-los>)); see generally Jessica Martinez, *Attorneys of Ind. Teacher Fired From Catholic School for In Vitro Procedure Argue Church Doctrine Is Irrelevant in Lawsuit*, CHRISTIAN POST: CHURCH & MINISTRY (Feb. 7, 2014, 4:01 PM), <http://www.christianpost.com/news/attorneys-of-ind-teacher-fired-from-catholic-school-for-in-vitro-procedure-argue-church-doctrine-is-irrelevant-in-lawsuit-114195/> (on file with the Washington & Lee Journal of Civil Rights & Social Justice); see generally Rebecca S. Green, *Jury Sides with Fired Teacher*, J. GAZETTE (Dec. 20, 2014, 1:03 AM), <http://www.journalgazette.net/news/local/courts/Jury-sides-with-fired-teacher-4094706> (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

326. See Gowri Ramachandran, *Freedom of Dress: State and Private Regulation of Clothing, Hairstyle, Jewelry, Makeup, Tattoos, and Piercing*, 66 MD. L. REV. 11, 63–69 (2006) (asserting such policies have a disparate impact on people of color).

been well documented.³²⁷ But most men under correctional supervision are not in prison: they live under the close surveillance of state probation and parole systems.³²⁸ As of 2008, there were approximately 2.3 million incarcerated people and 5.1 million people under correctional supervision (probation and parole).³²⁹ Probation and parole systems require work in the private sphere to remain in compliance and corrections officers will visit employment sites and ask for reports from employers to ensure compliance.³³⁰

In these ways, employers investigate and monitor the lives of their workers, which works to control their behavior and establish dominance over their decision making. Moreover, because low-wage work is insecure and precarious, whether because employers are quick to replace workers or see them as fungible, or because probation or immigration status makes them at risk, low-wage workers are not in a position to challenge these monitoring practices, given the precarious and insecure nature of their jobs.

B. Undervaluing Poor People's Time

1. How Poor People's Time is Undervalued by the State

Poor people's time is undervalued and not respected. By keeping poor people occupied with bureaucratic tasks and

327. See generally MICHELLE ALEXANDER, *THE NEW JIM CROW* (2010) (studying how the penal system discriminates against African Americans).

328. *1 in 52 Adults on Parole or Probation. 47 Million Supervised*, CRIME AM. (Nov. 22, 2015), <http://www.crimeinamerica.net/2015/11/22/1-in-52-adults-on-parole-or-probation-4-7-million-supervised/> (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

329. ALEXANDER, *supra* note 327, at 94; see also Sadhbh Walshe, *Probation and Parole: A Study in Criminal Justice Dysfunction*, GUARDIAN (Apr. 26, 2012), <https://www.theguardian.com/commentisfree/cifamerica/2012/apr/26/probation-parole-study-dysfunction> (describing and criticizing the parole and probation systems) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

330. See SOSS ET AL., *supra* note 11, at 297 (illustrating burdens placed on workers in the workplace by parole and probation requirements); see also, e.g., *Frequently Asked Questions*, N.Y.C. PROBATION, <http://www.nyc.gov/html/prob/html/adult/faq.shtml#contact> (last visited Nov. 18, 2017) (explaining that probation requires school, work, or vocational program participation) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

unrelenting pressures, poor people are less likely to cause social unrest. Historically, poor people were expelled from communities in order for communities to avoid responsibility for aiding them.³³¹ More recently, welfare applicants are forced to comply with extremely time-consuming verification requirements to establish eligibility.³³² They must also travel to multiple, scattered offices to procure the necessary records, applications, and approvals, only to be required to reappear in person at welfare offices at regular intervals to prove their ongoing eligibility.³³³ A welfare applicant must submit to multiple stages of application processes, interviews, record demands, classes, orientations, and assessments.³³⁴

In their recent study of low-income mothers in the U.S., Professors Kathryn Edin and Laura Lein documented the lives of poor women and families.³³⁵ Their study found that one and a half million households with three million children—representing four percent of all households with children—are surviving in America on less than two dollars, per person, per day (the metric used by the World Bank to measure extreme poverty across the globe).³³⁶ Edin and Lein followed the lives of several poor women and found that the amount of time spent in line, waiting for transportation, waiting at government offices, being shuffled from one place to the

331. See Quigley, *supra* note 36, at 140–41 (articulating that local laws allowed the non-local poor to be “expelled, removed, or banished from the community” in order to avoid local responsibility over them).

