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From Stigma to Dignity? Transforming Workfare with Universal Basic Income and a Federal Job Guarantee

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**FROM STIGMA TO DIGNITY? TRANSFORMING WORKFARE
WITH UNIVERSAL BASIC INCOME AND A FEDERAL JOB
GUARANTEE**

Lynn D. Lu*

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I. INTRODUCTION

As the 2020 COVID-19 pandemic took a catastrophic toll on lives and livelihoods across the United States,¹ the harshest impact of the unpredictable virus fell disproportionately, and with foreseeable accuracy, on Black, immigrant, poor, and elderly individuals—those most likely to live and work

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1. See Catlin Nchako, *Pandemic Hardship Worsening as Relief Programs Near End*, CTR. ON BUDGET & POL'Y PRIORITIES: OFF THE CHARTS (Dec. 17, 2020, 3:15 PM), <https://www.cbpp.org/blog/pandemic-hardship-worsening-as-relief-programs-near-end> [<https://perma.cc/AE5E-U2D5>].

in close contact with limited access to health care or emergency savings.² The speed and severity of a viral contagion devastatingly and undeniably rendered visible the vast racial gap between those with reliable health care, childcare, housing, nutrition, household wealth, and income, and those without.³ But that gap was widening well before the pandemic due to accelerating economic inequality, racial disparity, and precarity among those fortunate enough to find paid work.⁴

By the summer of 2020, pandemic isolation gave way to mass protests in support of the Movement for Black Lives.⁵ Protestors called for abolition of anti-Black police brutality and mass incarceration but also sought to end the exploitation of Black essential workers and demanded increased attention to the long-standing economic devastation of, and divestment from, communities of color.⁶ With physical health and safety inextricably linked to

2. See *Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships*, CTR. ON BUDGET & POL'Y PRIORITIES (Apr. 5, 2021), <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and> [<https://perma.cc/VZH9-QKKL>]; Matt Saenz & Arloc Sherman, *Research Note: Number of People in Families with Below-Poverty Earnings Has Soared, Especially Among Black and Latino Individuals*, CTR. ON BUDGET & POL'Y PRIORITIES (July 15, 2020), <https://www.cbpp.org/research/poverty-and-inequality/research-note-number-of-people-in-families-with-below-poverty> [<https://perma.cc/5S7F-CYHN>]; STEPHANIE SCHMIT ET AL., CTR. FOR L. & SOC. POL'Y, *A PANDEMIC WITHIN A PANDEMIC: HOW CORONAVIRUS AND SYSTEMATIC RACISM ARE HARMING INFANTS AND TODDLERS OF COLOR* 2, 6 (2020), https://www.clasp.org/sites/default/files/publications/2020/09/2020_A%20Pandemic%20within%20a%20Pandemic.pdf [<https://perma.cc/RSS5-FQWM>]; Press Release, Ctr. for L. & Soc. Pol'y, *2019 Poverty Data Show Pre-Pandemic Cracks in Foundation; 2020 Updates Show Urgent Need for Congressional Action* (Sept. 15, 2020) (on file with author).

3. See DARRICK HAMILTON & DANYELLE SOLOMON, KIRWAN INST. FOR THE STUDY OF RACE & ETHNICITY, *THE CORONAVIRUS PANDEMIC AND THE RACIAL WEALTH GAP* 2 (2020), <http://kirwaninstitute.osu.edu/wp-content/uploads/2020/03/CoronavirusRacialWealthGap2020.pdf> [<https://perma.cc/PUS9-E5XL>].

4. See Annie Nova, *Many Americans Who Can't Afford a \$400 Emergency Blame Debt*, CNBC (July 21, 2019, 9:56 AM), <https://www.cnbc.com/2019/07/20/heres-why-so-many-americans-cant-handle-a-400-unexpected-expense.html> [<https://perma.cc/XLK2-BYJ9>]; PAMELA CHAN ET AL., PROSPERITY NOW, *FORCED TO WALK A DANGEROUS LINE: THE CAUSES AND CONSEQUENCES OF DEBT IN BLACK COMMUNITIES* 3–6, 8, 12 (2018), <https://prosperitynow.org/forced-walk-dangerous-line> [<https://perma.cc/9X4R-WABY>]; Ezra Rosser, *Introduction to HOLES IN THE SAFETY NET: FEDERALISM AND POVERTY* 1, 10–11 (Ezra Rosser ed., 2019), https://works.bepress.com/ezra_rosser/60/ [<https://perma.cc/44W5-KM9M>] (documenting the impact of poverty in the United States by race).

5. Reuters, *U.S. Saw Summer of Black Lives Matter Protests Demanding Change*, U.S. NEWS & WORLD REP. (Dec. 7, 2020, 8:04 AM), <https://www.usnews.com/news/top-news/articles/2020-12-07/us-saw-summer-of-black-lives-matter-protests-demanding-change> [<https://perma.cc/3PAA-ZR57>].

6. See Charlotte Alter, *Black Lives Matter Activists Want to End Police Violence. But They Disagree on How to Do It*, TIME (June 5, 2020), <https://time.com/5848318/black-lives->

material deprivation came heightened demands for racial, social, and economic justice to help marginalized communities not just survive in times of crisis but thrive every day.⁷

This Article examines reinvigorated proposals for universal basic income (UBI) and a federal job guarantee (JG), both of which seek to reduce poverty, income inequality, and the widening racial wealth gap.⁸ It assesses the potential these reforms have to put more money into the hands of those most likely to use it while also ending involuntary unemployment and boosting labor conditions for all—but especially Blacks and people of color with less access to generational wealth, higher education, and protection against employment discrimination.⁹ It concludes that both UBI and a JG are necessary, but each is insufficient on its own to achieve greater economic security and mobility with dignified work for all.

Crucially, a universal minimum income untethered to any work requirement is essential to break the racialized and gendered stigma that conflates economic need with welfare dependency. Equally important is the guarantee of public employment at a living wage for those who voluntarily choose to avoid gaps in earned income and employment history but have historically been excluded from the best work-life options.¹⁰ Together, UBI and a JG form vital pillars of social support for withstanding potential crises—large or small—and creating a secure future.

Part II of this Article describes the main features of UBI and JG proposals and canvasses the diverse range of concerns that have motivated policy

matter-activists-tactics/ [https://perma.cc/3RWG-2ZGK]; Rachel Treisman, *Essential Workers Hold Walkouts and Protests in National ‘Strike for Black Lives,’* NPR (July 20, 2020, 7:45 PM), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/07/20/893316011/essential-workers-hold-walkouts-and-protests-in-national-strike-for-black-lives> [https://perma.cc/ZWH9-QNC3].

7. See, e.g., *About*, POOR PEOPLE’S CAMPAIGN, <https://www.poorpeoplescampaign.org/about/> [https://perma.cc/QEE4-VMZP].

8. See William “Sandy” Darity & Kirsten Mullen, *Black Reparations and the Racial Wealth Gap*, BROOKINGS: UP FRONT (June 15, 2020), <https://www.brookings.edu/blog/up-front/2020/06/15/black-reparations-and-the-racial-wealth-gap/> [https://perma.cc/33JU-DSSC].

9. See, e.g., CHAD STONE, CTR. ON BUDGET & POL’Y PRIORITIES, ROBUST UNEMPLOYMENT INSURANCE, OTHER RELIEF NEEDED TO MITIGATE RACIAL AND ETHNIC UNEMPLOYMENT DISPARITIES (2020), <https://www.cbpp.org/research/economy/robust-unemployment-insurance-other-relief-needed-to-mitigate-racial-and-ethnic> [https://perma.cc/B4Z9-KT3B]; Monica Bell et al., *Laboratories of Suffering: Toward Democratic Welfare Governance*, in HOLES IN THE SAFETY NET: FEDERALISM AND POVERTY, *supra* note 4, at 40, 44–45 (Ezra Rosser ed., 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3220372 [https://perma.cc/MSQ9-PRL4] (describing long-standing and intentional economic racism).

10. See WESLEY THARPE ET AL., CTR. ON BUDGET & POL’Y PRIORITIES, TAPPING MORE PEOPLE’S CAPACITY TO INNOVATE CAN HELP STATES THRIVE 1–4, 25 (2020), <https://www.cbpp.org/sites/default/files/atoms/files/12-9-20sf.pdf> [https://perma.cc/S83V-FMAY].

makers past and present—some more explicitly focused on racial justice than others—to consider their adoption. Such concerns include simplification of bureaucracy, prevention of job loss, valuation of carework, reduction of stigma, and worker empowerment. Part II concludes that, even in times of deep political polarization, unprecedented economic inequality and concentration of wealth may create common ground for enacting UBI and JG reforms with enduring impact. Part III nonetheless identifies persistent ideological beliefs and societal assumptions about race, work, and personal responsibility that have limited the potential of even modest UBI and JG proposals in the past, either through political compromise and policy drift or due to logistical challenges on the ground. By examining lessons from income proposals and work programs in U.S. history dating from the New Deal era to welfare reform, Part III illustrates how concerns about cost; fraud; waste; and, most importantly, disincentives to work productively diluted the potential of such projects.¹¹

Part IV analyzes contemporary examples of local UBI and JG reforms to highlight further opportunities for restoring the dignity of basic support and work choices through a combined federal UBI and JG. In particular, Part IV examines Argentina's governmental *Plan Jefes y Jefas de Hogares* program as a move toward a JG; Stockton, California's 2019 UBI program, funded through private donations solicited by then-mayor Michael Tubbs, as a promising pilot program; and New York City's implementation of state constitutional mandates to provide aid and support to the needy within the constraints of federal workfare directives as an ongoing experiment that could lead to a robust voluntary jobs program with a broad social safety net.

Finally, Part V proposes not a magic-bullet solution but a starting framework for effective implementation of UBI and JG programs that leverage federal tax administration and oversight while empowering community-based organizations to maximize public participation in program design. Part V also highlights the need for further research to identify reasonable and realistic steps toward transforming workfare with less stigma and greater dignity.

