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## Pandemic of Inequality: An Introduction to Inequality of Race, Wealth, and Class, Equality of Opportunity

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# **Pandemic of Inequality: An Introduction to Inequality of Race, Wealth, and Class, Equality of Opportunity**

DR. CHARLES J. REID, JR.

This Symposium was proposed and planned months before COVID-19 emerged as a public health emergency. Still, it can safely be said that the COVID pandemic that ravaged the United States in the summer and fall of 2020 – a pandemic, furthermore, that poses an even greater threat in the upcoming winter – has revealed in vivid detail the inequalities at the heart of American life. Similarly, this Symposium was conceived long before the police homicides of Breonna Taylor, George Floyd, and other African Americans plunged the American nation into a summer of passion and protest. Again, however, these homicides only made plain what was already there: a chasm of inequality that defines racial relations in the United States.

The symposium focuses on different facets of what is a tragic and multi-dimensional reality of inequality. For, surely, America is a land not of equality, but of yawning inequality. It is an inequality that deprives human beings of the opportunity to develop their talents, to thrive, to form families, and to contribute to the welfare and well-being of society. And it is an inequality, furthermore, that damages not only individuals but all of society, by depriving the American community of the benefits derived from the contributions of persons who, but for the accident of birth, would assuredly be doing great things for the general public advantage.

## **I. RACE AND POVERTY**

We might begin with race. So much could be said. Racism permeates much of American history, from slavery, through the wars of subjugation waged against Native Americans, to Jim Crow laws, to the waves of panic that led to the Chinese Exclusion Act and numerous other harsh measures directed at Asian Americans, to the so-called scientific racism that dominated too much of American university and public life in the 1910s, 1920s, and 1930s. Acknowledging this long and bitter history, let us consider what the COVID pandemic of 2020 has revealed.

A survey published in *The New York Times* in July, 2020, documented pervasive racial disparities in rates of infection and in outcomes.

“Latino and African American residents of the United States have been three times as likely to become infected as their white neighbors,” citing Centers for Disease Control statistics.<sup>1</sup> This was the case early in the pandemic, and it remains largely the situation today.<sup>2</sup>

Much of this disparate impact was – and is – reducible to who does what type of work in America. America’s so-called “essential workers” – many of them underpaid and economically oppressed service-sector employees, are also disproportionately members of racial and ethnic minority groups.<sup>3</sup> In July, the Centers for Disease Control called attention to the

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<sup>1</sup> Richard A. Oppel, Jr., et al., *The Fullest Look Yet at the Racial Inequity of Coronavirus*, N.Y. TIMES (July 5, 2020), <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-african-americans-cdc-data.html>; Cf., Kate Taylor, *87 % of the Thousands of Meatpacking Workers Diagnosed with COVID-19 Are Hispanic, Black, or Asian*, BUSINESS INSIDER (July 8, 2020), <https://www.businessinsider.in/retail/news/87-of-the-thousands-of-meatpacking-workers-diagnosed-with-covid-19-are-hispanic-black-or-asian/articleshow/76860281.cms>; and Heather Schlitz, *Arkansas Poultry Plants Hit Hard By COVID-19. Hispanic Workers Are Facing the Worst of It*, USA TODAY (Aug. 31, 2020), <https://www.usatoday.com/story/news/investigations/2020/08/31/arkansas-poultry-plants-hit-hard-covid-hispanics-bear-brunt/3433543001/> (further developing these points).

<sup>2</sup> Dan Keating, et al., *Covid’s Cruelty Cuts Deepest in Communities of Color* WASH. POST (Nov. 22, 2020); Jon Zelner et al., *Racial Disparities In COVID-19 Mortality Are Driven by Unequal Infection Risks*, CLINICAL INFECTIOUS DISEASES (Nov. 21, 2020); In December, 2020, it was noted that “[i]n Rhode Island, more than one in eight Latino people have tested positive for COVID-19, compared with one in 31 white people.” Alice Goldfarb et. al., COVID Tracking Project, *This Is Only Going to Get Worse*, THE ATLANTIC (Dec. 10, 2020), <https://www.theatlantic.com/health/archive/2020/12/worst-week-pandemic-yet/617363/>. Similarly, “in Louisiana, one in six Asian people have tested positive for COVID-19.” *Id.* The COVID Tracking Project notes finally that “for Native Americans . . . the weekly new cases reported per capita have been higher than for any other group.” *Id.*

<sup>3</sup> Tiana N. Rogers, et al., *Racial Disparities in COVID-19 Mortality Among Essential Workers in the United States*, WORLD MEDICAL HEALTH POLICY (August 5, 2020); Catherine Thorbecke, *‘Heroes or Hostages?’ Communities of Color Bear the Burden of Essential Work in Coronavirus Crisis*, ABC NEWS (May 22, 2020), <https://abcnews.go.com/Business/heroes-hostages-communities-color-bear-burden-essential-work/story?id=70662472>; Cf., Anna Romina Guevarra, *Essential, Not Disposable*, CHICAGO READER.COM (Oct. 20, 2020), <https://www.chicagoreader.com/chicago/essential-not-disposable/Content?oid=83654592>; Annie Lowrey, *Don’t Blame Econ 101 For*

“disproportionate burden of illness and death” suffered by racial and ethnic minorities in the meat processing industry, largely thanks to workplace risks.<sup>4</sup> These risks have been exacerbated by the terms of employment imposed by the meat processors upon their workers.<sup>5</sup> Thus the economic compulsion caused by the absence of paid leave and sick time forced – and continues to force – many food processing workers to put themselves (and others) at undue risk of contagion.<sup>6</sup> Inadequate safety measures and cramped working conditions have compounded the crisis,<sup>7</sup> and the same can be said for the

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*the Plight of Essential Workers: They’ve Been Systematically Devalued for Years. But They Don’t Have to Be*, THE ATLANTIC (May 13, 2020), <https://www.theatlantic.com/ideas/archive/2020/05/why-are-americas-most-essential-workers-so-poorly-treated/611575/>; and Mindy Isser, *Workers Are More Valuable Than CEOs*, JACOBIN (Mar. 25, 2020), <https://www.jacobinmag.com/2020/03/coronavirus-low-wage-workers-front-lines-grocery-store> (regarding economic oppression).

<sup>4</sup> *Morbidity and Mortality Weekly Report*, CENTERS FOR DISEASE CONTROL (July 10, 2020), <https://www.cdc.gov/mmwr/index.html>. (“Distinctive factors that increase meat and poultry processing workers’ risks . . . include prolonged close workplace contact with coworkers . . . for long time periods, [and] shared work spaces”).

<sup>5</sup> Michael Grabell, *What Happens If Workers Cutting Up the Nation’s Meat Get Sick?*, PROPUBLICA (Mar. 28, 2020), <https://www.propublica.org/article/what-happens-if-workers-cutting-up-the-nations-meat-get-sick> (“meat and poultry workers rarely get paid when they’re sick. At many companies . . . workers receive disciplinary points for calling in sick”). *Id.* Cf., *Meat Packers Deny Workers Benefits For COVID-19 Deaths, Illnesses*, NBC NEWS (Sept. 29, 2020), <https://www.nbcnews.com/news/latino/meatpackers-deny-workers-benefits-covid-19-deaths-illnesses-n1241348>.

<sup>6</sup> Shawn Hubler, et al., *Many Latinos Couldn’t Stay Home. Now Virus Rates Are Soaring in Their Communities*, N.Y. TIMES (June 27, 2020), <https://www.nytimes.com/2020/06/26/us/corona-virus-latinos.html>; Heather Schlitz, *Meatpacking Workers with COVID-19 Symptoms Are Still Being Forced to Work*, JACOBIN (Nov. 18, 2020), <https://jacobinmag.com/2020/11/meatpacking-tyson-covid-symptoms-work>.