332. See Martin Tolchin, *Welfare Denied to Many of Poor Over Paperwork*, N.Y. TIMES (Oct. 29, 1988), <http://www.nytimes.com/1988/10/29/us/welfare-denied-to-many-of-poor-over-paperwork.html?pagewanted=all> (“A great deal of the problem is paperwork,” said Sarah Shuptrine “It has become a process that is more concerned with verification and keeping ineligible people off welfare than in trying to help people become eligible.”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

333. See KATHRYN J. EDIN & H. LUKE SHAEFER, *\$2.00 A DAY: LIVING ON ALMOST NOTHING IN AMERICA 2* (2015) (detailing the investment in time required of those applying for or receiving welfare benefits).

334. *Id.* at 6 (outlining the extensive nature of the application process for welfare benefits).

335. *Id.* at xvii.

336. *Id.*

next, was simply staggering.³³⁷ Edin and Lein noted that “one way the poor pay for government aid is with their time.”³³⁸

This time deprivation harkens back decades and can be viewed as intentional.³³⁹ Poor people’s time was not their own during indoor relief because of their institutionalization or auctioning off.³⁴⁰ But even for those receiving other types of aid, long lines and long waiting times were part of the poverty governance bureaucracy.³⁴¹ Even early work requirements can be seen as a way to keep people busy and not idle. As President Johnson stated in support of Great Society legislation, policies could prove useful in stemming unwanted urban unrest (supporting Piven and Cloward’s thesis): “If they’re working, they won’t be throwing bombs in your homes and plants,” President Johnson told business leaders, “[k]eep them busy and they won’t have time to burn your cars.”³⁴²

2. Undervaluing Low-Wage Servants’ Time

Hourly workers’ time is likewise undervalued and not respected. Because low-wage work is made unpredictable by their employers, their time is not their own.³⁴³ Harmful scheduling

337. *See id.* at 2 (describing the long, arduous process to apply for government aid at the Department of Human Services).

338. *Id.*

339. *See generally* Dan Agin, *How It Was: Auctioning Off Poor in Old America*, HUFFPOST (May 25, 2011), https://www.huffingtonpost.com/danagin/how-it-was-auctioning-off_b_173945.html (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

340. *See id.* (“Paupers were the concern of the local community, communities had only little public money, and the community solution was simple if cruel: the poor were auctioned off in a public spectacle.”).

341. *See* WELFARE IN THE UNITED STATES: A HISTORY WITH DOCUMENTS, 1935–1996 Document 30 (Premilla Nadasen et al. eds., 2013) (discussing the problem of waiting in line outside the welfare office, the doctor’s office, or the food stamp line).

342. JOSEPH A. CALIFANO, *THE TRIUMPH & TRAGEDY OF LYNDON JOHNSON: THE WHITE HOUSE YEARS* 225 (2015).

343. *See generally* Naomi Gerstel, *How Erratic Schedules Penalize Workers—and What Can be Done to Make Jobs and Family Life More Predictable*, SCHOLARS STRATEGY NETWORK (Sept. 2015), <http://www.scholarsstrategynetwork.org/brief/how-erratic-schedules-penalize-workers-and-what-can-be-done-make-jobs-and-family-life-more> (on file with the Washington & Lee Journal of Civil Rights &

trends disrespect workers' time and ability to successfully navigate life's burdens.³⁴⁴ Such practices reflect the way employers fail to consider the effects their policies have on their workers' lives.³⁴⁵ As discussed above, many employers require "open availability," even in part-time jobs, such that workers are expected to be "on call" and available for work at any time.³⁴⁶ Some hourly employees are expected to call in, usually an hour or two before a possible shift, to see if the worker must report to work.³⁴⁷ Additionally, workers who are scheduled may report to work only, to be sent home in order to save on employer labor costs when customer demand or sales are low.³⁴⁸ Another trend in scheduling shortfalls is to under-schedule staff and rely on call-in practices, or to change schedules after they are made, both more easily accomplished through labor/cost tracking software.³⁴⁹

While over a dozen states have "reporting pay" statutes that require employers to pay workers who are sent home or called in during their off days, most provide only minimum coverage (such as two hours at minimum wage for being sent home), and cover a narrow category of workers.³⁵⁰ Such laws do little to deter employers from these scheduling abuses.

Social Justice).

344. See *id.* at 1 ("Erratic scheduling creates a cascade of disruptions.").

345. See *id.* ("For employers using disturbing new tactics, 'flexibility' means that employees—especially low-wage workers—must come in whenever the boss wants and can be sent home whenever demand is slack.").