II. UBI AND JG: A NEW HOPE OR THE NEW WORKFARE?

Well before the pandemic made working conditions unsafe and uncertain, U.S. policy makers and advocates from across the political spectrum had

11. See generally Peter B. Edelman, *Conclusion: A Way Forward*, in HOLES IN THE SAFETY NET: FEDERALISM AND POVERTY, *supra* note 4, 229, 236–37 (Ezra Rosser ed., 2019), <https://scholarship.law.georgetown.edu/facpub/2246/> [<https://perma.cc/V6LP-CQQY>] (describing the author's personal experience with the Family Assistance Program, a failed legislative guaranteed income proposal).

renewed calls for UBI or a JG to cure a variety of ills: to counteract accelerating income inequality and concentration of wealth,¹² to prepare for a technological future without jobs for human workers,¹³ and to retool public infrastructure in a way that could reverse climate change and protect against natural disasters.¹⁴

While earlier adherents of UBI, including conservative thinkers like Milton Friedman and Charles Murray, supported a version of negative income tax as a more efficient substitute for government-administered public assistance, contemporary technology capitalists, such as Chris Hughes and former presidential candidate Andrew Yang, promote UBI as a remedy for structural unemployment caused by technological advances that threaten U.S. jobs.¹⁵ Animated by concerns about growing economic inequality and concentration of wealth, these proponents also seek a more equitable redistribution of societal benefits. Pope Francis has added his own support for UBI and a right to dignified work as ways of promoting humanity in a time of technological change.¹⁶ In this, the Pope echoes Dr. Martin Luther King Jr., who argued for either “full employment or creat[ion of] incomes” to remedy structural unemployment beyond individuals’ control.¹⁷ The Poor People’s Campaign: A National Call for Moral Revival¹⁸ revitalizes Dr. King’s

12. See generally CHRIS HUGHES, FAIR SHOT: RETHINKING INEQUALITY AND HOW WE EARN 182 (2018) (“[C]apitalism will break down if wealth continues to concentrate at the rate that it has in recent years.”); ANDREW YANG, THE WAR ON NORMAL PEOPLE: THE TRUTH ABOUT AMERICA’S DISAPPEARING JOBS AND WHY UNIVERSAL BASIC INCOME IS OUR FUTURE (2018).

13. See, e.g., YANG, *supra* note 12, at 27. Yang defines “normal people” as individuals who do not have special expertise in technology and who “consider themselves part of the middle class.” *Id.* at xii.

14. See Jessica Shakesprere & Demetra Smith Nightingale, *Envisioning an Effective Federal Job Guarantee*, URBAN INST.: URBAN WIRE (Oct. 22, 2019), <https://www.urban.org/urban-wire/envisioning-effective-federal-job-guarantee> [<https://perma.cc/3EHE-58AD>] (“Guaranteed job proposals like the one in a Green New Deal are bringing renewed attention to a strategy for creating quality jobs that could help the nation achieve full employment with living wages while also addressing environmental challenges.”).

15. See, e.g., Yang, *supra* note 12, at xviii; HUGHES, *supra* note 12, at 41 (“Rapid technological advances, globalization, and financialization are pulling the rug out from under the middle class and lower-income Americans.”).

16. Kathleen Bonnette, *Pope Francis’ ‘Let Us Dream’ Inspires Readers to Meet the Challenge of Our Age*, U.S. CATH. (Dec. 1, 2020), <https://uscatholic.org/articles/202012/pope-francis-let-us-dream-inspires-readers-to-meet-the-challenge-of-our-age/> [<https://perma.cc/ZT75-EMNK>].

17. See Jordan Weissman, *Martin Luther King’s Economic Dream: A Guaranteed Income for All Americans*, THE ATLANTIC (Aug. 28, 2013), <https://www.theatlantic.com/business/archive/2013/08/martin-luther-kings-economic-dream-a-guaranteed-income-for-all-americans/279147/> [<https://perma.cc/NZ87-NUDG>].

18. *Our Demands*, POOR PEOPLE’S CAMPAIGN: A NAT’L CALL FOR MORAL REVIVAL, <https://www.poorpeoplescampaign.org/about/our-demands/> [<https://perma.cc/9D3K-A6ZJ>].

platform for economic justice by calling for “immediate implementation of federal and state living wage laws that are commensurate for the 21st century economy, guaranteed annual incomes, full employment[,] and the right for all workers to form and join unions.”¹⁹

To conservative advocates, part of UBI’s appeal is its potential to supplant costly and administratively burdensome spending programs.²⁰ To liberals, UBI and JG proposals direct resources toward the reduction of poverty, inequality, and exploitative labor conditions²¹—all goals considered to be worth the financial cost.²² Indeed, some view the proposals as nonstarters due to immediate costs (whether through wealth or other taxes, or through deficit spending) and, down the road, inflation.²³ The outlay for any meaningful program is big, to be sure, but even the Federal Reserve—which, for decades, responded to low unemployment rates with anti-inflation measures—recognizes that full employment need not inevitably lead to inflation.²⁴

19. *Id.*

20. See, e.g., Charles Murray, *A Guaranteed Income for Every American*, WALL ST. J. (June 3, 2016), <https://www.wsj.com/articles/a-guaranteed-income-for-every-american-1464969586> [<https://perma.cc/9JEC-RKCZ>] (“A UBI will do the good things I claim only if it replaces all other transfer payments and the bureaucracies that oversee them.”). This limited view of UBI, however, has shown negative results. Observers of the years-long U.K. process of transitioning six different social safety net programs into a single Universal Credit system, which can administer changes in income and other eligibility criteria, point to losses in net benefits for the elderly or disabled due to simplification of grant calculations, as well as transitional problems leaving individuals without benefits while they wait for Universal Credit to kick in. Amos Toh, *Automated Hardship: How the Tech-Driven Overhaul of the UK’s Social Security System Worsens Poverty*, HUM. RTS. WATCH (Sept. 29, 2020), <https://www.hrw.org/report/2020/09/29/automated-hardship/how-tech-driven-overhaul-uks-social-security-system-worsens#> [<https://perma.cc/2C82-DSWL>].

21. See Alyssa Battistoni, *Jobs Guarantee or Universal Basic Income? Why Not Both?*, IN THESE TIMES (June 20, 2018), <https://inthesetimes.com/features/universal-basic-income-federal-jobs-guarantee-climate-change-inequality.html> [<https://perma.cc/MT63-VHGF>]; Joshua Mound, *A Better Way to Fight ‘Corporate Welfare,’* NEW REPUBLIC (Sept. 19, 2018), <https://newrepublic.com/article/151293/better-way-fight-corporate-welfare> [<https://perma.cc/QC6E-YU2W>] (“NIT would increase workers’ bargaining power, thereby increasing wages for those at the bottom by \$1.39 for every dollar spent.”). Guy Standing identifies eight urgent evils to address: inequality, insecurity, debt, stress, precarity, advancing robots, extinction, and populism and neo-fascism. See generally GUY STANDING, *BATTLING EIGHT GIANTS: BASIC INCOME NOW 9–38* (2020) (building on the policy recommendations of the Shadow Chancellor of the Exchequer).

22. See Battistoni, *supra* note 21.

23. See, e.g., Yash Rajwanshi, *Unboxing Universal Basic Income*, BERKELEY ECON. REV. (Feb. 25, 2020), <https://econreview.berkeley.edu/unboxing-universal-basic-income/> [<https://perma.cc/N6C8-K6WT>].

24. Jerome H. Powell, Chair, Bd. of Governors of the Fed. Rsrv. Sys., *New Economic Challenges and the Fed’s Monetary Policy Review* (Aug. 27, 2020) (on file with author) (“[A] robust job market can be sustained without causing an outbreak of inflation.”); see also Mark PAUL ET AL., *CTR. ON BUDGET & POL’Y PRIORITIES, THE FEDERAL JOB GUARANTEE—A POLICY*

Accordingly, more policy makers view these benefits as well worth considering.²⁵

UBI—defined as “a regular cash income, paid to all, on an individual basis, without means test or work requirement”²⁶—if paid at an amount high enough to provide a safety net, would boost more households above the poverty threshold. As a universal benefit, however, it would do little to eliminate the racial wealth gap beyond allowing the taxation of high-income households that are more likely to be white. The goal of such cash transfers is not only to meet material needs but also to bind everyone together as deserving of basic social support.²⁷ According to University of Oxford professor Maximilian Kasy, who co-designed a study of a UBI pilot in Austria, “[t]he primary goal is to provide social inclusion, meaning and a source of income to the participants.”²⁸

Where individuals seek the added income of wages from work, “[t]he job guarantee (JG) provides a public option for jobs. It is a permanent, federally funded, and locally administered program that supplies voluntary employment opportunities on demand for all who are ready and willing to work at a living wage.”²⁹ A JG targets those who may face challenges in the existing labor market due to limited schedule flexibility; lack of skills; or exposure to race, age, gender identity, or sexual orientation discrimination. At a living wage and with full benefits, a JG could reduce involuntary unemployment that

TO ACHIEVE PERMANENT FULL EMPLOYMENT (2018), <https://www.cbpp.org/research/full-employment/the-federal-job-guarantee-a-policy-to-achieve-permanent-full-employment> [https://perma.cc/WT42-K3RM].

25. See Jeanna Smialek & Catie Edmondson, *As Some Deficit Hawks Turn Dove, the New Politics of Debt Are on Display*, N.Y. TIMES (Jan. 2, 2021), <https://www.nytimes.com/2021/01/02/business/economy/republicans-deficit.html> [https://perma.cc/V4P5-5S5L] (describing recent bipartisan tolerance for increasing the federal deficit for tax cuts and for increased spending); Angela Glover Blackwell & Darrick Hamilton, Opinion, *Will We Face Depression-Era Job Losses? Let's Not Find Out*, N.Y. TIMES (May 9, 2020), <https://www.nytimes.com/2020/05/09/opinion/federal-jobs-guarantee-coronavirus.html> [https://perma.cc/CCC4-UWV4] (advocating for a federal JG).

26. PHILIPPE VAN PARIJS & YANNICK VANDERBORGHT, BASIC INCOME: A RADICAL PROPOSAL FOR A FREE SOCIETY AND A SANE ECONOMY 1 (2017); see also WORLD BANK GRP., WORLD DEVELOPMENT REPORT 2019: THE CHANGING NATURE OF WORK 109 (2019), <https://www.worldbank.org/en/publication/wdr2019> [https://perma.cc/EZ4M-LG3V] (“First, the program is aimed at every individual, independent of income or employment status. Second, participants do not have to fulfill any conditions or reciprocal co-responsibilities. Third, assistance is provided in the form of cash instead of in-kind transfers and services . . .”).

27. See Julia Horowitz, *Job Guarantees and Free Money: ‘Utopian’ Ideas Tested in Europe as the Pandemic Gives Governments a New Role*, CNN BUS. (Nov. 23, 2020, 8:08 AM), <https://www.cnn.com/2020/11/23/economy/universal-basic-income-europe-pandemic/index.html> [https://perma.cc/CY78-6LUE].

28. *Id.*

29. Pavlina R. Tcherneva, *The Job Guarantee: Design, Jobs, and Implementation 2* (Levy Econ. Inst. of Bard Coll., Working Paper No. 902, 2018) [hereinafter *The Job Guarantee*].

disproportionately affects marginalized people of color,³⁰ but it would not assist to those unable or unwilling to enter the labor force in the first instance.³¹

To address the problem of long-term unemployment, work must be a meaningful option that offers individuals a variety of jobs and work schedules without the loss of safety net protections. Existing all-or-nothing choices that require either full-time participation in, or full-time exemption from, labor-market activities may not be feasible for those who need greater support to work. For example, those disconnected from both living-wage work and the social safety net include undocumented immigrants; unskilled workers; family caregivers; and those with criminal records, bad credit history, or undiagnosed mental or physical disabilities.³²

UBI alone, without a JG, could ease stress without regard to economic climate or individual fortunes and could permit more autonomy, especially for those choosing among caregiving and paid work or educational obligations. Adding a JG would address additional goals: reducing poverty to the extent one is able to work, decreasing the racial wealth gap to the extent it is caused by unemployment based on race, and restoring dignity to the extent that work is accompanied by full benefits and a living wage.