<sup>7</sup> Komala Ramachandra, *US Meatpacking Workers Face Crisis, Slashed Safety Protections During Pandemic*, HUM. RTS. WATCH (April 24, 2020), <https://www.hrw.org/news/2020/04/24/us-meatpacking-workers-face-crisis-slashed-safety-protections-during-pandemic>; Matt Smith, “How Meat Plant COVID Outbreaks Revealed ‘Devastating’ Workplace Conditions,” MARKETWATCH (Aug. 20, 2020), <https://www.marketwatch.com/story/how-meat-plant-covid-outbreaks-revealed-devastating-workplace-conditions-2020-08-17>; Kim Krisberg, “Meatpackers, Other Workers, Face High COVID-19 Risks,” 110 AM. J. PUB. HEALTH 1447 (2020).

frightening levels of deceit and indifference shown by management.<sup>8</sup>

Migrant agricultural workers have also been heavily impacted.<sup>9</sup> Like the employees of meat processing plants, they were the victims of employers and a system that are utterly indifferent to their health needs.<sup>10</sup> An international team of medical researchers blamed in part “long standing structural inequities” for this devastation.<sup>11</sup> Furthermore, the disparate impact COVID is visiting upon Latino populations shows no signs of slowing down, as COVID continues its uncontrolled march through locations like the Texas

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<sup>8</sup> Pilar Melendez, *Meat Plant Bosses Bet Money On How Many Workers Would Get COVID: As Dozens Were Hospitalized*, DAILY BEAST (Nov. 19, 2020), <https://www.thedailybeast.com/bosses-at-tyson-foods-plant-in-waterloo-iowa-made-bets-on-how-many-workers-would-get-covid-lawsuit-alleges>; Tyler Jett, *In New Allegation, Lawsuit Says Tyson Officials Lied To Interpreters About COVID-19 Dangers in Waterloo Plant*, DES MOINES REG. (Nov. 30, 2020), <https://www.desmoinesregister.com/story/money/business/2020/11/30/lawsuit-tyson-managers-lied-interpreters-covid-19-threat-waterloo-iowa-plant/6464310002/>.

<sup>9</sup> Helena Bottemiller Evich, et al., *Harvest of Shame: Farmworkers Face Coronavirus Disaster*, POLITICO (Sept. 8, 2020), <https://www.politico.com/news/2020/09/08/farmworkers-coronavirus-disaster-409339>; Rick Jervis, et al., *Worked to Death: Latino Farmworkers Have Long Been Denied Basic Rights. COVID-19 Showed How Deadly Racism Could Be*, USA TODAY (Oct. 24, 2020), <https://www.usatoday.com/in-depth/news/nation/2020/10/21/covid-how-virus-racism-devastated-latino-farmworkers-california/5978494002/>.

<sup>10</sup> Laura Reiley and Beth Reinhard, *Virus's Unseen Hot Zone. The American Farm*, WASH. POST (Sept. 24, 2020), <https://www.washingtonpost.com/business/2020/09/24/seasonal-farm-workers-coronavirus/>; Victoria Knight, *Without Federal Protections, Farm Workers Risk Coronavirus Infection to Harvest Crops*, NPR (Aug. 8, 2020), <https://www.npr.org/sections/health-shots/2020/08/08/900220260/without-federal-protections-farm-workers-risk-coronavirus-infection-to-harvest-c>; cf. Miriam Jordan, *Farmworkers, Mostly Undocumented, Become 'Essential' During Pandemic*, N.Y. TIMES (Apr. 2, 2020) (exploring the doubly-exploited life of migrant farmworkers), <https://www.nytimes.com/2020/04/02/us/coronavirus-undocumented-immigrant-farmworkers-agriculture.html>.

<sup>11</sup> Christina Greenaway, et al., *COVID-19: Exposing and Addressing Health Disparities Among Ethnic Minorities and Migrants*, J. TRAVEL MED., Oct. 2020 at 1.

city of El Paso<sup>12</sup> and the agricultural communities of California.<sup>13</sup>

African Americans, too, have felt the heavy hand of COVID. At least in the early stages of the pandemic, in cities like Chicago,<sup>14</sup> Detroit,<sup>15</sup> New Orleans,<sup>16</sup> and other urban areas,<sup>17</sup> African-Americans contracted COVID and died in greatly disproportionate numbers.<sup>18</sup> And while the pandemic has certainly spread far beyond ethnic minority neighborhoods, these early death tolls remain disproportionately elevated, due in part to the effects of long-

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<sup>12</sup> Keenan Willard, *Location, Population, Make El Paso Uniquely at Risk of Severe COVID-19 Cases, Doctors Say*, KFOX 14 (Oct. 20, 2020), <https://kfoxtv.com/news/coronavirus/location-population-make-el-paso-uniquely-at-risk-of-severe-covid-19-cases-doctors-say>; and Alfredo Corchado & Marisol Chavez, *El Paso Racks Up 1,000 Cases a Day as COVID-19 Continues To Batter Both Sides of the Border*, DALL. MORNING NEWS (Oct. 23, 2020), <https://www.dallasnews.com/news/mexico/2020/10/23/el-paso-racks-up-1000-cases-a-day-as-covid-19-continues-to-batter-both-sides-of-the-border/>.

<sup>13</sup> Eli Walsh, *Coronavirus Impacts Napa County Latinx Disproportionately*, PATCH (Oct. 6, 2020), <https://patch.com/california/napavalley/coronavirus-impacts-napa-county-latinx-disproportionately>.

<sup>14</sup> Donald J. Alcendor, *Racial Disparities-Associated COVID-19 Mortality Among Minority Populations in the US*, 9 J. CLINICAL MED. no. 8, art. no. 2442, 2020.

<sup>15</sup> Khushbu Shah, *How Racism and Poverty Made Detroit a New Coronavirus Hot Spot*, VOX (Apr. 10, 2020), <https://www.vox.com/identities/2020/4/10/21211920/detroit-coronavirus-racism-poverty-hot-spot>.

<sup>16</sup> Jeff Adelson, et al., *'It's Disturbing: ' Coronavirus Kills Black Residents at Dramatic Rates Across Louisiana*, NOLA.COM (Apr. 21, 2020), [https://www.nola.com/news/coronavirus/article\\_107fec9c-8408-11ea-9d9b-dflbbef7d77.html](https://www.nola.com/news/coronavirus/article_107fec9c-8408-11ea-9d9b-dflbbef7d77.html); Rebecca Santana, *Katrina to COVID: New Orleans' Black Community Pounded Again*, ASSOCIATED PRESS (Aug. 28, 2020), <https://apnews.com/article/virus-outbreak-race-and-ethnicity-ap-top-news-financial-markets-la-state-wire-1ec467d7fd31cddb56d4797ef6101bf3>.

<sup>17</sup> See, e.g., Benjamin D. Renelus, et al., *Racial Disparities in COVID-19 Hospitalization and In-Hospital Mortality at the Height of the New York City Pandemic*, J. RACIAL & ETHNIC HEALTH DISPARITIES, Sept. 18, 2020; and Teran Powell, *Milwaukee's COVID-19 Spread Highlights the Disparities Between White and Black*, THE GUARDIAN (Apr. 14, 2020), <https://www.theguardian.com/world/2020/apr/14/milwaukees-covid-19-spread-highlights-the-disparities-between-white-and-black>.