346. *Erratic Scheduling*, RETAIL ACTION PROJECT, <http://retailactionproject.org/advocacy/policy/erratic-scheduling/> (last visited Dec. 2, 2017) (describing various methods of erratic scheduling and how they negatively affect workers) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

347. See *id.* ("On-call shifts mean the scheduled employee is required to call the store, usually 2 hours in advance of the shift start time, to find out if they are needed that day.").

348. See Ruan & Reichman, *Hours Equity*, *supra* note 207, at 51–52 ("For hourly workers that are scheduled and report to work just to be summarily sent home, some states provide a minimum number of hours to be paid to those workers."); see also *Stabilizing Low-Wage Work*, *supra* note 207, at 19 ("Similarly, send-home provisions require a minimum number of hours of pay for workers who appear for a scheduled shift but are then sent home early.").

349. See Ruan & Reichman, *Hours Equity*, *supra* note 207, at 44–45 ("Advances in scheduling technologies make this possible. Software allows employers to track activities in fifteen-minute increments (or less) and to adjust staffing levels daily to respond just-in-time.").

350. See *id.* at 52 ("While over a dozen states have such "reporting pay"

All of these erratic scheduling practices impact hourly, low-wage workers negatively by removing the ability for them to plan and execute necessary parts of their lives that make work efficacious, such as child care, transportation, and educational and training opportunities.³⁵¹ Moreover, where hours are scarce in a just-in-time economy, and workers are routinely sent home or given less than full-time hours, a second part-time job is often necessary.³⁵² Yet, erratic schedules and open availability make second jobs extremely difficult to navigate.

Advocacy around these scheduling abuses and their impact on low-wage workers has led to increased media attention and awareness around these issues.³⁵³ The National Employment Law Project (NELP) and the Retail Action Project (RAP) are two such organizations that have reported on scheduling difficulties,³⁵⁴ and have garnered significant media attention.³⁵⁵ The New York State

statutes, most provide only minimum coverage (e.g., two hours at minimum wage) and cover a narrow worker population.” (citing *See* Charlotte Alexander, Anna Haley-Lock & Nantiya Ruan, *Stabilizing Low-Wage Work: Legal Remedies for Unpredictable Work Hours and Income Instability* 31–32 (Univ. of Denver Sturm Coll. of Law Legal Research Paper Series, Working Paper No. 13-43, 2013)); *see also* *Stabilizing Low-Wage Work*, *supra* note 207, at 26 (discussing various states’ send-home pay guarantees).

351. *See id.* at 45 (“These precarious workers face real and perceived job insecurity, earning volatility, and a loss of workplace benefits, along with the challenges of obtaining affordable and reliable child care, transportation to work, and access to education described earlier.”).

352. *See id.* at 39 (“Variable schedules undermine even the best efforts at managing caregiving, looking for additional work to supplement one’s income, or pursuing educational opportunities.”).

353. *See id.* at 79 (“Hourly workers, as non-unionized workers, can also rely upon labor laws to protect their right to act collectively to negotiate and advocate with their employers for fair scheduling practices and hourly rates.”).

354. *See generally* NAT’L EMP. L. PROJECT, <http://www.nelp.org> (last visited Dec. 2, 2017) (on file with the Washington & Lee Journal of Civil Rights & Social Justice); *see generally* RETAIL ACTION PROJECT, <http://retailactionproject.org> (last visited Dec. 2, 2017) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

355. *See* Jodi Kantor, *Starbucks to Revise Policies to End Irregular Schedules for Its 130,000 Baristas*, N.Y. TIMES (Aug. 14, 2014), http://www.nytimes.com/2014/08/15/us/starbucks-to-revise-work-scheduling-policies.html?_r=0 (discussing Starbucks’ plans to end irregular scheduling) (on file with the Washington & Lee Journal of Civil Rights & Social Justice); *see also* *Why We Need Schedules that Work Act: Andrea’s Story*, CLASP POL’Y SOLUTIONS (July 22, 2014), <http://www.clasp.org/pages/schedules-that-work-act-andrea-story> (describing the difficulties placed on a single mother named Andrea by irregular work schedules)

Attorney General began an investigation into retail companies to target these abuses.³⁵⁶

But the compulsion of low-wage employers to cut labor costs to the bone at the expense of low-wage workers' time is too powerful. For example, after a campaign to stop such abuses, Starbucks vowed to provide its retail employees with more consistent schedules and to post their schedules at least ten days in advance.³⁵⁷ Starbucks also said it would stop asking workers to work a schedule with a "clopening," which requires them to shut down a store late at night and return very early the next morning to open it.³⁵⁸ But one year later, the company had not fulfilled its promises and the New York Times reported that "the scheduling and staffing problems at Starbucks appear to arise from the way individual managers handle their tight labor budgets."³⁵⁹