Calls for UBI and a JG have only increased during the pandemic, when rapid and widespread unemployment resulting from lockdowns and quarantines has left many individuals suddenly without income.³³ Short-term emergency measures were slow to roll out, described as “byzantine,”³⁴ and expired quickly, leaving many individuals (such as undocumented

30. See PAUL ET AL., *supra* note 24, at 15.

31. See Philip Harvey, *Is There a Progressive Alternative to Conservative Welfare Reform?*, 15 GEO. J. ON POVERTY L. & POL’Y 157, 164 (2008); Philip Harvey, *The Right to Work and Basic Income Guarantees: Competing or Complementary Goals?*, 2 RUTGERS J.L. & URB. POL’Y 8, 14 (2005) (“The right to work promises that everyone who wants decent work can find it, but it does not impose a duty to work on anyone.”).

32. See STEVEN CARLSON ET AL., CTR. ON BUDGET & POL’Y PRIORITIES, WHO ARE THE LOW-INCOME CHILDLESS ADULTS FACING THE LOSS OF SNAP IN 2016? (2016), <https://www.cbpp.org/research/food-assistance/who-are-the-low-income-childless-adults-facing-the-loss-of-snap-in-2016> [<https://perma.cc/D9WC-TG8V>].

33. D.T. Cochrane, *Job Guarantees, Basic Income Can Save Us from COVID-19 Depression*, CONVERSATION (Mar. 23, 2020, 4:32 PM), <https://theconversation.com/job-guarantees-basic-income-can-save-us-from-covid-19-depression-133997> [<https://perma.cc/Z4WA-F9N4>].

34. Linnea Feldman Emison, *The Promising Results of a Citywide Basic-Income Experiment*, THE NEW YORKER (July 15, 2020), <https://www.newyorker.com/news/news-desk/the-promising-results-of-a-citywide-basic-income-experiment> [<https://perma.cc/749X-8BSW>].

immigrants) ineligible for much-needed relief.³⁵ At the same time, means-testing was abandoned, and economic stimulus payments were almost universally distributed.³⁶ One advisor noted that “[i]t probably helps that the pandemic has helped normalize cash transfers from the government.”³⁷ By the end of 2020, the U.S. Conference of Mayors directed “cities, states, and the federal government to explore the feasibility of a guaranteed income” because the pandemic “has shed light on economic insecurity and exposed the vulnerability of our current welfare system.”³⁸

The pandemic heightened existing and urgent concerns about contingent and disempowered workers who may lack technological expertise, not to mention work authorization. For those willing and able to work, voluntary job opportunities at a living wage eliminate gaps in employment, provide publicly beneficial work, and prevent discriminatory harm that leads to unemployment or low-quality jobs.³⁹ During a pandemic, there is a need to insure against job loss, provide health and safety protection, *and* guarantee quality jobs.⁴⁰ As JG advocate Pavlina R. Tcherneva argues, “[a]t bottom, the Job Guarantee is a policy of care, one that fundamentally rejects the notion that people in economic distress, communities in disrepair, and environmental peril are the unfortunate but unavoidable collateral damage of a market economy.”⁴¹

UBI and a JG are thus not only needed in times of crisis and widespread unemployment. Rather, they draw support from a range of viewpoints not only as ways of directly stimulating the economy during times of high unemployment but also ways of boosting labor market power by creating alternatives to low-wage or otherwise exploitative work.⁴² Instead of merely

35. Felicity Sanchez, *COVID-19 and Immigrants*, NAT’L CONF. OF ST. LEGISLATURES (July 14, 2020), <https://www.ncsl.org/research/immigration/covid-19-and-immigrants.aspx> [<https://perma.cc/26TX-SQ2N>].

36. See Eric Levitz, *\$2,000 Stimulus Checks Are Poorly Targeted and That’s Fine*, N.Y. MAG.: INTELLIGENCER (Dec. 29, 2020), <https://nymag.com/intelligencer/2020/12/2000-covid-stimulus-checks-congress-larry-summers.html> [<https://perma.cc/WXX3-T5F7>].

37. Horowitz, *supra* note 27.

38. Emison, *supra* note 34.

39. David Brancaccio & Candace Manriquez Wrenn, *Reimagining the Economy: The Effects of Unemployment Spread Like a Virus*, MARKETPLACE (June 16, 2020), <https://www.marketplace.org/2020/06/16/covid-19-economy-job-guarantee-government-hiring/> [<https://perma.cc/J7M9-QWN3>] (discussing the long-term pandemic unemployment ripple effect likely to impact communities due to private employers’ preferences for individuals without work gaps and further discussing the negative health effects of unemployment).

40. PAVLINA R. TCHERNEVA, LEVY ECON. INST. OF BARD COLL., *GUARANTEEING EMPLOYMENT DURING THE PANDEMIC AND BEYOND* 2, 3 (2020), http://www.levyinstitute.org/pubs/pn_20_4.pdf [<https://perma.cc/LL97-MVUF>] [hereinafter *GUARANTEEING EMPLOYMENT DURING THE PANDEMIC AND BEYOND*].

41. PAVLINA R. TCHERNEVA, *THE CASE FOR A JOB GUARANTEE* 3 (2020) [hereinafter *THE CASE FOR A JOB GUARANTEE*].

42. Horowitz, *supra* note 27.

preserving the kind of low-quality jobs that endure—those that “[pay poorly], with no benefits or basic employment protections, much like the ones ‘essential’ workers currently have (the delivery drivers, grocery store clerks, and sanitation staff)”⁴³—a JG “will give workers the power to say ‘no’ to abusive employers. It will also act as a stepping-stone for young people entering the labor market, an employment opportunity for caregivers who wish to return to paid work, and a bridge to civilian employment for former inmates and veterans.”⁴⁴ A JG targets racial and gender justice as economists document disproportionately high unemployment rates for Black men in particular⁴⁵ but also for women of color, who are more likely to be employed as service workers.⁴⁶ It can also begin to restore lost generations of human capability.⁴⁷

Yet the risk remains that a UBI and JG scheme would eventually come to replace, rather than augment, a minimum social safety net. Tcherneva notes that “while paid work in the modern world is life-defining and indispensable, it has, for many, become elusive, onerous, and punitive.”⁴⁸ The attempt to recapture the language of work, while intended to celebrate the dignity of work, may emphasize the stigma of benefits receipt as “laziness.” Indeed, these programs might only replicate the worst problems of punitive workfare on an even wider scale, subjecting more individuals to sanction, hardship, and stigma for failing to fulfill the job responsibilities of a government program that offers only degrading, make-work jobs.

III. LESSONS FROM HISTORY: FROM WORKS PROGRESS TO WORKFARE AND BEYOND

The checkered history of past efforts to alleviate poverty and economic inequality reveals the difficulty of decoupling subsistence-level benefits from politically popular work mandates. Under current workfare programs funded by Temporary Assistance for Needy Families (TANF), compulsory work requirements subject recipients to punitive sanctions for noncompliance—no matter how inappropriate or degrading the assigned work—that reduce

43. GUARANTEEING EMPLOYMENT DURING THE PANDEMIC AND BEYOND, *supra* note 40, at 1.

44. *Id.* at 3.

45. See PAUL ET AL., *supra* note 24, at 2.

46. JOCELYN FRYE, CTR. FOR AM. PROGRESS, ON THE FRONTLINES AT WORK AND AT HOME: THE DISPROPORTIONATE ECONOMIC EFFECTS OF THE CORONAVIRUS PANDEMIC ON WOMEN OF COLOR (2020) <https://www.americanprogress.org/issues/women/reports/2020/04/23/483846/frontlines-work-home/> [<https://perma.cc/KL2Q-NNDR>].

47. See THARPE ET AL., *supra* note 10, at 2.

48. THE CASE FOR A JOB GUARANTEE, *supra* note 41, at 2.

subsistence benefits despite demonstrated need.⁴⁹ Government assistance has thus been formally recast through workfare, not as a justly deserved entitlement but rather as a condition to be excused solely in extreme circumstances.⁵⁰ Hence the Trump Administration openly characterized poverty as laziness—an immoral failure of will—and expanded work requirements beyond cash assistance by requiring recipients of government aid to work off their “debt” for access to medical assistance, nutritious food, and safe housing.⁵¹

At the same time, national tax and spending policies have consistently—both in intent and impact—favored the breadwinning-white-male-headed household over that of the unmarried single mother of color. Such incentives encourage patriarchal patterns of economic dependency that exacerbate disparate racial and gender impacts in income inequality, wealth building, and economic mobility.⁵² Even if not explicitly supporting disparate treatment by race, sociologists suggest that “perceptions of rising minority power, declines in whites’ relative socioeconomic status, or other perceived macro-level threats to whites’ racial status may provoke adoption of more restrictive welfare regimes.”⁵³ As a result, cash assistance programs associated with greater uptake by people of color carry the harshest and most punitive or onerous requirements.⁵⁴ “As whites attempt to undermine racial progress they

49. See Rosser, *supra* note 4, at 6 (“Today, less than a quarter of all people in poverty receive cash assistance from TANF, compared to 68 percent in 1996 This is not because there are not poor people but because states have been successful in creating barriers to welfare.” (footnote omitted)).

50. Federal law provides that the provisions of the TANF program “shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part.” 42 U.S.C. § 601(b); see also Rosser, *supra* note 4, at 5 (“The 1996 welfare reform act had three major components: work requirements, time limits, and block grants.”).

51. Mick Mulvaney, Opinion, *Trump’s Budget Is One to ‘Balance the Books,’* THE POST & COURIER (May 22, 2017), https://www.postandcourier.com/opinion/commentary/mick-mulvaney-trump-s-budget-is-one-to-balance-the/article_1ce0ddca-3f28-11e7-91a6-4f2ccd34229d.html [<https://perma.cc/45XK-79UX>] (“Taking money from someone without an intention to pay it back is not debt. It is theft. [Trump’s] budget ma[de] it clear that [his Administration would] reverse this larceny [through imposition of work requirements].”).

52. Rosser, *supra* note 4, at 4 (explaining that, as advocates fought for access to public benefits for people of color, “[t]he public, with the help of biased media depictions of the poor, came to think of poverty in black-and-white terms” even as the majority of recipients remained white); see MEG WIEHE ET AL., INST. ON TAX’N & ECON. POL’Y, RACE, WEALTH AND TAXES: HOW THE TAX CUTS AND JOBS ACT SUPERCHARGES THE RACIAL WEALTH DIVIDE 4 (2018), <https://prosperitynow.org/resources/race-wealth-and-taxes> [<https://perma.cc/GP4V-2WK5>].