<sup>18</sup> Tyrone Beason, *'I'm Borne Down: ' She's Lost More than Thirty Friends and Acquaintances to the Coronavirus*, L.A. TIMES (May 12, 2020), <https://www.latimes.com/world-nation/story/2020-05-12/coronavirus-devastates-black-community-in-michigan>.

term structural racial disparities in health care.<sup>19</sup>

One must also make mention of the tragic spread of COVID in Native American communities. The Navajo Nation, which has its home in Northeast Arizona, has been especially devastated.<sup>20</sup> Inadequate housing<sup>21</sup> and the lack of clean water made matters far worse.<sup>22</sup> Swamped by a devastating second wave of infections,<sup>23</sup> the Navajo Nation in December, 2020, applied to the federal government for a major disaster declaration.<sup>24</sup> The same story has occurred on other American Indian Reservations,<sup>25</sup> and,

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<sup>19</sup> Clarence C. Gravlee, *Systemic Racism, Chronic Health Inequities, and COVID-19: A Syndemic in the Making?* 32 AM. J. OF HUM. BIOLOGY (August 4, 2020); Leonard E. Egede & Rebekah J. Walker, *Structural Racism, Social Risk Factors, and COVID-19: A Dangerous Convergence for Black Americans*, 383 NEW ENG. J. MED. e77 (Sept. 17, 2020); James Louis-Jean, et al., *Coronavirus (COVID-19) and Racial Disparities: A Perspective Analysis*, J. RACIAL & ETHNIC HEALTH DISPARITIES, September 21, 2020.

<sup>20</sup> Joshua Cheetham, *Navajo Nation: The People Battling America's Worst Coronavirus Outbreak*, BBC NEWS (June 15, 2020), <https://www.bbc.com/news/world-us-canada-52941984>; Wyatt Grantham-Phillips, *On the Navajo Nation, COVID 19 Death Toll Is Higher Than Any US State*, USA TODAY (Oct. 24, 2020), <https://www.usatoday.com/story/news/nation/2020/10/24/covid-native-americans-how-to-help-navajo-nation/3652816001>.

<sup>21</sup> Ian Lovett, et al., *COVID-19 Stalks Large Families in Rural America*, WALL ST. J. (June 7, 2020), <https://www.wsj.com/articles/covid-19-households-spread-coronavirus-families-navajo-california-second-wave-11591553896>; Heather Kovich, *Rural Matters: Coronavirus and the Navajo Nation*, NEW ENG. J. MED. 383:2 (July 9, 2020).

<sup>22</sup> Charles W. Schmidt, *Lack of Handwashing Access: A Widespread Deficiency in the Age of COVID-19*, 128 ENVTL. HEALTH PERSP. (June, 2020); Amanda Gold & Jessica Shakesprere, *Four Ways to Improve Water Access in Navajo Nation During COVID-19*, URBAN WIRE (Sept. 29, 2020), <https://www.urban.org/urban-wire/four-ways-improve-water-access-navajo-nation-during-covid-19>.

<sup>23</sup> Justine Coleman, *Navajo Nation President: Second COVID-19 Wave 'Much More Dire and Much More Severe,'* THE HILL (Dec. 7, 2020), <https://thehill.com/policy/healthcare/529048-navajo-nation-president-second-covid-19-wave-much-more-dire-and-much-more>.

<sup>24</sup> Emily Wilder, *'Truly in Crisis Mode: Navajo Nation Requests Major Disaster Declaration Amid Medical Shortages, Growing COVID-19 Infections,* ARIZ. REPUBLIC (Dec. 3, 2020) <https://www.azcentral.com/story/news/local/arizona-breaking/2020/12/03/navajo-nation-requests-major-disaster-declaration-amid-medical-shortages-growing-covid-19-infections/3809224001>.

<sup>25</sup> Desi Rodriguez-Lonebear, et al., *American Indian Reservations and COVID-19: Correlates of Early Infection Rates in the Pandemic*, 24 J. PUB.

indeed, is growing worse.<sup>26</sup> The British medical journal *The Lancet* places this American tragedy within a larger global context of colonization and the consequent marginalization of indigenous peoples.<sup>27</sup>

COVID, however, merely revealed what was already obvious, had a complacent and comfortably-situated establishment chosen to look. Poverty runs deep in the United States, particularly in minority communities. It is reported that upwards of forty million Americans live in poverty – a figure that constitutes over 12 % of the total population.<sup>28</sup> 18.5 million of these Americans have been described by the United Nations Special Rapporteur on Extreme Poverty and Human Rights, Professor Philip Alston of New York University, as living in extreme poverty.<sup>29</sup> On his tour of the nation, Professor Alston reported finding “sewage-filled yards in states whose governments don’t consider sanitation facilities to be their responsibility . . . people who had lost all of their teeth because adult dental care is not covered by the vast majority of programs available to the very poor, . . . soaring death rates and family and community destruction,” and much else besides.<sup>30</sup>

Indeed, poverty brings with it multiple pathologies that blight the lives of persons who are born into it or who have fallen into it, most often

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HEALTH MGMT. & PRAC. 371(2020); Dennis Wagner & Wyatte Grantham-Phillips, ‘Still Killing Us:’ *The Federal Government Underfunded Health Care for Indigenous People for Centuries. Now They’re Dying of COVID-19*, USA TODAY (Oct. 26, 2020), <https://www.usatoday.com/in-depth/news/nation/2020/10/20/native-american-navajo-nation-coronavirus-deaths-underfunded-health-care/5883514002>.

<sup>26</sup> Delilah Fisher, *Indian Country Has Entered a Devastating New Phase of the Pandemic*, MOTHER JONES (Dec. 4, 2020), <https://www.motherjones.com/coronavirus-updates/2020/12/indian-country-has-entered-a-devastating-new-phase-of-the-pandemic>.

<sup>27</sup> Kaitlin Curtice & Esther Choo, *The Penumbra: Indigenous Populations: Left Behind in the COVID-19 Response*, 395 LANCET 1753 (June 6, 2020).

<sup>28</sup> Michael T. Hertz, *Why Are There 40 Million People in the US Living Below the Poverty Line?* NATION OF CHANGE (Jan. 14, 2020), <https://www.nationofchange.org/2020/01/14/why-are-there-40-million-people-in-the-us-living-below>.

<sup>29</sup> Philip Alston, *Statement on Visit to the USA, by Professor Philip Alston, United Nations Special Rapporteur on Extreme Poverty and Human Rights, Office of the United Nations High Commissioner for Human Rights*, OHCHR.ORG (Dec. 15, 2017),

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22533>.

<sup>30</sup> *Id.*



owing to no fault of their own. Access to healthy food options is difficult.<sup>31</sup> Writers sometimes speak of “food deserts,” by which is often meant low-income parts of urban areas characterized by an absence of grocery stores or other outlets that offer a wide range of healthy choices.<sup>32</sup>

“Food insecurity” – the prospect that some impoverished Americans at least are at real risk of hunger – often goes hand-in-hand with food deserts.<sup>33</sup> COVID has, furthermore, greatly exacerbated these societal pre-conditions.<sup>34</sup> In 2019, “10.5 % of all U.S. households, experienced food insecurity at some point.”<sup>35</sup> It is now estimated that COVID and its consequent economic disruptions has caused “food insecurity [to] more than double[] . . . hitting as many as 23 % of households earlier this year.”<sup>36</sup> Indeed, food banks have become a necessary feature in the lives of tens of millions Americans,<sup>37</sup> and it is no longer merely the indigent but also the

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<sup>31</sup> Hunt Allcott, et al., *The Geography of Poverty and Nutrition: Food Deserts and Food Choices Across the United States* (Stan. Graduate Sch. of Bus., Working Paper no. 3631, 2018).

<sup>32</sup> Jessica Crowe, et al., *Barriers to Food Security and Community Stress in an Urban Food Desert*, URB. SCI. art. no. 46, May 2018. The absence of choice in turn negatively impacts the health of poor people. See, e.g., Abigail J. Fong, et al., *Association of Living in Urban Food Deserts with Mortality From Breast and Colorectal Cancer*, ANNALS OF SURGICAL ONCOLOGY (Aug. 25, 2020), <https://pubmed.ncbi.nlm.nih.gov/32844294>.

<sup>33</sup> Christina Nuñez, *14 % of Americans Have Been Food Insecure: Here's One Reason Why*, GLOBAL CITIZEN (Mar. 25, 2015), <https://www.globalcitizen.org/en/content/14-of-americans-have-been-food-insecure-heres-one/>; Victoria L. Mayer, et al., *Food Insecurity, Neighborhood Food Access, and Food Assistance in Philadelphia*, 91 J. URB. HEALTH 1087 (2014).