(on file with the Washington & Lee Journal of Civil Rights & Social Justice); see also Ilya Marritz, *In New Economy, Minimum-Wage Workers are Always on Call*, WNYC NEWS (Nov. 21, 2013), <http://www.wnyc.org/story/new-economy-many-employers-expect-open-availability> (detailing the impact that irregular work schedules have on the lives of minimum wage earners in New York City) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

356. See Krystina Gustafson, *On-Call Scheduling Debate: Where Retailers Stand*, CNBC (Feb. 4, 2016), <http://www.cnbc.com/2016/02/04/on-call-scheduling-debate-where-retailers-stand.html> (analyzing the success achieved by concerned organizations in convincing retailers to end on-call scheduling) (on file with the Washington & Lee Journal of Civil Rights & Social Justice); see also Ann Besler, *Irregular Work Schedules: Efficient for Employers, but Tough for Workers*, PITTSBURG POST-GAZETTE (Apr. 25, 2015), <http://www.post-gazette.com/business/careerworkplace/2015/04/26/Irregular-work-schedules-efficient-for-employers-but-tough-for-workers/stories/201504260090> (explaining the difficulties placed on workers by irregular work schedules) (on file with the Washington & Lee Journal of Civil Rights & Social Justice); see also Lauren Webber, *Retailers are Under Fire for Work Schedules*, WALL ST. J. (Apr. 12, 2015), <https://www.wsj.com/articles/retailers-under-fire-for-work-schedules-1428890401> (describing the pressures placed on retailers to end irregular work schedules by the Office of the Attorney General of New York) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

357. See Kantor, *supra* note 355 ("He specified that all work hours must be posted at least one week in advance, a policy that has been only loosely followed in the past.").

358. See *id.* ("The company intends to curb the much-loathed practice of 'clopening,' or workers closing the store late at night and returning just a few hours later to reopen.").

359. Noam Schieber, *Starbucks Falls Short After Pledging Better Labor Practices*, N.Y. TIMES (Sept. 23, 2015), https://www.nytimes.com/2015/09/24/business/starbucks-falls-short-after-pledging-better-labor-practices.html?_r=0 (on

This “dark side” of workplace flexibility allows employers to exploit hourly workers, diminishing their opportunities and keeping them subservient to the unreasonable demands of their employers.

C. Limiting Self Sufficiency and the Ability for Poor People to Escape Poverty

1. State Policies Limiting the Success of Poor People to be Self-Sufficient

Historically, an amalgam of state policies has served to ensure that poor people are kept below subsistence levels without a meaningful path to self-sufficiency. First, the federal benefit programs—first AFDC and now TANF—are simply not sufficient for families to survive.³⁶⁰ Benefit levels are less than half the poverty line in every state.³⁶¹ Mississippi provides a stark example:

In Mississippi, for the 11 percent of poor families with children lucky enough to get welfare, the combination of welfare and food stamps yield an income that measures a little over 40 percent of the poverty line. In other words, even a family receiving both TANF and SNAP [food stamps] is living in deep poverty in the State of Mississippi, or less than \$9,000 for a family of three.³⁶²

Because support services, such as child care, transportation, and housing subsidies, as well as educational and employment promotion opportunities, are not adequately addressed or resourced by welfare reform initiatives, poor families remain trapped in a cycle of poverty.³⁶³ Many families living below the

file with the Washington & Lee Journal of Civil Rights & Social Justice).

360. See EDELMAN, *supra* note 145, at 90 (“Thus, even in the high-benefit states, a family whose only income comes from TAND and SNAP is getting an income at less than 70 percent of the poverty line—enough to avoid extreme poverty but not enough to escape poverty altogether.”).

361. *Id.* at 89.

362. *Id.*

363. See PIVEN & CLOWARD, *supra* note 3, at 391 (“Given scarce jobs and low wages, the result of work programs was predictable enough. The contributed to the ‘churning’ or ‘revolving door’ effect which had already been set in motion by the revised quality control system.”).

poverty threshold are headed by single mothers.³⁶⁴ “Women who are materially deprived, psychologically damaged, or physically abused are unlikely to gain a footing for self-sufficiency.”³⁶⁵ Thus, as Piven and Cloward recognized, poverty regulation both creates and maintains a class of dependent poor.³⁶⁶ By maintaining a cadre of poor people regulated by the state, the state is better able to control their behavior.