53. Rachel Wetts & Robb Willer, *Privilege on the Precipice: Perceived Racial Status Threats Lead White Americans to Oppose Welfare Programs*, 97 SOC. FORCES 793, 817 (2018), <https://doi.org/10.1093/sf/soy046> [<https://perma.cc/ESK7-2SXT>]; see also Martin Gilens, “Race Coding” and White Opposition to Welfare, 90 AM. POL. SCI. REV. 593, 593 (1996), <https://www.jstor.org/stable/2082611?seq=1> [<https://perma.cc/YA7H-W5GH>].

54. See Gilens, *supra* note 53.

see as threatening their group's status, they increase opposition to programs intended to benefit poorer members of all racial groups."⁵⁵

Past experiences with welfare and workfare reform since the New Deal era reveal persistent discrimination and disparate impact in both the conception and execution of safety net assistance and job creation programs. First, as historians have described, the design and implementation of New Deal programs, both by intent and in effect, reproduced existing social disparities that excluded Black workers and women of color from program benefits.⁵⁶ Social Security and the Fair Labor Standards Act (FLSA) were explicitly and intentionally designed to exclude agricultural and domestic workers—primarily Blacks in states governed by southern democrats—from benefits and protections,⁵⁷ an injustice also effectuated by TANF's predecessor, Aid to Families with Dependent Children (AFDC), and later by the GI Bill, as implemented at the discretion of state agency employees.⁵⁸

Federal New Deal programs intended to provide a social safety net after the Great Depression provided paid, public-works jobs primarily to able-bodied men (for example, through the Works Progress Administration (WPA)) while also expanding means-tested cash assistance to households with dependent children regardless of adult employment status through AFDC.⁵⁹ Although these programs varied greatly in implementation from state to state, one aspect was consistent: Blacks were excluded from the highest paying jobs and benefit amounts.⁶⁰

As economist Nancy Rose recounts, the WPA and other New Deal work programs were successful on a number of levels but still fell victim to

55. Wetts & Willer, *supra* note 53, at 818.

56. See Dorothy A. Brown, *Race and Class Matters in Tax Policy*, 107 COLUM. L. REV. 790, 813 (2007) ("The distinction between the deserving and undeserving poor began long before the New Deal."); Rosser, *supra* note 4, at 2 ("The New Deal might have created federal welfare rights, but the benefited population largely did not include poor African Americans, Latinos, or Native Americans.").

57. Nancy E. Rose, *Gender, Race, and the Welfare State: Government Work Programs from the 1930s to the Present*, 19 FEMINIST STUD. 319, 326 (1993), <https://www.jstor.org/stable/3178372> [<https://perma.cc/PYQ6-2B9X>] [hereinafter *Gender, Race, and the Welfare State: Government Work Programs from the 1930s to the Present*].

58. Rosser, *supra* note 4, at 2–3 (describing the history of poverty relief in the United States from colonial times through the 1960s "War on Poverty").

59. See Clifford M. Johnson & Ana Carricchi Lopez, *Shattering the Myth of Failure: Promising Findings from Ten Public Job Creation Initiatives*, CTR. ON BUDGET & POL'Y PRIORITIES (Dec. 22, 1997), <https://www.cbpp.org/archives/1222jobcr.htm> [<https://perma.cc/L7KL-KS2S>].

60. See Rosser, *supra* note 4, at 3–4. See generally Philip Harvey, *The New Deal's Direct Job Creation Strategy: Providing Employment Assurance for American Workers*, in WHEN GOVERNMENT HELPED: LEARNING FROM THE SUCCESSES AND FAILURES OF THE NEW DEAL 5–10 (Sheila D. Collins & Gertrude S. Goldberg eds., Oxford University Press 2013) (describing the Civil Works Administration (CWA), a precursor to the larger WPA program).

opposition from employers who objected to the wages as too high, the work as unproductive, and the workers as displacing the private labor force.⁶¹ Left to the discretion of local agency supervisors, job placements revealed supervisors' preferences for enrolling older male heads of household in each family's WPA slot and reproduced existing social disparities by, for example, favoring more privileged workers for white-collar, professional jobs.⁶² To appease southern legislators, WPA rolls were closed during certain seasons to maintain a ready supply of cheap domestic and agricultural workers—who were disproportionately Black⁶³—as private employers sought agricultural laborers for low-paid farm work.⁶⁴ Finally, WPA workers were prohibited from refusing jobs offered by private employers.⁶⁵

While Black workers remained excluded from the benefits of social safety net programs, unmarried women faced a double bind: segregation in the labor market and increasingly punitive safety net programs.⁶⁶ By the mid-1960s, as the War on Poverty continued to rage, racist stereotypes and public perceptions of welfare dependency as a disincentive to engage in low-wage work demonized Black single mothers⁶⁷ and derailed attempts to create a federal Family Assistance Program (FAP), which would pay a minimum amount of cash assistance without a work requirement to households with children.⁶⁸ Instead, the Earned Income Tax Credit was born to incentivize paid work through a tax credit conditioned on receipt of earned income and effectively meaningful only to households with dependent children.⁶⁹

As sociologist Brian Steensland argues in his careful account of the rise and demise of FAP, ideology and culture played a decisive role in ending FAP's chances of passage, as public depictions of the program increasingly framed it as a non-reciprocal payment with no expected social contribution in

61. See Nancy E. Rose, *Lessons from the New Deal Public Employment Programs*, MONTHLY REV., Oct. 2009, at 21, 23 [hereinafter *Lessons from the New Deal Public Employment Programs*] (“Nothing before or after the 1930s has matched the magnitude of the FERA, CWA, and WPA-programs that provided work each month for several million people, paid decent wages, and developed innovative projects in construction, the arts, and the production of consumer goods.”).

62. See *Gender, Race, and the Welfare State: Government Work Programs from the 1930s to the Present*, *supra* note 57, at 324.

63. *Id.* at 320–321.

64. *Id.*

65. *Id.* at 325.

66. See *generally id.* at 318, 320–21, 327–28 (explaining the adverse effects that government programs had on Black women in particular).

67. See *id.* at 336.

68. See BRIAN STEENSLAND, *THE FAILED WELFARE REVOLUTION* (2008); Brown, *supra* note 56, at 817–18.

69. See STEENSLAND, *supra* note 68; Brown, *supra* note 56, at 817.

return.⁷⁰ Coupled with the National Welfare Rights Organization's opposition to the proposed reduction of benefit levels in northern regions of the country, and in response to pilot experiments reporting higher divorce rates correlating with mothers' reduced economic dependence on men,⁷¹ FAP was eventually overshadowed by calls for an Earned Income Tax Credit and a later-abandoned JG.⁷²

Rose's comprehensive history beginning with temporary New Deal job creation programs and continuing through 1990s welfare reform highlights numerous concerns that repeatedly threatened to impede progress, including fears of corruption, displacement of private employees, make-work jobs, and illegal discrimination due to discretionary local job assignment practices.⁷³ Writing before TANF imposed even harsher work requirements as a condition of receiving public benefits, Rose called for expansion of voluntary work incentive programs (fair work rather than workfare) in order to increase labor market participation and job readiness for those left out of economic prosperity or structurally unemployed.⁷⁴ Based on her extensive analysis of New Deal WPA programs, Rose identified several challenges that could have been addressed by a genuine JG program but that were instead exacerbated by the TANF program's punitive mandatory work requirements.⁷⁵ To avoid similar problems in a JG and safety net program, Rose advised that such schemes should adhere to nondiscrimination and other labor protections, be locally driven, be administered by nongovernmental organizations, and

70. See STEENSLAND, *supra* note 68; see also F.E. Guerra-Pujol, *Guaranteed Income: Chronicle of a Political Death Foretold*, 23 CHAP. L. REV. 99, 122 (2020) (asserting that FAP legislation was "negatively framed by its opponents in moral terms: the bill paid people not to work").

71. Thomas L. Hungerford & Rebecca Thiess, *The Earned Income Tax Credit and the Child Tax Credit: History, Purpose, Goals, and Effectiveness*, in ECONOMIC POLICY INSTITUTE ISSUE BRIEF 2 (2013), [https://www.epi.org/publication/ib370-earned-income-tax-credit-and-the-child-tax-credit-history-purpose-goals-and-effectiveness/#:~:text=The%20earned%20income%20tax%20credit%20\(EITC\)%20and%20the%20child%20tax,middle%2Dincome%20families%20with%20children](https://www.epi.org/publication/ib370-earned-income-tax-credit-and-the-child-tax-credit-history-purpose-goals-and-effectiveness/#:~:text=The%20earned%20income%20tax%20credit%20(EITC)%20and%20the%20child%20tax,middle%2Dincome%20families%20with%20children) [<https://perma.cc/WA42-JS9D>] ("The EITC grew out of the 1960s debates over the negative income tax (NIT) and the early 1970s debate over the Nixon administration's Family Assistance Plan (FAP). Congressional opposition (primarily from Sen. Russell Long) and opposition from the National Welfare Rights Organization (NWRO) essentially 'zapped' FAP and the idea of a negative income tax as a *replacement* for the welfare system." (emphasis added) (footnotes omitted)).

72. See STEENSLAND, *supra* note 68.

73. See *Lessons from the New Deal Public Employment Programs*, *supra* note 61, at 23, 27, 31.

74. *Gender, Race, and the Welfare State: Government Work Programs from the 1930s to the Present*, *supra* note 57, at 337.

75. See Nancy E. Rose, *Bring Back the WPA: Lessons from the Job Creation Programs of the 1930s*, in EMPLOYMENT GUARANTEE SCHEMES 155, 171–72 (Michael J. Murray & Mathew Forstater eds., 2013) [hereinafter *Bring Back the WPA*].

preserve worker dignity and choice—for example by preserving the choice to combine paid work with caregiving or postsecondary education.⁷⁶

Similarly, around the time that welfare reform was seriously being debated, the late Anthony Atkinson proposed “participatory income” as a compromise—offering a basic income to all individuals conditioned upon participation in a broadly defined range of socially useful activities—which he later promoted as a substitute for the existing safety net.⁷⁷ Even this kinder, gentler version of workfare retained the problematic aspects of a restrictive mandatory system.

Instead, in 1996, the TANF program enacted a punitive workfare scheme that intensified the worst features of the WPA by imposing mandatory work requirements as a condition of receiving subsistence-level benefits.⁷⁸ With the racialized association of poverty with Black women cemented in the public mind through the false image of a welfare queen living on taxpayer funds,⁷⁹ TANF imposed lifetime limits on the receipt of federal cash assistance and conditioned receipt on participation in work requirements.⁸⁰ Consequently, states dependent on federal funds were required to implement punitive work programs.⁸¹

At the time of federal welfare reform in 1996, New York City was already a model laboratory for punitive workfare, having recruited consultants from other states to design and implement its own restrictive workfare program.⁸² Trumpeting work requirement conditions in New York City, then-Mayor Rudy Giuliani favorably compared the “dignity” of workfare to the New Deal era’s widely respected WPA.⁸³ Far from improving upon the WPA, however, the program instead instituted a punitive, stingy, and stigmatizing form of

76. *See id.* at 155, 159, 164–65, 173.