<sup>34</sup> Grace Segers, *'Staggering Need:' COVID-19 Has Led to Rising Levels of Food Insecurity Across the U.S.*, CBS NEWS (Oct. 14, 2020), <https://www.cbsnews.com/news/staggering-need-covid-19-has-led-to-rising-levels-in-food-insecurity-across-the-u-s/>; Gabriella M. McLoughlin, et al., *Addressing Food Insecurity Through a Health Equity Lens: A Case Study of Large Urban School Districts During the COVID-19 Pandemic*, 97 J. URB. HEALTH 759 (2020).

<sup>35</sup> Christianna Silva, *Food Insecurity in the U.S. By the Numbers*, NPR (Sept. 27, 2020), <https://www.npr.org/2020/09/27/912486921/food-insecurity-in-the-u-s-by-the-numbers>.

<sup>36</sup> *Id.*

<sup>37</sup> Megan Leonhardt, *Covid-19 Pandemic is the First Time 40 % of Americans Have Experienced Food Insecurity*, CNBC (Nov. 19, 2020), <https://www.cnbc.com/2020/11/19/covid-pandemic-first-time-many-americans-experienced-food-insecurity.html>; Melissa Alonso & Susannah Cullinane, *Thousands of Cars Form Lines to Collect Food in Texas*, CNN (Nov. 16, 2020), <https://www.cnn.com/2020/11/15/us/dallas-texas-food-bank-coronavirus/index.html>.

formerly comfortable who need their services<sup>38</sup> as the economic situation of many, perhaps even a majority, of ostensibly middle-class Americans deteriorates dramatically.<sup>39</sup>

Little surprise, therefore, to learn that the deprivations poverty breeds are bad for one's health.<sup>40</sup> Chronic childhood disorders – such as asthma or Attention Deficit/Hyperactivity Disorder – are worsened by poverty.<sup>41</sup> Obesity and diabetes also disproportionately afflict the poor, who are often denied access to appropriate food choices.<sup>42</sup> Cancer outcomes are

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<sup>38</sup> Jim Beckerman, *Professionals, Executives, Teachers Now Join the Ranks of the Hungry, Say NJ Food Pantries*, NORTHJERSEY.COM (Nov. 19, 2020), <https://www.northjersey.com/story/news/new-jersey/2020/11/19/nj-food-pantries-covid-pandemic-unemployment-first-timers-rise-demand/6063871002>; Sharon Cohen, *Millions of Hungry Turn to Food Banks for the First Time*, ASSOCIATED PRESS (Dec. 7, 2020), <https://apnews.com/article/race-and-ethnicity-hunger-coronavirus-pandemic-4c7f1705c6d8ef5bac241e6cc8e331bb#:~:text=Feeding%20America%20has%20never%20handed,in%2010%20are%20first%2Dtimers.&text=She%20also%20has%20two%20grown,home%20since%20the%20pandemic%20began>.

<sup>39</sup> Meghan Leonhardt, *63% of Americans Have Been Living Paycheck to Paycheck Since COVID Hit*, CNBC (Dec. 11, 2020), <https://www.cnbc.com/2020/12/11/majority-of-americans-are-living-paycheck-to-paycheck-since-covid-hit.html#:~:text=Nearly%20two%2Dthirds%20of%20Americans,information%20technology%20company%20Highland%20Solutions>.

<sup>40</sup> Dave A. Choksi, *Income, Poverty, and Health Inequality*, 316 JAMA 1312 (2018).

<sup>41</sup> Philip Andrew Cantu, et al., *Downward Neighborhood Poverty Mobility During Childhood is Associated with Child Asthma: Evidence from Geographic Research on Wellbeing Survey*, 96 J. URB. HEALTH 558 (Aug. 2019); Zachary D. McDade, *In Washington, DC, Is Childhood Asthma Part of a Poverty Trap?* URBAN INST.: URBAN WIRE (Apr. 17, 2014), [https://www.urban.org/urban-wire/washington-dc-childhood-asthma-part-poverty-trap#:~:text=In%20fact%2C%20research%20shows%20that,than%20their%20higher%2Dincome%20peers.](https://www.urban.org/urban-wire/washington-dc-childhood-asthma-part-poverty-trap#:~:text=In%20fact%2C%20research%20shows%20that,than%20their%20higher%2Dincome%20peers.;); Bianca Nfonoyim, et al., *Disparities In Childhood Attention Deficit-Hyperactivity Disorder Symptom Severity by Neighborhood Poverty*, 20 ACAD. PEDIATRICS 917 (2020).

<sup>42</sup> James A. Levine, *Poverty and Obesity In the United States*, 60 DIABETES 2667 (Nov. 2011); Félice Le-Scherban, et al., *Identifying Neighborhood Characteristics Associated With Diabetes and Hypertension Control in an Urban African-American Population Using Geo-Linked Electronic Health Records*, PREVENTIVE MED. REP., July 2019; Claudia Chaufan, et al., *The Twin Epidemics of Poverty and Diabetes: Understanding Diabetes Disparities in a Low-Income Latino and Immigrant Neighborhood*, 36 J. CMTY. HEALTH 1032 (2011); Shantell L. Steve, et al., *Social Disorder in Adults with Type Two Diabetes: Building on Race, Place, and Poverty*, 16 CURRENT DIABETES REP. 72 (2016).

worse in poor neighborhoods than in affluent ones,<sup>43</sup> while poor persons with chronic illnesses experience correspondingly more serious adverse outcomes.<sup>44</sup> The poor also suffer disproportionately from mental illness and substance abuse.<sup>45</sup> Thus a group of researchers wrote: “The effects of socioeconomic status on health are well known and thoroughly documented. Simply put, greater wealth is associated with better health outcomes in most areas . . . .”<sup>46</sup>

Our first paper, a collaborative effort between Kemet Imhotep and Bruce Corrie, weaves a many-textured account of navigating the difficulties of being poor in America. Kemet Imhotep describes himself as “a reflective professional and entrepreneur” while Dr. Bruce Corrie is a Professor of Economics at Concordia University-St. Paul, and an advisor to local government.

Mr. Imhotep recites, as compelling first-person narrative, some of the burdens the poor must bear. “We pay to be Poor,” he asserts and he tells of the challenges the poor have performing everyday tasks others take for granted – like being unable to rent a car, like failing a credit check, like falling hopelessly behind on child support, like dealing with episodic homelessness. Mr. Imhotep recognizes that the system itself is the source of these hardships – “[c]urrent racial inequalities in the (USA) have their roots in over 300 years of cultural, Economic, physical, legal and political discrimination based on race.” But his account is not entirely grim. Dare I say, I even detect a glimmer of hope. Perhaps you will notice it too.

Dr. Corrie, on the other hand, writes as a professional economist who has spent the better part of three decades researching the efforts of a group

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<sup>43</sup> Faustine Williams & Emmanuel Thompson, *Disparities in Breast Cancer Stage at Diagnosis: Importance of Race, Poverty, and Age*, 10 J. HEALTH DISPARITIES RES. & PRAC. 34 (2017); Sandi L. Pruitt, et al., *Hispanic and Immigrant Paradoxes in U.S. Breast Cancer Mortality: Impact of Neighborhood Poverty and Hispanic Density*, 13 INT’L J. ENVTL. RES. & PUB. HEALTH 1238 (2016).

<sup>44</sup> Henry J. Whittle, et al., ‘*The Land of the Sick and the Land of the Healthy: Disability, Bureaucracy, and Stigma Among Persons Living With Poverty and Chronic Illness in the United States*, 190 SOC. SCI. & MED. 181 (2017).

<sup>45</sup> Elizabeth Reisinger Walker & Benjamin G. Druss, *Cumulative Burden of Comorbid Mental Disorders, Substance Abuse Disorders, Chronic Medical Conditions, and Poverty on Health Among Adults in the United States*, 22 PSYCHOL. HEALTH & MED. 727 (2017); Joseph E. Glass, et al., *Intersections of Poverty, Race/Ethnicity, and Sex: Alcohol Consumption and Adverse Outcomes in the United States*, 52 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 515 (2017).