2. *Limiting Self-Sufficiency of Low-Wage Servants and Their Ability to Escape Poverty*

The policies of corporate masters insure that low-wage servants are kept poor without a meaningful path to self-sufficiency. They are dependent on their low-wage employers for sufficient hours at a living wage but are too often given neither.³⁶⁷ Hourly workers require enough hours to work in order to be compensated well enough to meet their needs, but the current systems in place do not provide for that stability.³⁶⁸ Instead, just-in-time employment incentivizes employers to keep a bench of part-time workers who work less than thirty-five hours a week; such a structure allows the employer to avoid paying benefits³⁶⁹

364. See *Poverty Solutions*, UNIV. MICHIGAN, <http://poverty.umich.edu/> (last visited Dec. 2, 2017) (highlighting the higher rates of poverty among households headed by single women, as opposed to single men or married couples) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

365. Gilman, *supra* note 160, at 20.

366. See PIVEN & CLOWARD, *supra* note 3, at 145 (“[S]tructure of the relief system—whether statutes peculiar to some states or those common to most—helps to maintain a low-wage labor pool.”).

367. See Holzer, *supra* note 296 (explaining how low-wage employees have no way of escaping poverty because of the low, hourly compensation and lack of benefits).

368. See LIZ WATSON & JENNIFER E. SWANBERG, FLEXIBLE WORKPLACE SOLUTIONS FOR LOW-WAGE HOURLY WORKERS: A FRAMEWORK FOR A NATIONAL CONVERSATION 1, 8 (2010), <http://workplaceflexibility2010.org/images/uploads/whatsnew/Flexible%20Workplace%20Solutions%20for%20Low-Wage%20Hourly%20Workers.pdf> (“Likewise fluctuating work schedules, including layoffs, reductions in work hours, and involuntary part-time work, can lead to insufficient income and savings for low-wage hourly workers.”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

369. See Ben Gitis, *Changing the ACA’s Definition of Full-Time Work*, AM. ACTION F. (Jan. 8, 2015), <https://www.americanactionforum.org/research/changing-the-acas-definition-of-full-time-work/> (explaining that the ACA only

and to retain the flexibility to meet customer demand by limiting labor.³⁷⁰ Workers are constantly “on call” without being paid for that wait time are unable to select the hours they want.³⁷¹ Also, these workers are pushed into the gig economy to pick up work where they can but such work is without security, benefits, or livable schedules.³⁷²

Most damaging, the hourly wage of too many of these workers is not enough to lift them out of poverty.³⁷³ One-third of all workers in the U.S. earn below poverty wages and of these workers, one-third are persistent low-wage earners who are responsible for the bulk of their family’s income.³⁷⁴ Today, at the federal minimum wage of \$7.25 per hour, working forty hours per week, fifty-two weeks per year yields an annual income of only \$15,080—below the federal poverty line for families of two or more.³⁷⁵ This statistic is

applies to “full time” employment, defined as over thirty-five hours per week) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

370. See *Stabilizing Low-Wage Work*, *supra* note 207, at 3 (“[E]mployers adjust staffing levels in real time, calling workers in to meet unexpected customer demand and sending them home early when business lags.”).

371. See *Erratic Scheduling*, *supra* note 346 (“On-call shifts mean the scheduled employee is required to call the store, usually 2 hours in advance of the shift start time, to find out if they are needed that day. This day-of notification makes it extremely difficult to prepare work and plan for other life activities.”).

372. See *Stabilizing Low-Wage Work*, *supra* note 207, at 4 (“Workers also report having to take on second jobs to compensate for the hours they lose when shifts are cancelled without pay, and having to skip or drop out of school to make shifts that are scheduled at the last minute.”).

373. See generally David Cooper, *The Minimum Wage Used to be Enough to Keep Workers Out of Poverty—It’s Not Anymore*, ECON. POL’Y INST. (Dec. 4, 2013), <http://www.epi.org/publication/minimum-wage-workers-poverty-anymore-raising/> (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

374. See Michael J. Austin et al., *Serving Low Income Families in Poverty Neighborhoods Using Promising Programs and Practices: Building a Foundation for Redesigning Public and Nonprofit Social Services 2* (Sept. 2004), <http://cssr.berkeley.edu/pdfs/lowIncomeFam.pdf> (describing how many workers earn wages that are insufficient to lift them above the poverty line) (on file with the Washington & Lee Journal of Civil Rights & Social Justice); see also Anthony Patrick Carnevale & Stephen J. Rose, *Low Earners: Who are They? Do They Have a Way Out?*, in *LOW-WAGE WORKERS IN THE NEW ECONOMY: STRATEGIES FOR PRODUCTIVITY AND OPPORTUNITY* (Marc S. Miller & Richard Kazis eds., 2001) (highlighting the issues posed by hourly wages that leave workers below the poverty line).