77. *See* A.B. Atkinson, *The Case for a Participation Income*, 67 POL. Q. 67, 68–69 (1996).

78. Nancy E. Rose, *Scapegoating Poor Women: An Analysis of Welfare Reform*, 34 J. ECON. ISSUES 143, 148 (2000) [hereinafter *Scapegoating Poor Women*].

79. *Id.* at 144.

80. CTR. ON BUDGET & POL’Y PRIORITIES, POLICY BASICS: TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (2020), <https://www.cbpp.org/research/family-income-support/temporary-assistance-for-needy-families> [https://perma.cc/WND9-2SSF].

81. *Id.*

82. Margy Waller, Opinion, *New York Program Wrong Model for U.S.*, BROOKINGS (Apr. 21, 2002), <https://www.brookings.edu/opinions/new-york-program-wrong-model-for-u-s/> [https://perma.cc/4ALX-GZEE].

83. *See* David Firestone, *Praising the Wonders of Workfare, Giuliani Finds a Campaign Theme*, N.Y. TIMES (Mar. 20, 1997), <https://www.nytimes.com/1997/03/20/nyregion/praising-the-wonders-of-workfare-giuliani-finds-a-campaign-theme.html> [https://perma.cc/TNS8-69JK]; Jason Deparle, *What Welfare-to-Work Really Means*, N.Y. TIMES MAG. (Dec. 20, 1998), <https://www.nytimes.com/1998/12/20/magazine/what-welfare-to-work-really-means.html> [https://perma.cc/PJV7-LPDS].

subsistence benefits that left children living in poverty with little hope of economic mobility through education or other investment in human capital.⁸⁴

When the Clinton Administration succeeded in “ending welfare as we know it”—transforming the federal cash assistance program into a time-limited federal block grant (and purportedly not an entitlement)—states remained free to impose even stricter requirements, such as family caps on cash assistance regardless of household size or wholesale exclusion based on criminal legal history. Individuals were limited to five years’ worth of federal funding, and to qualify for federal funds, states were required to satisfy high participation rates among benefit recipients—even those receiving solely state-funded benefits—in limited work activity categories.⁸⁵ Importantly, federal rules initially restricted recipients’ opportunities to attend four-year college programs as a countable “work activity.”⁸⁶

The state of New York, administering its program through its counties—of which New York City is by far the most populous—remained mandated by article XVII of its state constitution to provide for the “aid, care and support of the needy[,]” including individuals without minor dependent children,⁸⁷ although it left the substantive grant amount for “the legislature from time to time [to] determine.”⁸⁸ Accordingly, New York provided cash assistance beyond the five-year time limit and to households without minor dependent children.⁸⁹

Yet the state of New York and New York City’s Work First program prioritized short-term employment over long-term economic self-sufficiency, which resulted in hundreds of thousands of case closures.⁹⁰ Where recipients had no paying job options or lacked the skills required for paying jobs, they were assigned to simulated, unpaid, and degrading work experience

84. SONDR A YOUDELMAN WITH PAUL GETSOS, THE REVOLVING DOOR: RESEARCH FINDINGS ON NYC’S EMPLOYMENT SERVICES AND PLACEMENT SYSTEM AND ITS EFFECTIVENESS IN MOVING PEOPLE FROM WELFARE TO WORK 1 (2005), <https://static1.squarespace.com/static/5a83696fb0786935f4bd17f5/t/5cd2f292652dea34cbdd1c6b/1557328533006/The+Revolving+Door+FINAL+Full+Report+%282005%29.pdf> [<https://perma.cc/Q7AC-WCX8>].

85. *Policy Basics: Temporary Assistance for Needy Families*, *supra* note 80, at 4.

86. *See id.*

87. *See* N.Y. Const. art. XVII, § 1 (adopted 1938); *Tucker v. Toia*, 371 N.E.2d 449, 452 (N.Y. 1977).

88. *See* N.Y. Const. art. XVII, § 1 (adopted 1938); *Bernstein v. Toia*, 373 N.E.2d 238, 244 (N.Y. 1977).

89. DEMETRA SMITH NIGHTINGALE ET AL., WORK AND WELFARE REFORM IN NEW YORK CITY DURING THE GIULIANI ADMINISTRATION: A STUDY OF PROGRAM IMPLEMENTATION 1–2 (2002), http://webarchive.urban.org/UploadedPDF/NYC_welfare.pdf [<https://perma.cc/E9AU-2ATZ>].

90. *See id.* at iii, 3; YOUDELMAN WITH GETSOS, *supra* note 84, at 1.

programs.⁹¹ Where childcare was unavailable, recipients were excused from sanction only if they demonstrated reasonable attempts to locate adequate care.⁹² Despite public funding for higher education, the state of New York refused to permit four-year college enrollment to count toward work requirements even when federal rules were relaxed to allow the option.⁹³ By 1996, New York City's system of public higher education, CUNY, had lost thousands of students who left college to avoid losing subsistence benefits.⁹⁴ Instead of allowing students to complete four-year college degrees and despite economic forecasts highlighting increased need for workers with postsecondary degrees, punitive workfare rules forced students to work unpaid, simulated jobs with no career prospects.⁹⁵

Activist organizations, such as Community Voices Heard, used the city's own data to document the revolving door of welfare churning that failed to lead to family-sustaining-income jobs and instead resulted in families returning to welfare.⁹⁶ The sanction rate was so high that the state threatened to cut funding for every administrative hearing the city lost; moreover, sanction rates for recipients with counsel were overturned at a high rate, indicating most were erroneous.⁹⁷ Importantly, data showed evictions correlating with recent case closure.⁹⁸ This was workfare at its most punitive and stingy, with numerous recipients moving off the welfare rolls and into hardship for purported noncompliance rather than into permanent, gainful employment.⁹⁹

91. See NIGHTINGALE ET AL., *supra* note 89, at ix; YOUDELMAN WITH GETSOS, *supra* note 84, at 15.

92. See YOUDELMAN WITH GETSOS, *supra* note 84, at 8, 15–16.

93. See Steve Loffredo, *Poverty Law and Community Activism: Notes from a Law School Clinic*, 150 U. PA. L. REV. 173, 176–77 (2001); Joshua Brustein, *Fighting Poverty and a Decade of Welfare Reform*, GOTHAM GAZETTE (June 19, 2006), <https://www.gothamgazette.com/social-services/3280-fighting-poverty-and-a-decade-of-welfare-reform> [<https://perma.cc/E6LM-A79D>].

94. See Loffredo, *supra* note 93, at 176–77; Brustein, *supra* note 93.

95. Brustein, *supra* note 93.

96. YOUDELMAN WITH GETSOS, *supra* note 84, at 92.

97. See *id.* at 8, 67.

98. See Steven Banks, Comm'r of the N.Y.C. Hum. Res. Admin., Testimony at the New York State Senate – Task Force on Social Service Delivery in New York City 1 (Oct. 7, 2015) (transcript available at https://www1.nyc.gov/assets/hra/downloads/pdf/news/testimonies/2015/oct_2015/100715HomelessnessHearing_FINAL.pdf [<https://perma.cc/AY8C-UKZH>]); Samar Kurshid, *In Departure from Predecessors, De Blasio Administration Overhauls City Welfare System*, GOTHAM GAZETTE (Feb. 19, 2016), <https://www.gothamgazette.com/city/6177-in-departure-from-predecessors-de-blasio-administration-overhauls-city-welfare-system> [<https://perma.cc/ASG4-K7TW>].

99. See Kurshid, *supra* note 98.

IV. NEW MODELS WITH PROMISE

Considering these seemingly intractable problems, how could a truly universal UBI program survive without a work requirement, and how could a JG program avoid becoming a make-work, low-wage failure? Further, how could such programs avoid the evils of re-entrenching racial and gender disparities into society? Some limited programs—Argentina’s *Plan Jefes y Jefes de Hogares* job program, the Stockton Economic Empowerment Demonstration (SEED) basic income program, and New York City’s increasingly flexible workfare program—show how meaningful reforms can be effectively implemented even under difficult constraints.¹⁰⁰

If a JG were accompanied by meaningful benefits and labor protections, including the minimum social protection of UBI, it could offer dignified choices—for example, allowing individuals to combine wage work with caregiving or higher education. Argentina’s *Plan Jefes y Jefes de Hogares* (in effect from 2002 to 2004) is a rare example with lessons for future program design. But the program included many features that distinguish it from a truly universal and permanent JG.¹⁰¹ Federally funded but locally administered, the voluntary program targeted low-income families with dependent children, was limited to one participant per household, and paid well below a living wage.¹⁰² Participants “worked primarily in community projects and were directed to training programs, including finishing basic education”; some participants started microenterprises to make toys, clothing, and artisan wares.¹⁰³ Based on qualitative surveys, economist Pavlina Tcherneva concluded, “although the official poverty rate was not considerably reduced due to the low pay . . . there were other tangible ways in which the program improved the lives of the poor.” After only a few years, the program was terminated and replaced with a family welfare grant containing no work requirement.¹⁰⁴ The program’s gendered features proved to be both its strongest unintended impact and its ultimate demise, as the government witnessed more female household heads participating than expected and then, as the economy recovered, pushed them out of the program and back into to the home as unpaid caregivers and domestic laborers.¹⁰⁵

Unsurprisingly, one of the program’s main consequences was participants’ reported feelings of empowerment in contributing value to their

100. See *infra* Part V.

101. See Pavlina R. Tcherneva, *Beyond Full Employment: What Argentina’s Plan Jefes Can Teach Us About the Employer of Last Resort*, in *EMPLOYMENT GUARANTEE SCHEMES*, *supra* note 75, at 79, 88 [hereinafter *Beyond Full Employment*].

102. See *id.* at 85.

103. *Id.* at 85, 91.

104. *Id.* at 87–88.

105. See *id.* at 87, 98.

communities, which both raised the floor for wages and increased their bargaining power in the domestic sphere.¹⁰⁶ Researchers note that “[s]o long as these public-sector jobs have a gender-informed design, they will be able to incorporate the care economy in the public sphere and help redefine the meaning of work away from strict market utility toward social usefulness.”¹⁰⁷ But that condition is a tall order given entrenched ideologies about work and compensation in the United States, as in Argentina, where “the major obstacles to [women’s] participation in the program were not their childcare responsibilities or poverty, but the social mores of [policy makers] regarding what was considered ‘productive’ and ‘unproductive’ work and who should be regarded as ‘employable’ and ‘unemployable.’”¹⁰⁸

As Tcherneva observes, “[t]hose citizens who participate and successfully invest in the market are perceived as undertaking valuable and productive activities, while those who are less successful or who operate outside the market are seen as unproductive and even lazy.”¹⁰⁹ This divisive dichotomy, which pits market participation against nonmarket labor, “has worked to the particular disadvantage of women and people of color who are found in low-income positions and often spend a significant amount of time outside the formal market economy.”¹¹⁰ As the recent Tax Cuts and Jobs Act shows, U.S. policy makers cling to the retrograde ideal of one unpaid homemaker in every wealthy married family and single out this family model for the largest tax breaks.¹¹¹ Regardless of the model’s value, not everyone has the same opportunity or choice to attain that model.