<sup>46</sup> Olivia Egen, et al., *Health and Social Conditions of the Poorest Versus Wealthiest Counties in the United States*, 107 AM. J. PUB. HEALTH 130 (2017).

he calls the ALANA economy. By ALANA, he means to single out persons of “African, Latino, Asian, and Native American” heritage and their contributions “to the Minnesota economy as consumers, workers, entrepreneurs, cultural assets, taxpayers, and part of global networks.” He meant to do two things at once in his work. First, he sought to challenge Minnesota’s dominant white culture. ALANA contributions are real and need to be acknowledged. But, second, he wished to identify continuing impediments to ALANA success. Chief among those barriers that must be torn down, Dr. Corrie forcefully argues, is structural racism.

If, furthermore, the very facts of being poor and a member of a racial minority imposes economic burdens – and with those economic burdens, also burdens to health and well-being – the criminal justice system poses its own set of challenges.

To understand the impact the criminal justice system has on African American urban poor, one must begin with the failure of the education system. As Erica Pandey of Axios has written, “In America, it’s better to be born wealthy – which often means white – than to be born smart. . . . For decades, the US has held up schooling as the key to unlocking the American dream, but the facts tell us that education’s promise is a false one.”<sup>47</sup>

The public school system, as it was conceived more than a century and a half ago, was intended to serve as a great equalizer. Its founders understood that the accident of birth should not place a limit on one’s destiny. Thus the purposes of the public school system were conceived to instill in children the basic principles of democratic self-rule and to ensure that all children, regardless of socio-economic background, should have a more or less equal opportunity to succeed and thrive in the United States of America.<sup>48</sup> Already by the 1970s, however, it was recognized that the public schools were failing in these tasks, and that a principal reason for the failure was an American system that financed schools mostly through local school districts.<sup>49</sup> The richer school districts could afford better schools while poorer school districts lacked the resources to hope to compete.

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<sup>47</sup> Erica Pandey, *Race and Education in America*, AXIOS (Nov. 14, 2020), <https://www.axios.com/hard-truths-deep-dive-race-and-education-in-america-f59138e1-f602-4aad-8b69-c5ee467af577.html>.

<sup>48</sup> See, e.g., Robert H. Wiebe, *The Social Function of Public Education*, 21 AM. QUARTERLY 147 (1969); and JOHN R. SHOOK, *Dewey’s Vision of Equal Opportunity for Education in a Democracy*, in PRAGMATISM AND THE PROBLEMS OF RACE 48-72 (Bill Lawson & Daniel Koch eds., 2004).

<sup>49</sup> See, e.g., *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 70-133 (1973) (Marshall, J., dissenting).

The situation is much worse today.<sup>50</sup> In the opening chapter of her book, *Unequal City*, Carla Shedd contrasted the vast gulf in educational opportunity that separates students from inner-city Chicago and their suburban neighbors in Naperville. The lack of resources, in turn, causes stunted educational attainment.<sup>51</sup> Thus one finds many inner-city school districts, starved of needed finances, producing students deficient in mathematics and reading skills.<sup>52</sup> Indeed, many schools have been so neglected their physical environments have become health hazards.<sup>53</sup> And, at the same time, other schools, well-connected and flush with cash, serve as glide-paths to the Ivy League.<sup>54</sup>

The expression “School-to-Prison Pipeline,” has been coined to

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<sup>50</sup> Elijah Anderson, *The Devolution of the Inner-City High School*, 673 ANNALS AM. ACAD. POL. & SOC. SCI. 60 (2017).

<sup>51</sup> CARLA SHEDD, *UNEQUAL CITY: RACE, SCHOOLS, AND PERCEPTIONS OF INJUSTICE* 2-3 (2015).

<sup>52</sup> See, e.g., Elizabeth Votruba-Drzal, et al., *Poverty, Urbanicity, and Children's Development of Early Academic Skills*, CHILD DEV. PERSP., Mar. 2016, at 3; Liz Bowie, *Baltimore Students Score Near Bottom in Reading, Math on Key National Assessment*, BALT. SUN (Apr. 10, 2018), <https://www.baltimoresun.com/education/bs-md-nations-report-card-20180409-story.html>; Molly Beck, *Wisconsin Again Has the Worst Academic Achievement Gap Between Its Black and White Students*, MILWAUKEE J. SENTINEL (Oct. 30, 2019), <https://www.jsonline.com/story/news/politics/2019/10/30/wisconsin-student-test-scores-stagnate-black-white-gap-persists/4096609002/>; Alejandra Matos, *After Year In Crisis, Minneapolis School Board Promises Change*, STAR TRIB. (MINNEAPOLIS) (Jan. 17, 2016), <https://www.startribune.com/after-year-in-crisis-minneapolis-school-board-promises-change/365549071/>; Josh Verges, *Will Changing MN Constitution Improve Achievement Gap? Alan Page and Local Fed Bank Leader Think So*, ST. PAUL PIONEER PRESS (Jan. 8, 2020), <https://www.twincities.com/2020/01/08/alan-page-mn-constitution-achievement-gap-kashkari-fed-bank/>.

<sup>53</sup> Michael J. Blackowicz, et al., *The Impact of Low-Level Lead Toxicity on School Performance Among Hispanic Subgroups in the Chicago Public Schools*, 13 INT'L J. ENVTL RES. & PUB. HEALTH 774 (2016); Sachin N. Baxi, et al., *Association Between Fungal Spore Exposure in Inner-City Schools and Asthma Morbidity*, 122 ANNALS OF ASTHMA, ALLERGY, AND IMMUNOLOGY 610 (2019).

<sup>54</sup> Scott Jaschik, *Wealth and Admissions*, INSIDE HIGHER ED (Mar. 18, 2019), <https://www.insidehighered.com/admissions/article/2019/03/18/look-many-legal-ways-wealthy-applicants-have-edge-admissions>; and Daniel Golden, *How the Rich Really Play, 'Who Wants to Be an Ivy Leaguer?'* PRO PUBLICA (Mar. 12, 2019), <https://www.propublica.org/article/college-admission-bribe-rich-parents-ivy-league-how-to>.

describe this tragic situation.<sup>55</sup> It is a term that is meant to capture a number of aspects about inner-city schools: the neglect with which state legislatures and other authorities regard them;<sup>56</sup> the achievement gap that is a consequence of official neglect;<sup>57</sup> and the use of harsh methods of discipline to enforce obedience and order.<sup>58</sup> These elements then combine to form a system that robs students of a meaningful education only to send them out to become entrapped by the criminal-justice system once they have ceased to be students.

Little surprise, then, that the summer of 2020 witnessed what has been characterized by some public intellectuals, such as Angela Davis<sup>59</sup> and

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<sup>55</sup> CATHERINE Y. KIM, ET AL., *THE SCHOOL-TO-PRISON PIPELINE: STRUCTURING LEGAL REFORM* (2010) (collection of essays describing the situation and offering proposals for reform).

<sup>56</sup> Caitlin Curley, *School Funding: How a Broken System Deepens the School-to-Prison Pipeline*, GENBIZ (July 19, 2016), <https://genbiz.com/school-funding-broken-system-deepens-school-prison-pipeline>; Mary Ellen Flannery, *Follow the Money: The School to (Privatized) Prison Pipeline*, NEA TODAY (Nov. 14, 2017), <https://www.nea.org/advocating-for-change/new-from-nea/follow-money-school-privatized-prison-pipeline>; Grace Chen, *School-to-Prison Pipeline Persists Despite Local, State, and National Efforts*, PUB. SCH. REV. (May 11, 2020), <https://www.publicschoolreview.com/blog/school-to-prison-pipeline-persists-despite-local-state-and-national-efforts#:~:text=Policies%20%3E%20School%20Controversies-,School%2Dto%2DPrison%20Pipeline%20Persists%20Despite,Local%2C%20State%20and%20National%20Efforts&text=The%20result%20is%20a%20continuation,efforts%20to%20curb%20the%20problem>; Jennifer C. Berkshire, *How an Education Crisis Is Spurring a Seismic Shift in Arizona Politics*, THE APPEAL (Oct. 28, 2020), <https://theappeal.org/politicalreport/education-crisis-shifting-arizona-politics/>.