375. See David Cooper, *The Minimum Wage Used to Be Enough to Keep Workers Out of Poverty—It’s Not Anymore*, ECON. POL’Y INST. (Dec. 4, 2013),

even more stark when one looks closely at the federal poverty threshold and recognizes that this absolute poverty measure is extremely low compared to what most Americans would consider “poor” though a relative measure.³⁷⁶ A relative measure of poverty takes into consideration the costs of living beyond food (such as housing and transportation), which are not calculated in the federal index, and the social exclusion standard, which examines factors that exclude those from a standard of living generally available to other members of society.³⁷⁷ Under a relative measure, many more low-wage workers are considered living below a sufficiency standard.

Another way to gauge the effect of poverty wages of low-wage workers is by looking to the number of workers on government assistance. One recent study revealed that 41.2 million working people, or nearly thirty percent of the workforce, receive food stamps, housing subsidies, and/or cash assistance to make ends meet.³⁷⁸ Nearly half of those workers, 19.3 million people, had full-time jobs and most were earning less than \$12.16 per hour in wages.³⁷⁹ Walmart’s low-wage workers alone receive roughly \$6.2 billion in public assistance, including food stamps, Medicaid and subsidized housing.³⁸⁰

One of the major hindrances to low-wage workers failing to escape the cycle of poverty is the lack of promotional opportunities available to them.³⁸¹ “Persistent” low-wage work—moving from one low paying job to another—keeps workers from ever making a

<http://www.epi.org/publication/minimum-wage-workers-poverty-anymore-raising/> (analyzing the historical interactions between the minimum wage and the poverty line) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

376. See generally ICELAND, *supra* note 39, at 23–26.

377. See *id.* at 10–19 (defining relative measure of poverty).

378. Cooper, *supra* note 373.

379. *Id.*

380. See AMERICANS FOR TAX FAIRNESS, WALMART ON TAX DAY: HOW TAXPAYERS SUBSIDIZE AMERICA’S BIGGEST EMPLOYER AND RICHEST FAMILY 3 (Apr. 2014), <https://americansfortaxfairness.org/files/Walmart-on-Tax-Day-Americans-for-Tax-Fairness-1.pdf> (“Walmart receives an estimated \$6.2 billion annually in mostly federal taxpayer subsidies. The reason: Walmart pays its employees so little that many of them rely on food stamps, health care and other taxpayer-funded programs.”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

381. See Holzer, *supra* note 367 (“Nor do they move up the job ladder very much over time.”).

living wage.³⁸² As recognized by author David Shipler, in his book *The Working Poor*,³⁸³ many factors contribute to the churning of low-wage jobs: lack of reliable transportation and child care; on-the-job discrimination; lack of “soft skills” and training to be successful.³⁸⁴ A lack of education keeps many workers from obtaining better paying jobs.³⁸⁵ And low-wage jobs are too often dead-end jobs, without meaningful workplace advancement opportunities.³⁸⁶

D. Robbing Poor People of Their Dignity

1. The Lack of Dignity Afforded Poor People

Throughout U.S. history and through the present day, poor people have been robbed of their dignity by poverty policies that restrict their rights and freedoms and stymie their ability to break the cycle of poverty. The combination of constant surveillance, undervalued time, and limited opportunity to escape their economic dependence create an “air-tight cage of poverty”³⁸⁷ that robs poor people of their sense of self-respect and autonomy.

America’s founding documents do not hold human dignity as its core principle, as other nations do. But if we look to the Universal Declaration of Human Rights, it states: “All human beings are born free and equal in dignity and rights.”³⁸⁸ As one

382. *See generally id.*

383. DAVID K. SHIPLER, *THE WORKING POOR: INVISIBLE IN AMERICA* (2005).

384. *See id.* at 4 (providing examples of how “low-wage employees have been testing the American doctrine that hard work cures poverty”).

385. *See id.* at 285 (noting that the working poor often have common experiences, such as lack of education and “soft skills” that make full-time, consistent employment difficult).

386. *See id.* (describing the lack of opportunities to advance out of low-wage employment); *see also* SHARON L. HARLAN & CATHERINE WHITE BERHEIDE, *LABOR ECONOMICS COMMONS, BARRIERS TO WORKPLACE OPPORTUNITIES EXPERIENCED BY WOMEN IN LOW-PAYING OCCUPATIONS* (1994), http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1123&context=key_workplace (describing the barriers to advancement in low-paying jobs) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

387. Letter from Martin Luther King, Jr., *supra* note 27.

388. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) at 1.