To test a UBI program, in 2019 SEED—under the leadership of Stockton, California’s then-Mayor Michael Tubbs—leveraged private philanthropy to pay 125 residents earning below the median income \$500 per month for eighteen months (extended during the pandemic by six months) without

106. *See id.* at 97.

107. *Id.* at 99.

108. *Id.* at 95.

109. Nancy Staudt, *The Political Economy of Taxation: A Critical Review of a Classic*, 30 LAW & SOC’Y REV. 651, 652 (1996).

110. *Id.*

111. Linda Sugin, *The Social Meaning of the Tax Cuts and Jobs Act*, YALE L.J.F. 403, 405 (2018) (“The tax law has long favored families with two parents, one breadwinner, and children living in the same home The traditional family, in this paradigm, is increasingly affluent and white” (footnote omitted)); Staudt, *supra* note 109, at 653 (1996) (revealing the forgotten and ignored purpose of Simon’s income definition, “to limit income inequality,” by defining what is income and determining whether subject to income tax or not). We cannot agree what constitutes fair apportionment of the cost of public goods, such as to low-income individuals and to women of color caring for children. *See id.* at 665.

regard for employment or household status.¹¹² Among the recipients, “[43% were] working full or part time and [10% were] looking for work, while [30% were unable to] work because they are disabled or a primary caregiver.”¹¹³ After the first six months, several recipients spoke to journalist Bliss Broyard, expressing plans to use the additional funds to enroll in classes for higher salary potential, invest in small businesses (e.g., buying and selling used cars), and make consumer purchases they would not have otherwise made (e.g., travel, clothing, and pet care), in addition to paying more basic housing or healthcare costs.¹¹⁴

The goal of the demonstration was not to determine whether recipients made the right kind of purchases or reduced their hours of work, although researchers have collected such data;¹¹⁵ rather, then-Mayor Tubbs remained hopeful that the pilot would reduce the stigma of receiving cash assistance such that “people begin to see themselves, their neighbors, and the people they have warm feelings for.”¹¹⁶ According to the plan, the program would ideally “lead to reductions in monthly income volatility and provide greater income sufficiency, which [would] in turn lead to reduced psychological stress and improved physical functioning.”¹¹⁷ During the pilot, SEED participants would be assessed for increased “feelings of hope and mattering.”¹¹⁸ At the six-month mark, after profiling several individual participants, Broyard reported: “My own experience has been that the money doesn’t change the recipients’ behavior—if anything, it serves as an accelerant for whatever path they were already on—but it is changing their lives by making them less stressful.”¹¹⁹ “The money can be transformative, yes, but it also seems to make them more themselves.”¹²⁰

Whether UBI recipients, like SEED recipients, would also seek additional paid work opportunities through a JG to further enable their passions and pursuits remains in question, but those unable to find remunerative work might certainly consider that option if the right job were guaranteed to come along. Some commentators doubt that even a JG program would supply jobs sufficient to meet both public needs and the existing skills and preferences of

112. Bliss Broyard, *What Would You Do with an Extra \$500 a Month? A Financial Experiment in Five True Stories*, N.Y. MAG.: INTELLIGENCER (Oct. 12, 2019), <https://nymag.com/intelligencer/2019/10/universal-basic-income-stockton-california.html> [<https://perma.cc/6E3G-UQGM>].

113. *Id.*

114. *See id.*

115. *See* Emison, *supra* note 34.

116. Broyard, *supra* note 112.

117. Emison, *supra* note 34.

118. Broyard, *supra* note 112.

119. *Id.*

120. *Id.*

available workers.¹²¹ During the New Deal era, the most visible WPA jobs “required relatively little training or equipment” and were by design “temporary, or optional,” so that workers could return to the private market when jobs became available.¹²² Where workers lack skills for available jobs, a JG program would need to “start with the [individuals that employers] need to hire and then find work [those individuals are] qualified to do.”¹²³ Some have proposed that, in addition to infrastructure and green jobs, caregiving and community involvement would provide opportunities for public option jobs.¹²⁴ This raises concerns about who should perform high-value work as compared to less-valued physical drudgery, which may only reinforce existing racial, gender, physical ability, and other disparities.

Cautious optimism about combining both UBI and JG in a supportive rather than punitive, and dignified rather than degrading, way may be warranted based on New York City’s gradual transformation of a punitive workfare regime—requiring participation in a degrading, sometimes dangerous simulated “work experience program”—into a more expansive social safety net and jobs program by partnering with private employers to provide paid sectoral job training while also providing childcare, transportation, housing assistance, and exempt work-study funding for students enrolled in higher education programs.¹²⁵

New York City’s example, while not intentionally designed to break ground in any particular respect, nonetheless reveals how local municipal reforms can improve the lives of individuals and households despite the constraints of federal and state law. Because New York’s state constitution—enforced by a dedicated and experienced network of legal advocates—mandates the government’s support of the needy, the state has funded cash assistance without time limits and without regard for parental status (as required for the use of federal TANF funds).¹²⁶

121. See, e.g., Josh Carney, *The Trouble with a Job Guarantee*, CNBC (Jan. 4, 2012), <https://www.cnbc.com/id/45872602> [<https://perma.cc/F6Q5-U543>] (discussing a JG program’s inability to distribute labor).

122. Jonathan Chait, *Democrats Are Rushing into a Job Guarantee. It Could Be a Huge Mistake*, N.Y. MAG.: INTELLIGENCER (Apr. 25, 2018), <https://nymag.com/intelligencer/2018/04/democrats-are-rushing-a-jobs-guarantee-its-a-huge-mistake.html> [<https://perma.cc/PVA5-FSKJ>].

123. *Id.*

124. See, e.g., *The Job Guarantee*, *supra* note 29, at 19.

125. See Liz Alderman, *In Europe, Fake Jobs Can Have Real Benefits*, N.Y. TIMES (May 29, 2015) <https://www.nytimes.com/2015/05/31/business/international/in-europe-fake-jobs-can-have-real-benefits.html> [<https://perma.cc/L6FZ-GVZJ>].

126. See *Policy Basics: Temporary Assistance for Needy Families*, *supra* note 80.

By the time Mayor de Blasio took charge of city hall after his 2014 campaign to end New York City's "tale of two cities,"¹²⁷ the workfare program's damage was well-documented by advocates, organizers, and legal service providers.¹²⁸ Over time, advocates succeeded in working with the city's welfare agency to push for the amendment of certain features of New York's workfare rules, including statutory protections permitting districts to count at least some four-year-college coursework as a work activity for purposes of receiving subsistence benefits.¹²⁹ Additionally, the state of New York eliminated the mandatory minimum sanction periods within which an allegedly noncompliant household member would stop receiving benefits.¹³⁰ Advocates worked with the city agency to reduce the number of work hours required by single parents of young children and to eliminate mandatory workfare placements in unpaid, unproductive "Work Experience Program" positions that offered minimal experience or value to potential employees.¹³¹

To obtain federal TANF funds,¹³² states and local districts remain subject to punitive mandatory work requirements, which continue to stigmatize recipients and trap them in an alternating cycle between low-wage, insecure work and reliance on welfare to meet basic needs.¹³³ Still, as a result of these reforms, New York City was closer than it had been in decades to

127. Matt Flegenheimer, *How Bill de Blasio Went from Progressive Hope to Punching Bag*, N.Y. TIMES MAG. (Aug. 6, 2019), <https://www.nytimes.com/2019/08/06/magazine/mayor-bill-de-blasio-2020-campaign.html?action=click&module=Well&pgtype=Homepage§ion=The%20New%20York%20Times%20Magazine> [<https://perma.cc/4SGC-ETMP>] ("De Blasio's soak-the-rich platform aimed at bridging the 'tale of two cities' suited a New York that powered the Occupy movement two years earlier.")

128. See COAL. FOR THE HOMELESS, LEGACY OF NEGLECT: THE IMPACT OF WELFARE REFORM ON NEW YORK'S HOMELESS 40 (1999), <https://www.coalitionforthehomeless.org/wp-content/uploads/2014/06/LegacyofNeglect-finalreport1999.pdf> [<https://perma.cc/8EX7-4BDX>] (evaluating New York's workfare program and its impact on the increase in poverty).

129. Samar Khurshid, *In Departure from Predecessors DeBlasio Administration Overhauls City Welfare System*, GOTHAM GAZETTE (Feb. 19, 2016), <https://www.gothamgazette.com/topics-newestopinions/6177-in-departure-from-predecessors-de-blasio-administration-overhauls-city-welfare-system> [<https://perma.cc/CW3K-5BM6>].

130. *Id.*

131. *Id.*

132. LIZ SCHOTT & LADONNA PAVETTI, CTR. ON BUDGET & POL'Y PRIORITIES, CHANGES IN TANF WORK REQUIREMENTS COULD MAKE THEM MORE EFFECTIVE IN PROMOTING EMPLOYMENT (2013), <https://www.cbpp.org/research/family-income-support/changes-in-tanf-work-requirements-could-make-them-more-effective-in> [<https://perma.cc/5LXS-9HEH>] (explaining TANF participation rate requirements).

133. See HEATHER HAHN, URB. INST., WORK REQUIREMENTS IN SAFETY NET PROGRAMS 1 (Apr. 2018), https://www.urban.org/sites/default/files/publication/98086/work_requirements_in_safety_net_programs.pdf [<https://perma.cc/FK7M-MF4B>].

implementing non-punitive work supports and subsistence-level benefits to all income-eligible households.¹³⁴

Under new reforms, public assistance recipients face less exposure to sanctions and erroneous loss of benefits, but they also lack crucial supports to move them into higher education, employment at a living wage, or credit for caregiving obligations.¹³⁵ Erroneous disruptions in transportation and childcare assistance as work supports can operate as what advocate and educator Dillonna Lewis, Co-Executive Director of the Welfare Rights Initiative, refers to as “shadow sanctions”; even if cash assistance continues to be received, as without needed work supports, individuals cannot comply with required work activities.¹³⁶ While New York City has made strides in eviction prevention, immigrant protection, disability accommodations, and minimum wage and labor regulation, gaps in employment history and involuntary unemployment continue to hinder self-sufficiency.¹³⁷ Finally, despite changes in workfare rules, persistent stigma and disparate treatment of benefit recipients demands transformation of workfare agency culture and administration.¹³⁸

While challenges persist in providing affordable housing, equitable public education, and health access, New York City has—at a minimum—mitigated some of the most onerous features of workfare.¹³⁹ Far from a pilot project, New York City’s efforts to transform workfare from a punitive make-work program to something resembling a safety net with vital work supports accelerated during the pandemic out of necessity despite severe preexisting

134. *NYC Mayor Looks to Undo Giuliani-Era Welfare Reforms*, FOX NEWS (Dec. 20, 2015), <https://www.foxnews.com/politics/nyc-mayor-looks-to-undo-giuliani-era-welfare-reforms> [<https://perma.cc/T9ND-EBGC>].