<sup>57</sup> Maisha T. Winn & Nadia Behizadeh, *The Right to Be Literate: Literacy, Education, and the School-To-Prison Pipeline*, 35 REV. RES. EDUC. 147 (2011).

<sup>58</sup> Russell J. Skiba, et al., *More Than a Metaphor: The Contribution of Exclusionary Discipline to the School-to-Prison Pipeline*, 47 EQUITY & EXCELLENCE EDUC. 546 (2014); *The School-to-Prison Pipeline*, N.Y. TIMES (May 30, 2013), <https://www.nytimes.com/2013/05/30/opinion/new-york-citys-school-to-prison-pipeline.html?searchResultPosition=2>; Abigail Novak, *An Examination of the Association Between Suspension and Justice System Involvement*, 46 CRIM. JUST. & BEHAV. 1165 (2019); Kathryn Gregory, *Call to Action: New Play Explores 'School-to-Prison Pipeline' for Men of Color*, LOUISVILLE COURIER-J. (Jan. 6, 2019), <https://www.courier-journal.com/story/entertainment/theater/2019/01/03/q-pipeline-writer-morrisseau/2315657002>.

<sup>59</sup> *Uprising and Abolition: Angela Davis on Movement Building, 'Defund the Police,' and Where We Go From Here*, DEMOCRACY NOW! (June 12, 2020), [https://www.democracynow.org/2020/6/12/angela\\_davis\\_historic\\_moment](https://www.democracynow.org/2020/6/12/angela_davis_historic_moment).

Cornel West, as an “uprising.”<sup>60</sup> Indeed, as Professor Steven Thrasher of Northwestern University wrote, it was an “uprising” of the “viral underclass” – those persons whose marginalized position in society leave them particularly exposed to health crises like COVID-19.<sup>61</sup>

These events were triggered by the police homicide of George Floyd in late May, 2020, on the streets of Minneapolis.<sup>62</sup> The unrest that followed shook the nation.<sup>63</sup> The complaint of the protestors was that the criminal-justice system was tilted, fundamentally and structurally, against the urban poor.<sup>64</sup> And in this assertion the protestors were plainly right. The system is, indeed, unfair. In his contribution to this Symposium, Sean Cahill explores one discrete but significant aspect of this unfairness – the legal tests utilized by the courts of Minnesota to determine when it is appropriate to downwardly depart from judicial sentencing guidelines.

Sean Cahill is a career prosecutor in the Hennepin County (Minneapolis) County Attorney’s Office; he did graduate training in theology before enrolling in law school; and he is an adjunct professor of law at the University of St. Thomas. He eschews a “macro-level” analysis of these issues – and indeed, such an analysis would be vast – in favor of a narrow, precise, and technical examination of a single aspect of the problem: the often camouflaged consideration, at sentencing, of economic, social, and racial status as grounds for the granting of probation as opposed to incarceration.

Like many states, Minnesota adheres to sentencing guidelines that direct judges towards the appropriate use of their power to sentence for crimes. These guidelines set forth a series of tests a sentencing court might consult in determining whether to downwardly depart from the recommended sentence. The guidelines make clear that social and economic

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<sup>60</sup> Chauncey deVega, *Cornel West on This Moment of ‘Escalating Consciousness’ and the Need for Radical Democracy*, SALON (June 26, 2020), <https://www.salon.com/2020/06/26/cornel-west-on-this-moment-of-escalating-consciousness-and-the-need-for-radical-democracy>.

<sup>61</sup> Steven W. Thrasher, *An Uprising Comes From the Viral Underclass*, SLATE (June 12, 2020), <https://slate.com/news-and-politics/2020/06/black-lives-matter-viral-underclass.html>.

<sup>62</sup> *What We Know About the Death of George Floyd in Minneapolis*, N.Y. TIMES (Sept. 8, 2020), <https://www.nytimes.com/article/george-floyd.html>.

<sup>63</sup> Tyler Tynes, *The Spirit of Rebellion Grows During America’s Summer of Protest*, THE RINGER (June 29, 2020), <https://www.theringer.com/2020/6/29/21304911/summer-of-protest-america-2020>.

<sup>64</sup> Mehrsa Baradaran, *No Justice. No Peace*, THE AMERICAN PROSPECT (June 17, 2020), <https://prospect.org/civil-rights/no-justice-no-peace-fix-the-racial-wealth-gap>.

factors – a broadly-defined category including everything from educational attainment to marital status – ought not to be directly considered when deciding whether to grant probation or divert to treatment. But to these guidelines the Minnesota Supreme Court has additionally contributed a judicial gloss. Cahill focuses on a line of three cases that collectively form the backbone of Minnesota post-conviction probation practice.<sup>65</sup>

The opinion in the first of these cases, *State v. Trog*, pointed to a number of factors that permitted the Court to authorize a downward departure where the defendant can demonstrate a “prior record of law-abiding behavior, . . . remorse, . . . cooperation, and [a] respectful attitude.”<sup>66</sup> *State v. King* qualified the guidelines’ prohibition on the use of social and economic factors by indicating that they may be used “indirectly on a determination such as whether a defendant is particularly suitable to treatment in a probationary setting.”<sup>67</sup> The decision in *State v. Soto* proposed that sentencing courts take into account the defendant’s “particular amenability” for probation – adding to the test an individualized component that takes account of characteristics personal to the defendant.<sup>68</sup>

It is in this combination of judicially-crafted factors that Cahill finds the potential for mischief. Relatively affluent and well-educated defendants are much better situated than others to demonstrate their own amenability to probation and lenient treatment. They can post bail before ever appearing in court; they can enroll in treatment facilities and use their health insurance (or their own resources) to defray the costs; they can cite their commitment to treatment (for substance abuse, say, or anger management) as evidence that they are conscious of their own wrong-doing and have a plan for correcting it; they have the social networks and connections to make judges and lawyers think of them more as one of “us” than one of “them;” they have the verbal and technical fluency to navigate the system, to obtain letters of support, to show proper courtroom deference, and to display all the proper etiquette of someone not likely to offend again. Criminal defendants from less advantaged circumstances, on the other hand, might be just as unlikely (perhaps even less likely) to re-offend, but their relative lack of resources will make it far harder for them to demonstrate their “particular amenability” for probation, or diversion, or other forms of non-carceral treatment.

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<sup>65</sup> *State v. Trog*, 323 N.W. 2d 28 (Minn., 1982) (en banc); *State v. King*, 337 N.W. 2d 674 (1983); *State v. Soto*, 855 N.W. 2d 303 (2014).

<sup>66</sup> *Trog*, 323 N.W. 2d at 30.

<sup>67</sup> *King*, 337 N.W. 2d at 675-676.

<sup>68</sup> *Soto*, 855 N.W. 2d, at 308.



Although Cahill's particular focus is Minnesota, Cahill's argument should resonate within every state's criminal-justice system. Cahill's solution should also speak broadly across jurisdictional boundaries. Courts, Cahill insists, must not maintain the status quo and surely must refrain from drawing tighter and narrower lines around who is eligible for alternative forms of post-conviction treatment. Quite the contrary, courts and prosecutors must be deeply and broadly aware of the potential of a large array of criminal defendants to make amends, reform their ways, and go and sin no more. If someone is amenable to probation, ready to reform, then, rich or poor alike, they should be given that opportunity. Finally, of course, Cahill's argument can be fit within a larger national conversation about the many ways in which the criminal-justice system confers structural advantages or disadvantages based not on the likelihood of defendants re-offending, but on the basis of race, wealth, education, and social status.