European scholar noted, “[p]overty is a violation of human dignity if poverty is so severe that the material conditions of self-determination are not given and if, thereby, the moral status of the poor is violated by others.”³⁸⁹ In fact, the Revised European Social Charter mandates that “[r]espect of dignity is identified with reference to the right to housing and the right to protection against poverty and social exclusion. With regard to social protection, ‘the right to personal dignity’ and ‘respect of human dignity’ are emphasized repeatedly.”³⁹⁰

The U.S. Supreme Court has signaled the importance of human dignity, including in the context of constitutional rights of poor people.³⁹¹ In its 1970 decision in *Goldberg v. Kelly*,³⁹² the Court held that statutory entitlement to welfare benefits is a property interest that the government could not deprive without satisfying procedural due process requirements.³⁹³ In doing so, the Court stated that “from its founding,” the U.S. has attempted “to foster the dignity and well-being of all persons within its borders,” particularly the poor.³⁹⁴

Yet, as poverty law scholar Professor Julie A. Nice has recognized, this nod to dignity was followed by a systematic

389. Corinna Mieth, *The Double Foundation of Human Rights in Human Nature*, 35 IUS GENTIUM: COMP. PERSP. ON L. & JUST. 11, 21 (Marion Albers et al. eds., 2014).

390. Mariann Arany Tóth, Note, *The Right to Dignity at Work: Reflections on Article 26 of the Revised European Social Charter*, 29 COMP. LAB. L. & POL'Y J. 275, 278–79 (2008) (citing Eur. Soc. Charter (rev.), Eur. Comm. Soc. Rights Conclusions 2003, art. 31, at 228–29 (Fr.); 1 Conclusions 2003, at 346 (It.); 2 Conclusions 2003, at 558 (Slovn.); 2 Conclusions 2003, at 654 (Swed.); 2 Conclusions 2005, at 408–10 (Lith.); 1 Conclusions 2003, at 214 (Fr.) (citing article 30: “living in a situation of poverty and social exclusion violates the dignity of human beings”); 1 Conclusions 2003, at 335 (It.); 2 Conclusions 2003, at 548 (Slovn.); 2 Conclusions 2003, at 644 (Swed.)).

391. See Maxine Goodman, *Human Dignity in Supreme Court Constitutional Jurisprudence*, 84 NEB. L. REV. 740, 748 (“[F]rom the mid-1940s to the present, the Court has treated human dignity as a constitutional value.”).

392. *Goldberg v. Kelly*, 397 U.S. 254 (1970).

393. See *id.* at 264–65 (ruling that the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires an evidentiary hearing before a recipient of certain government welfare benefits can be deprived of such benefits); see also JULIE A. NICE & LOUISE G. TRUBEK, *CASES AND MATERIALS ON POVERTY LAW: THEORY AND PRACTICE* 148 (1997) (describing the influence of *Goldberg v. Kelly* on welfare benefits).

394. *Goldberg*, 397 U.S. at 264–65.

unraveling of the rights of poor people by the Court.³⁹⁵ Instead of promoting human dignity, what the U.S. has done is “detach[] provision from citizenship and treat[] the claims of the poor, not as an integral part of the rights of citizens, but as an alternative to them—as claims which could be met only if the claimant ceased to be a citizen.”³⁹⁶

2. *Robbing Low-Wage Servants of Their Dignity*

For corporate masters, keeping a large pool of part-time hourly workers allows them greater flexibility to staff their labor needs in the most cost-efficient way. Companies keep workers engaged as on-call staff in order to call them in or let them go as required to minimize labor costs.³⁹⁷ As argued here, paying them below-living wages allows for greater corporate profit. Monitoring their workers closely gives employers the control they desire to ensure that their policies are followed to an exacting degree.³⁹⁸ In these ways, low-wage workers serve the corporate master, thereby robbing them of their dignity. As discussed above, between having to be on-call, waiting to see if their employer is going to call them in, relying on the generosity of charities or SNAP (food stamps) to deal with food insecurity, and a lack of autonomy and privacy in the workplace, low-wage workers face dignitary harms by their corporate masters much like poor people have at the hands of the state. Such dignitary harms and the exhausting and relentless cycle of poverty contributes to the high levels of anxiety and depression suffered by

395. Nice, *supra* note **Error! Bookmark not defined.**, at 4; *see also* Julie A. Nice, *Poverty as an Everyday State of Exception*, in ACCUMULATING INSECURITY: VIOLENCE AND DISPOSSESSION IN THE MAKING OF EVERYDAY LIFE 56–60 (Shelley Feldman et al. eds., 2011) (describing the post-*Goldberg* jurisprudence of the Supreme Court).