135. *Scapegoating Poor Women*, *supra* note 78, at 143, 151 (“[P]oor women . . . are not supposed to remain home taking care of their children, but instead must show that they are ‘good mothers’ by working for a wage.”).

136. Interview with Dillonna Lewis, Co-Exec. Dir. of the Welfare Rts. Initiative (Apr. 3, 2021). *See generally* Neil Demause, *The Squeeze Is On*, THE VILL. VOICE (Apr. 25, 2006), <https://www.villagevoice.com/2006/04/25/the-squeeze-is-on-2/> [<https://perma.cc/L285-QENC>] (noting that failure to provide childcare operates as a de facto sanction in receipt of public assistance).

137. *See, e.g.*, Oksana Mironova, *Right to Counsel and Stronger Rent Laws Helped Reduce Evictions in 2019*, CMTY. SERV. SOC’Y (Feb. 24, 2020) <https://www.cssny.org/news/entry/right-to-counsel-and-stronger-rent-laws-helped-reduce-evictions-in-2019> [<https://perma.cc/YMA7-WBCL>] (analyzing New York’s progressive law that prevents evictions).

138. URB. JUST. CTR., THE BUREAUCRACY OF BENEFITS: STRUGGLING TO ACCESS PUBLIC ASSISTANCE AND SNAP IN NEW YORK CITY 29 (2019), <https://snp.urbanjustice.org/wp-content/uploads/sites/12/2019/09/Bureaucracy-of-Benefits.pdf> [<https://perma.cc/2JPU-22FW>].

139. *See* Timothy J. Casey, *Welfare Reform and Its Impact in the Nation and in New York*, W. N.Y. L. CTR. (Aug. 1998), <http://www.wnyc.net/web/welfare-law/resource-material/welrefor.htm> [<http://perma.cc/L62F-B9YV>].

revenue shortfalls.¹⁴⁰ To encourage social distancing in response to the COVID-19 pandemic, all work requirements were suspended, and interviews, applications, and recertifications were—to the extent possible and not without difficulty—processed by telephone or online.¹⁴¹

Advocates for individuals with disabilities have promoted a positive version of “Employment First”—made possible only where preexisting disability benefits and supports are assured—which is intended to reduce stigma and segregation by increasing access to competitive labor-market jobs rather than automatically excluding individuals from work opportunities and, through them, greater job prospects and prosperity.¹⁴² Crucially, such proposals are not a substitute for disability benefits or support for individuals choosing to work with appropriate accommodations.¹⁴³ Advocates may quibble over whether any feature should be “first” in a system of individualized supports that are intended to maximize choices around social engagement.¹⁴⁴ Arguably, what is prioritized in these programs is each individual’s unconditional and universal entitlement to a full range of possibilities and supports.¹⁴⁵ Importantly, Employment First advocates emphasize the need to preserve individual choice and autonomy¹⁴⁶—a challenge even with a robust national job market and even for those with the protection of disability benefits.

Federal UBI and JG programs at scale would similarly transform the workfare system into a truly productive scheme that rewards—but does not require—work to live. In light of the results of municipal UBI and JG programs, such as *Plan Jefes y Jefas de Hogares*, SEED, and New York City’s workfare reform, what lessons can be drawn to envision even broader and better approaches and to evaluate their effectiveness given a diverse range of priorities and goals?

Welfare reform at the national level was inspired by local experiments, including the punitive system first rolled out in New York City by the Giuliani

140. See HAHN, *supra* note 133, at 16.

141. *Important Information About COVID-19 and Your HRA Benefits*, N.Y.C. HUM. RES. ADMIN., <https://www1.nyc.gov/site/hra/important-information-about-covid-19-and-your-hra-benefits.page> [<https://perma.cc/B66Y-ZJ48>].

142. See NAT’L DISABILITY RTS. NETWORK, BEYOND SEGREGATED AND EXPLOITED 15–16 (2012), https://www.ndrn.org/wp-content/uploads/2019/03/Beyond_Segregated_and_Exploited.pdf [<https://perma.cc/AH7S-TKPX>].

143. See *id.* at 24 (discussing how individuals with disabilities are entitled to receive benefits regardless of whether they live in an institution).

144. See *id.* at 17 (emphasizing the importance of social opportunities for individuals with disabilities).

145. *Id.* at 15.

146. *Id.* at 15–16.

administration.¹⁴⁷ But just as the city's example inspired a nationwide embrace of the 1990s' negative Work First philosophy, the city's recent rollback of some of the worst workfare features can and should provide hope for workfare reform that may reduce the stigma of benefits receipt and eliminate unemployment for those seeking work. So long as the trend moves toward expanding and supporting, rather than limiting and punishing participant choices, New York City could model how to make vast improvements in the lives of low-income households, mitigating the racial wealth gap and spreading the social safety net beneath those who need it most.

V. NEITHER MAGIC BULLET NOR BLANK SLATE: PROCEEDING WITH CAUTION

UBI and a JG are not magic-bullet solutions for the wide range of ills they seek to address, but neither are they emerging onto a blank slate. Prior experiences reveal the ideological disagreements that hinder the creative reform of existing programs. Previous attempts to enact UBI or a JG through social safety net programs have resulted in political compromises by guaranteeing economic security only for those deemed deserving through work effort.¹⁴⁸ Under these programs, those fortunate enough to achieve prosperity are viewed as deserving of all the credit, and those who fail are viewed simply as lacking the will to succeed and are consigned to the meanest work or circumstances. To the contrary, a minimum guarantee of social support free of work requirements, even if not constitutionally required, recognizes that individuals should not be indebted to private employers, breadwinners, or society at large for the basic necessities of life.¹⁴⁹

What might be accomplished in building upon, rather than tearing down and replacing, existing safety protections for the poor and underemployed? Would existing legal protections and safeguards need to be re-envisioned in a new regime of universal benefits and expanded public employment options? Finally, would such a scheme offer potential for greater participation and individual agency in the administration of public goods and freedom from government intervention into private affairs rather than increased bureaucracy, or worse, surveillance by the state?

First, neither UBI nor a JG must substitute other forms of minimum social protection, such as disability, unemployment insurance benefits, or other

147. See *NYC Mayor Looks to Undo Giuliani-Era Welfare Reforms*, *supra* note 134.

148. See, e.g., Benjamin M. Leff, *EITC for All: A Universal Basic Income Compromise Proposal*, 25 WASH. & LEE J. C.R. & SOC. JUST. 85, 87–89 (advocating for expansive Earned Income Tax Credit as a compromise, recognizing “UBI appeals to thinkers on the political left, the right, and places in between”).

149. See *GUARANTEEING EMPLOYMENT DURING THE PANDEMIC AND BEYOND*, *supra* note 40, at 3.

targeted reforms.¹⁵⁰ Second, a JG at a living wage must ensure meaningful choices among productive social activities, including participation in the labor market according to ability, higher education, caregiving, and other activities in the public interest.¹⁵¹ Careful design would be required to prevent stigma from attaching to jobs offered by the government as an employer of last resort—jobs that would, by definition, go unfilled in economic boom times—or to the choice not to accept such work.¹⁵² Otherwise, a JG scheme might exacerbate existing job segregation, for example, among traditionally female caregiving labor¹⁵³ or among job seekers with disabilities.

The devil is in the details: first in the amount of benefit a UBI would pay and to whom and, second, in what activities would count for compensation in a JG, in how employment rights and protections would be enforced, and in the nature of any individualized supports that would be available. Even then, additional logistical questions include how to provide government oversight and public participation, all while obtaining buy-in from the for-profit and nonprofit sectors.

At a minimum, tax scholars Miranda Perry Fleischer and Daniel Hemel conclude that a basic income of \$6,000 paid annually through the Social Security Administration in biweekly installments to smooth spending to all citizens and legal permanent residents, adults, and children alike could be funded “through the consolidation of existing cash and near-cash transfer programs as well as the imposition of a relatively modest surtax on all earners.”¹⁵⁴ While such a proposal risks replacing, rather than augmenting, existing social safety net programs, some administrative efficiency could be gained by eliminating frequent and burdensome eligibility verification and

150. See, e.g., Amos Toh, *How the Tech-Driven Overhaul of the UK's Social Security System Worsens Poverty*, HUM. RTS. WATCH (Sept. 29, 2020), <https://www.hrw.org/report/2020/09/29/automated-hardship/how-tech-driven-overhaul-uk-social-security-system-worsens#> [<https://perma.cc/29VZ-M483>].

151. *The Job Guarantee*, *supra* note 29, at 5–6.

152. See, e.g., Brown, *supra* note 56, at 797–98.

153. See Nancy E. Shurtz, *Long-Term Care and the Tax Code: A Feminist Perspective on Elder Care*, 20 GEO. J. GENDER & L. 107, 113 (2018) (describing the disproportionate impact of inadequate elder care services on women, who are more likely to need long-term care and make sacrifices to provide that care either as a “paid direct care worker” or as an “unpaid family/friend caregiver” and are less likely to be able to afford long-term care); Almaz Zelleke, *Work, Leisure, and Care: A Gender Perspective on the Participation Income*, 89 POL. Q. 273, 273, 277 (2018) (“Any meaningful attempt to reduce inequality should address inequalities in responsibility for care as well as inequalities in income and wealth, if only because disproportionate responsibility for care has negative effects on lifetime earnings and savings for those who withdraw from the labour force to provide it—and who are disproportionately women.”).

154. Miranda Perry Fleischer & Daniel Hemel, *The Architecture of a Basic Income*, 87 U. CHI. L. REV. 625, 625, 708 (2020), <http://ssrn.com/abstract=3346467> [<https://perma.cc/GR9L-8RMQ>].

reporting obligations that stigmatize participants with constant government agency contact and increase the duties of overtasked caseworkers.

To implement a federal JG, economists Mark Paul, William Darity Jr., and Derrick Hamilton propose the establishment of a “National Investment Employment Corps” that would offer a living wage plus fringe benefits to all adults seeking work, including those disproportionately consigned to involuntary unemployment by consistent racial discrimination.¹⁵⁵ Tcherneva similarly supports a detailed federal JG proposal that pays a living wage through administration by community-led local job banks that could identify socially useful tasks, such as maintaining public infrastructure.¹⁵⁶

These are far from pie-in-the-sky reforms; to the contrary, they could be phased in relatively quickly and independently of each other. Yet to counteract the intransigent ideology that insists on work in exchange for basic subsistence benefits and to make progress in alleviating poverty, reducing income inequality, and remedying long-standing racial and gender disparities in wealth-building, UBI and a JG must operate together. To do so at scale on the federal level requires careful design, implementation, and oversight.

As a preliminary matter, the choice of administrative scheme best suited for implementing each program depends on the kind of agency expertise available for the tasks, as well as the particular safeguards that are in place or needed to detect, avoid, or redress errors in implementation.¹⁵⁷ Accuracy, accountability, equity, efficiency, interagency coordination, and administrability are among the possible criteria to be considered,¹⁵⁸ and different agencies have varying levels of experience and expertise in each of these areas.¹⁵⁹

155. PAUL ET AL., *supra* note 24, at 3–4.

156. *The Job Guarantee*, *supra* note 29, at 10.