## II. RURAL POVERTY

Human beings think in archetypes.<sup>69</sup> One does not have to be a Jungian – I am not – to appreciate that human beings encounter and explain the world around them through a series of images that are the product of an accumulated, multi-generational body of perceptions. And the archetype through which most Americans continue to view the rural United States is one of simplicity, innocence, home-town good cheer, natural beauty, and the rich bounty of crops and livestock. It is the purity of the garden, a serene retreat far away from the artificial ways and manners of clustered, claustrophobic urban life.

It comes as a shock, therefore, to realize that contemporary American rural life bears only a passing resemblance to this idealized archetype. It should first be appreciated that rural poverty affects not only whites but also Native Americans and African Americans. According to the Institute for Policy Research at Northwestern University, “[a]cross the United States, 1 in 3 Native Americans are living in poverty, with a median income of \$23,000 a year.”<sup>70</sup> Much of this poverty, furthermore, is found on American Indian

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<sup>69</sup> George B. Hogenson, *Archetypes: Emergence and the Psyche's Deep Structure*, in *ANALYTICAL PSYCHOLOGY: CONTEMPORARY PERSPECTIVES IN JUNGIAN ANALYSIS* 32-55 (Joseph Cambray & Linda Carter eds., 2004); and George B. Hogenson, *The Controversy Around the Concept of Archetypes*, 64 *J. ANALYTICAL PHIL.* 682 (2019).

<sup>70</sup> Beth Redbird, *What Drives Native American Poverty?*, *INST. FOR POLICY RESEARCH* (Feb. 24, 2020),

Reservations. But what is at the root of this poverty? Beth Redbird, Professor of Sociology at Northwestern, suggests that these poverty rates are not the result of a lack of education – Native American educational attainment has broadly improved since 1980 – but of the unavailability of jobs in areas of the country that are remote from major urban centers and commercial activity.<sup>71</sup>

The situation of the Navajo Nation has been discussed above.<sup>72</sup> Similar conditions can be found in many other parts of the United States. Native American poverty begins with the deliberate practice and policy of the generations of white Americans who created the Indian Reservation system. The quality of land entrusted to Reservations was often – though not invariably – substandard,<sup>73</sup> and its use was further complicated by a legal regime hostile to Native property interests.<sup>74</sup> “[C]enturies of government-sanctioned discrimination” has thus taken its toll.<sup>75</sup> Over 50 % of the Native populations of the “Gila River, Rosebud, Standing Rock, Spirit Lake, and Pine Ridge reservations” live in poverty.<sup>76</sup> While poverty on other reservations is not as extreme, “poverty rates remain above the U.S. average.”<sup>77</sup> With this crushing poverty, furthermore, come crises in health

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<https://www.ipr.northwestern.edu/news/2020/redbird-what-drives-native-american-poverty.html>.

<sup>71</sup> *Id.*

<sup>72</sup> *Supra* notes 20-27 and accompanying text.

<sup>73</sup> Bryan Leonard, et al., *Land Quality, Land Rights, and Indigenous Poverty*, J. DEV. ECON., March 2020.

<sup>74</sup> Randall Akee, *Land Titles and Dispossession: Allotment On American Indian Reservations*, 2 J. ECON. RACE & POL’Y 123 (2020); Jessica A. Shoemaker, *Like Snow in the Spring Time: Allotment, Fractionation, and the Indian Land Tenure Problem*, 2003 WIS. L. REV. 729 (2003).

<sup>75</sup> James J. Davis, et al., *American Indian Poverty in the Contemporary United States*, 31 SOC. F. 5, 7 (2016).

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

care<sup>78</sup> and substance abuse.<sup>79</sup>

Rural African American poverty is also a stark reality of contemporary life. The Stanford Center on Poverty and Inequality has determined that African-Americans residing in the rural South “have among the highest poverty rates in the country” (at 33%).<sup>80</sup> Rural African Americans in the Northeast fare nearly as badly at 31%.<sup>80</sup> Rural African Americans, in fact, experience poverty at far higher rates than their white neighbors.<sup>81</sup>

Rural African American poverty is also far more concentrated.<sup>82</sup> The so-called “Black Belt” – a series of rural counties, extending broadly north and east from the Mississippi Delta through Southern Mississippi, Alabama, Georgia, and the Carolinas – is the epicenter of rural African American poverty, but relative economic disadvantage is a feature as well in other

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<sup>78</sup> Sujit Vijay Sakpal, et al., *Kidney Transplantation in Native Americans: Time to Explore, Expel Disparity*, 31 J. HEALTH CARE FOR POOR & UNDERSERVED 1044 (2020); Tennille L. Marley, *Ambiguous Jurisdiction: Governmental Relationships That Affect American Indian Health Care Access*, 30 J. HEALTH CARE FOR POOR & UNDERSERVED 431 (2019); Matthew Hoyer, *Standing Rock Doesn't Stand Alone: The Health Care Battle Across Native America*, 107 AM. J. PUB. HEALTH 1349 (2017); Rae O'Leary, et al., *Asthma Triggers On the Cheyenne River Indian Reservation in Western South Dakota: The Breathing Relief and Tribal Health Empowerment (BREATHE) Study*, 65 S.D. MED. 57 (2012); Janette Beals, et al., *Prevalence of DSM-IV Disorders and Attendant Help-Seeking in 2 American Indian Reservation Populations*, 62 ARCHIVES GEN. PSYCHIATRY 99 (2005).

<sup>79</sup> Katherine A. Hirschak & Sean M. Murphy, *Assessing Differences in the Availability of Opioid Addiction Therapy Options: Rural Versus Urban and American Indian Reservation Versus Non-Reservation*, 33 J. RURAL HEALTH 102 (2017); Blake T. Hilton, et al., *Substance Abuse Among American Indians and Alaska Natives: An Integrative Cultural Framework For Advancing Research*, 16 INT'L J. MENTAL HEALTH & ADDICTION 507 (2018); Oliver Laughland & Tom Silverstone, *Liquid Genocide: Alcohol Destroyed Pine Ridge Reservation – Then They Fought Back*, THE GUARDIAN (Sept. 29, 2017), <https://www.theguardian.com/society/2017/sep/29/pine-ridge-indian-reservation-south-dakota>; Linda R. Stanley, et al., *Rates of Substance Abuse Of American Indian Students In 8<sup>th</sup>, 10<sup>th</sup>, and 12<sup>th</sup> Grades Living on Or Near Reservations: Update, 2009-2012*, 129 PUB. HEALTH REP. 156 (2014).

<sup>80</sup> Linda M. Burton, et al., *Poverty*, PATHWAYS, Special Issue 2017 at 9, 9.

<sup>81</sup> *Id.*

<sup>82</sup> Mark H. Harvey, *Racial Inequalities and Poverty in Rural America*, in RURAL POVERTY IN THE UNITED STATES 146 (Ann R. Tickamyer, et al. eds., 2017).

<sup>83</sup> Daniel T. Lichter, et al., *The Geography of Exclusion: Race, Segregation, and Concentrated Poverty*, 59 SOC. PROBS. 364, 368 (2012).

locations in the Southern United States.<sup>83</sup> Health metrics within the Black Belt and adjacent areas, furthermore, are depressed relative to other parts of the nation,<sup>84</sup> and it seems that structural reasons are to blame.<sup>85</sup>

There are also substantial numbers of whites – concentrated in the rural parts of the United States, particularly Appalachia,<sup>86</sup> and in the rusting factory towns of the post-industrial Midwest – who meet the definition of impoverished. Two features stand out concerning this latter population. The first is declining life expectancy. The second is an ingrained and deepening social, economic, and political alienation.