396. James W. Fox, Jr., *Liberalism, Democratic Citizenship, and Welfare Reform: The Troubling Case of Workfare*, 74 WASH. U. L. Q. at 103, 178 (1996).

397. *See Stabilizing Low-Wage Work*, *supra* note 207, at 32 (“This is not as farfetched as it might sound: some restaurant managers already maintain a pool of on-call waitstaff ready to come to work when customer demand requires.” (citing Anna Haley-Lock, *The Structural Contexts of Low-Wage Work: Restaurant Employment Practices Across Firm Geography, Size, and Ownership Status*, 16 J. POVERTY 447, 459 (2012))).

398. *See generally* Strine, *supra* note 293.

those in low-wage, dead-end jobs.³⁹⁹ As Linda Tirado explained, the grind of her daily schedule shreds her self-discipline and leads to depressive thoughts.⁴⁰⁰ In essence, it strips her of her human dignity.

Today's work policies undermine the human dignity of workers, limiting their ability to succeed. Instead of providing a functioning pathway out of poverty, low-wage work erects structural barriers that make personal well-being and self-sufficiency a losing battle.

V. Conclusion: Today's Corporate Masters' Control of Low-Wage Servants Continues Yesterday's Poverty Regulation

The moral dignity of work is a closely held American value. Americans like to believe that our country is a land of opportunity, a place where anyone, with enough hard work and perseverance, can pull themselves up to a seat at life's top table. For those that fail to do so—the ones that remain in the masses begging for scraps—such hardship is attributed to personal failings and missed opportunities. Policies that govern and regulate social welfare reflect this ethos. Personal responsibility, work mandates, and getting tough with poor people for their own good: this is poverty governance in the U.S.

Work should provide an effective pathway out of poverty. Instead, poverty governance pushes poor people into the private sector of work such that they service corporate masters with their labor. As a parallel to the social control of poor people through poverty regulation, low-wage workers are now controlled by private employers.

As explained, low-wage workers are controlled by their corporate masters in four important ways. First, low-wage workers are under surveillance and monitored by their employers in order

399. See *Why Low-Income and Food-Insecure People are Vulnerable*, *supra* note 297 (stating that individuals with low-incomes often are suffering with poor mental health).

400. See Tirado, *supra* note 16 (“This is what our lives are like, and here are our defense mechanisms, and here is why we think differently. It’s certainly self-defeating, but it’s safer. That’s all. I hope it helps make sense of it.”).

to control their behavior.⁴⁰¹ 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, their lives are not their own.⁴⁰² Third, low-wage workers are provided a limited opportunity to escape their economic dependence on dead-end jobs.⁴⁰³ Low-wage work is simply not self-sustaining. Fourth, low-wage workers are robbed of dignity and kept subordinate by their precarious jobs, their unpredictable work schedules, and their subsistence wages. These factors combine to control low-wage workers and keep them servicing their corporate masters.

The flip side of the promise of the American Dream is that work will provide an effective pathway out of poverty.⁴⁰⁴ Policies that press poor people into the worst low-paying jobs in exchange for government aid are tolerated because of the cultural belief that with employment should come dignity and a ladder to self-sufficiency. That promise has been broken. Today's low-wage employers are corporate masters that control their servants through poverty-level pay and precarious positions. Work is scheduled in a way to make advancement, and the promotional opportunities that go along with it, impossible. Resources, such as leave benefits and support services that would make advancement from hourly entry-level work possible, are lacking.

Low-wage employers, like the state in its poverty governance, ensure that their servants are controlled and kept exactly where they want them to be: servicing their masters.

401. See generally Strine, *supra* note 293.

402. See generally Ruan & Reichman, *Hours Equity*, *supra* note 207.

403. See Harry J. Holzer, *Encouraging Job Advancement Among Low-Wage Workers: A New Approach*, BROOKINGS (May 1, 2004), <https://www.brookings.edu/research/encouraging-job-advancement-among-low-wage-workers-a-new-approach/> (describing ways to assist low wage workers improve their job prospects and socioeconomic status while highlighting the systems inequities, including the tendency for low-wage work to not lead to additional opportunities) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

404. See generally Long, *supra* note 13.