157. See Leslie Book, *The Collection Due Process Rights: A Misstep or Step in the Right Direction?*, 41 HOUSTON L. REV. 1145, 1163 (2004); *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970).

158. Alice G. Abreu, *Tax 2018: Requiem for Ability to Pay*, 51 LOYOLA L.A. L. REV. 61, 64 n.4 (2018) (“Horizontal equity is the concept that similarly situated taxpayers ought to be treated similarly and is one of the three fundamental tenets of U.S. tax policy The other two bedrock principles are vertical equity and simplicity (or administrability). Vertical equity is the concept that tax burdens should vary with ability to pay, or put another way, that dissimilarly situated taxpayers ought to be treated dissimilarly. Simplicity is the concept that the tax system should be simple enough to be understood by taxpayers and administered by the IRS.”) (internal citations omitted); Reuven S. Avi-Yonah, *The Three Goals of Taxation*, 60 TAX L. REV. 1, 1 (2006) (discussing the traditional grounds for evaluating tax policy).

159. See, e.g., Book, *supra* note 157, at 1152 (discussing how the Internal Revenue Service, a governmental agency, determines the administration of collected taxes).

UBI could be administered through any one of several existing agencies.¹⁶⁰ Possible candidates include the Social Security Administration (SSA) or the Internal Revenue Service (IRS). Public messaging may differ depending on which agency is chosen; proponents of the SSA point to its process for making more frequent payments, but benefits would remain tied to social security number rather than tax identification number and thus would be unavailable to anyone without a social security number.¹⁶¹ Federal tax administration may offer one area in which collection and redistribution of revenue could be accomplished by prioritizing equity and administrability over fault, so long as due process in revenue collection and fairness in audit exposure can be assured.¹⁶² To the extent an option is modeled after, or expanded from, the Earned Income Tax Credit (EITC) in order to reach more recipients, some could be refunded through payroll. But in order to streamline administration for those without earned income, some coordination would be required. The IRS arguably has greater experience working with taxpayers to assess, collect, and resolve overpayment or other disputes through the Taxpayer Advocate and under the Taxpayer Bill of Rights.

In the pandemic, the fastest and smoothest method for distributing “economic stimulus payments” turned out to be a combination of direct deposit to previous tax filers; automatic distribution by the IRS to SSA recipients and veterans through an interagency matching system; and, most difficult, creation of a new process for non-filers.¹⁶³ Additional credits, made fully refundable to those with no tax liability, could be instituted and made available, even for those lacking a social security number, without onerous filing procedures. Some of the advantages of using IRS administration would be symbolic and intangible. As commentators note, the EITC need not be administered by the IRS.¹⁶⁴ Yet there are advantages: claimants could file without having to visit a welfare agency in person, which might raise concerns about stigma,¹⁶⁵ and the EITC’s location in the Internal Revenue Code (IRC)

160. Professors Fleischer and Hemel opt for the Social Security Administration, as payments could be made more frequently than annually. Fleischer & Hemel, *supra* note 154, at 695.

161. *See id.*

162. Brown, *supra* note 56, at 792.

163. *See* Jack Brewster, *Coronavirus Stimulus Payments Will Hit Direct Deposit Accounts Next Week, Mnuchin Says*, FORBES (Apr. 8, 2020, 5:51 PM), <https://www.forbes.com/sites/jackbrewster/2020/04/08/coronavirus-stimulus-payments-will-hit-direct-deposit-accounts-next-week-mnuchin-says/?sh=4fe6ae1118a4> [<https://perma.cc/B8BA-LBF9>] (discussing how individuals who opt for direct deposit stimulus checks will receive them sooner).

164. *See, e.g.*, Lawrence Zelenak, *Tax or Welfare? The Administration of the Earned Income Tax Credit*, 52 UCLA L. REV. 1867, 1867 (2005).

165. *Id.*

would somewhat insulate it from budget cuts as a spending program.¹⁶⁶ Indeed, the IRC can mask policy choices that, arguably, would not be popular if they were more visible.¹⁶⁷

The perceived relationship between taxpaying and social provision persists as a way of reflecting shared public values about which forms of wealth, income, or consumption should be taxed, exempted, or subsidized (and whether those are simply different versions of the same action).¹⁶⁸ Because tax policy reflects social choices and is typically protected from political whims and judicial review, it lends legitimacy to tax assessments, which most individuals report they are willing to pay so long as they are accurately calculated (and so long as others also comply).¹⁶⁹

A UBI administered through the IRC might only displace concerns about fraud, abuse, and program integrity onto the administration of a JG, but such concerns would not be insurmountable in a voluntary JG regime. Existing administrative schemes, such as the unemployment insurance benefit system, may be ill-equipped to handle the issues that currently arise in the workfare sanctions context and could still arise in a combined UBI and JG regime. During the pandemic, the burdensome state-run unemployment insurance benefit expansion resulted in highly visible fraud in some instances and lack of skilled coders to quickly adapt the system in others.¹⁷⁰

Significant policy making or other substantive expertise would be required to identify and define the kinds of activities that would qualify for a paid JG—for example, caregiving or maintenance work that might be done regardless of whether compensation was available. Restrictions on educational and training activities, such as participation in college coursework, currently consign many TANF recipients to low-wage, dead-end jobs that disappear in times of economic recession, thus necessitating a return to public assistance.¹⁷¹ Any JG must fully account for and, indeed,

166. See Brown, *supra* note 56, at 804.

167. Zelenak, *supra* note 164, at 1903.

168. Critical tax theorists have cataloged the myriad intended and unintended consequences of tax expenditures. See generally CRITICAL TAX THEORY: AN INTRODUCTION (Anthony C. Infanti & Bridget J. Crawford eds., 2009); Alice G. Abreu & Richard K. Greenstein, *Rebranding Tax/Increasing Diversity*, 96 DENV. L. REV. 1, 2 (2019) (discussing the implications of the relationship between taxes and social values).

169. See ANTHONY C. INFANTI, OUR SELFISH TAX LAWS: TOWARD TAX REFORM THAT MIRRORS OUR BETTER SELVES 1 (2018); CAMILLE WALSH, RACIAL TAXATION: SCHOOLS, SEGREGATION, AND TAXPAYER CITIZENSHIP 1869–1973, at 4 (2018).

170. Makena Kelly, *Unemployment Checks Are Being Held Up by a Coding Language Almost Nobody Knows*, THE VERGE (Apr. 14, 2020, 8:00 AM), <https://www.theverge.com/2020/4/14/21219561/coronavirus-pandemic-unemployment-systems-cobol-legacy-software-infrastructure> [<https://perma.cc/8ZYM-VGSZ>].

171. JUDITH M. GUERON & GAYLE HAMILTON, THE ROLE OF EDUCATION AND TRAINING IN WELFARE REFORM 7 (2002).

affirmatively support participation in postsecondary education and caregiving work, as well as in other occupations that confer a public benefit.¹⁷² Again, tax administration could be part of the solution as treatment of income or benefits from a range of sources is already a task of the Department of Treasury. For good or ill, the tax arena already operates as a default system for determining which activities confer sufficient public over private benefit or which advocacy efforts cross the line into impermissible political activity, and it could perform this function for JG job selection as well.¹⁷³ Meanwhile, workfare agencies currently tasked with administering punitive sanctions could adjudicate a broader range of employment-related issues in the vein of unemployment insurance benefit hearings.

Administration of a JG program poses additional problems considering its greater need for local coordination of job sites, evaluation of employment conditions, and matching of jobs with job seekers, including individuals combining or alternating paid work with uncompensated activities, such as school attendance or caregiving, or by individuals who require accommodation of disabilities or other special circumstances. Drawing on lessons from New York City, any administrative system must respond to, if not actively collaborate with, community stakeholders in the design and coproduction of programs, including adoption of new technology. While any scheme requires some degree of federal oversight and local discretion, UBI or a JG may also need to be entrusted to community-based organizations in collaboration with the private, for-profit employer sector instead of local government agencies. Even so, how would we address concerns about leaving oversight to the private sphere without regulation? Proponents of greater participatory decision-making, rather than agency bureaucracy, point to increased flexibility and individualized support, which lead to greater accountability.¹⁷⁴

Ultimately, advocates seek greater control by benefit recipients through breaking the mold of the current administrative state.¹⁷⁵ Where greater local discretion is warranted, community-based organizations may be empowered to guide the determination of which activities and social contributions are valuable enough to provide sufficient public benefit subject to agency

172. *See id.*

173. *See* Roger Colinvax, *Policing the Border: A History of IRS Regulation of Political Activity*, HISTPHIL (Aug. 24, 2018), <https://histphil.org/2018/08/24/policing-the-border-a-history-of-irs-regulation-of-political-activity/> [<https://perma.cc/5SQQ-CNQ8>] (discussing how tax law regulates political activity).

174. *See* Wendy A. Bach, *Mobilization and Poverty Law: Searching for Participatory Democracy Amid the Ashes of the War on Poverty*, 20 VA. J.L. & SOC. POL'Y 96 (2013) (examining community action programs and the standard of “maximum feasible participation” by affected community members).

175. *See The Job Guarantee, supra* note 29, at 16.

oversight.¹⁷⁶ To the extent community members can work with individuals seeking to expand their capacity to contribute meaningfully to society, they can provide support networks, vibrant relationships, and accountability.¹⁷⁷ Perhaps the jobs guaranteed in the future will value and compensate civic participation and engagement for precisely this purpose. To some, models of local participatory decision-making in the implementation of a voluntary JG built on a solid UBI safety net might be the most socially beneficial result of all.¹⁷⁸

VI. CONCLUSION

As the world hopes for an end to the immediate COVID-19 crisis and anticipates safer spaces for sociable work and care, we can build a stronger safety net to better support the vulnerable if and when the rug is pulled out from under us in the future. In the United States, the political polarization that has stalled long-term economic relief makes reform in the near term difficult to imagine. At the same time, bold ideas for racial and economic justice like UBI and a JG need not be a radical departure from existing schemes. Lessons from past, ill-fated efforts show that, by insuring each other against economic ruin and investing in the full range of human creativity, we may still see shared prosperity, rather than the precarious edge of an abyss, on the horizon.

176. *See id.* (“[F]or its long-term success, participatory governance is likely a prerequisite. There are many models and real-world experiences that can inform a design that incorporates citizen engagement, public decision-making, and local institution building.”).

177. *See* Lynn D. Lu, *Restorative Relationships and “Radical Help”: Reimagining Welfare-to-Work Beyond the Market-Family Divide*, 50 U. BALT. L. REV. (forthcoming 2021) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3670427 [<https://perma.cc/GYS4-UKH7>].

178. *See The Job Guarantee*, *supra* note 29, at 17 (explaining that a JG “can be an institution with profound democratizing tendencies, and a conduit for transformative change in the workplace, people’s everyday lives, and the economy as a whole”).