To understand the uniquely tragic American phenomenon of declining life expectancy, – something not seen in any developed nation aside from Russia in the years following the collapse of the Soviet Union in the 1990s<sup>87</sup> – it is mandatory to begin with the book by Anne Case and Angus

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<sup>84</sup> James W. Guthrie & Gary Peevely, *King Cotton's Lasting Legacy of Poverty and Southern Region Contemporary Conditions*, 85 PEABODY J. EDUC. 4, 10-14 (2010); and Rosalind Harris and Heather Hyden, *Geographies of Resistance Within the Black Belt South*, 57 SOUTHEASTERN GEOGRAPHER 51 (2017).

<sup>85</sup> Arthur G. Cosby & Diana M. Bowser, *The Health of the Delta Region: A Story of Increasing Disparities*, 31 J. HEALTH & HUM. SERVICES ADMIN. 58 (2008); Addie Weaver, et al., *Depressive Symptoms and Psychological Distress Among Rural African-Americans: The Role of Material Hardship and Self-Rated Health*, 236 J. AFFECTIVE DISORDERS 207 (2018); cf., Richard Ingram, et al., *The Health of Marginalized Populations*, in CONTEMPORARY PUBLIC HEALTH: PRINCIPLES, PRACTICE, AND POLICY 55 (James W. Holsinger, ed., 2013) (“In 1997 some Black Belt counties had life expectancies less than those of developing nations such as Sri Lanka, Ecuador, and El Salvador”).

<sup>86</sup> *Addressing Environmental Racism: An Interview with Robert Bullard*, J. INT'L AFF. (Feb. 11, 2020), <https://jia.sipa.columbia.edu/addressing-environmental-racism>; Guangqing Chi, et al., *Lost in the Black Belt South: Health Outcomes and Transportation Infrastructure*, 191 ENVTL. MONITORING & ASSESSMENT, art. no. 297 (2019); Andrew A. Zekeri, et al., *Household Food Insecurity and Health Among African-American Women in Black Belt Counties of Alabama: Evidence From Mixed-Methods Research*, 2 J. COMMUNITY & PUB. HEALTH NURSING 138 (2016); Jessica Cook Wedgworth and Joe Brown, *Limited Access to Safe Drinking Water and Sanitation in Alabama's Black Belt: A Cross-Sectional Case Study*, 5 WATER QUALITY, EXPOSURE, & HEALTH 69 (2013).

<sup>87</sup> DWIGHT B. BILLINGS & KATHLEEN M. BLEE, THE ROAD TO POVERTY: THE MAKING OF WEALTH AND HARDSHIP IN APPALACHIA 2-5 (2000); Dwight B. Billings, *Appalachia*, in POVERTY IN THE UNITED STATES: AN ENCYCLOPEDIA OF HISTORY, POLITICS, AND POLICY 93 (Gwendolyn Mink & Alice O'Connor, eds., 2004).

<sup>88</sup> See, e.g., Aytalina Azarova, et al., *The Effect of Rapid Privatisation on Mortality in Mono-Industrial Towns in Post-Soviet Russia: A Retrospective Cohort Study*, 2 THE LANCET PUB. HEALTH 231 (2017). These trends continue today, albeit

Deaton, *Deaths of Despair and the Future of Capitalism*, published in early 2020.<sup>88</sup>

What are “deaths of despair?” Preeminently, they are deaths attributable to suicide, drug overdose, or the effects of alcoholism.<sup>89</sup> Relatedly, death rates are also increasing as the result of hypertension, obesity, and diabetes – often preventable illnesses that are the result of unhealthy habits frequently triggered by stress, depression, and other mental health issues associated with despair.<sup>90</sup> These deaths are occurring in such numbers that we have seen the reversal of a trend that was previously thought to be irreversible: instead of rising life expectancy, which characterized almost the entirety of twentieth-century-American history, the early twenty-first century has experienced increasing rates of mortality in middle age and a consequent overall decline in life expectancy.<sup>91</sup>

Life expectancy, however, is not declining for all Americans. Rising death rates are concentrated particularly in the white working class<sup>92</sup> and in “non-metropolitan” (i.e., rural and small-town) parts of the United States.<sup>93</sup> Using college education as a proxy, Case and Deaton write: “The four-year college degree is increasingly dividing America.”<sup>94</sup> Why? The authors expend considerable effort in sorting out factors that might contribute to this

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in less extreme form. Masha Gessen, *The Dying Russians*, N.Y. REV. BOOKS (Sept. 2, 2014), <https://www.nybooks.com/daily/2014/09/02/dying-russians>.

<sup>89</sup> ANNE CASE & ANGUS DEATON, DEATHS OF DESPAIR AND THE FUTURE OF CAPITALISM (2020); cf., Stephanie Mencimer, *What’s Killing the White Working Class?*, WASHINGTON MONTHLY, April/May/June, 2020 (reviewing Case and Deaton and proposing a political dimension to declining life expectancy).

<sup>90</sup> Case and Deaton, *supra* note 89, at 2.

<sup>91</sup> Jen Christensen, *US Life Expectancy Is Still on the Decline: Here’s Why*, CNN HEALTH, (Nov. 26, 2019, 1:44 PM EST), <https://www.cnn.com/2019/11/26/health/us-life-expectancy-decline-study/index.html>; Kristoffer Rehder, et al., *Deaths of Despair: Conceptual and Clinical Implications*, COGNITIVE & BEHAVIORAL PRAC. (Dec. 27, 2019), <http://www.sciencedirect.com/science/article/pii/S107772291930104X>.

<sup>92</sup> Steven H. Woolf & Heidi Schoomaker, *Life Expectancy and Mortality Rates in the United States, 1959-2017*, 322 JAMA 1996 (2019).

<sup>93</sup> Case and Deaton do a careful job distinguishing the life expectancies of the white working class and African Americans. While it remains the case, they note, that African American life expectancy is still lower than that of white Americans, the life expectancy of the white working class is declining, while life expectancy for African Americans continues to increase. Case and Deaton, *supra* note 89, at 62-70.

<sup>94</sup> Irma T. Elo, et al., *Trends in Non-Hispanic White Mortality in the United States by Metropolitan-Nonmetropolitan Status and Region, 1990-2016*, 45 POPULATION & DEV. REV. 549 (2019).

<sup>95</sup> Case and Deaton., *supra* note 89, at 3.

immense American tragedy but they might be summarized under the rubric of “social disintegration,” which in turn is both caused and worsened by the disappearance of stable and appropriately remunerative work for those lacking significant educational attainments.

Wages and income for the average American have been stagnant or even in descent since the middle 1970s.<sup>95</sup> The decline in life expectancy did not move in lockstep with these larger economic trends, but it is clear that the declining expectations – both social and economic – which one has for one’s life now have an impact on one’s longevity.<sup>96</sup>

If deaths of despair and declining life expectancy is one characteristic of the plight of the white working class, the other is intense, almost comprehensive alienation from the prevailing institutions of American life.<sup>97</sup> Alienation has been defined as the loss or surrender of something that is “integral” to human nature.<sup>98</sup> It includes the turning away from institutions and accepted practices because such organizations or activities have come to be seen as “meaningless.”<sup>99</sup> Labor, and the nature and quality of the workplace, are particularly significant vantage points from which to observe the processes of alienation unfold. After all, it has been written that work is “a particular mark of . . . humanity” and that it is through work that the person “achieves fulfillment as a human being and, indeed, in

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<sup>96</sup> John Schmidt, et al., *America’s Slow-Motion Wage Crisis*, ECONOMIC POLICY INSTITUTE (Sept. 13, 2018), <https://www.epi.org/publication/americas-slow-motion-wage-crisis-four-decades-of-slow-and-unequal-growth-2>; cf., Dylan Matthews, *Wages Aren’t Stagnating, They’re Plummeting*, WASH. POST (July 31, 2012, 10:10 AM), <https://www.washingtonpost.com/news/wonk/wp/2012/07/31/wages-arent-stagnating-theyre-plummeting> (“High school dropouts’ earnings have fallen 66 % since 1969 and people with some college – the median level of education in the United States – have seen earnings fall by a third”).

<sup>97</sup> Case and Deaton, *supra* note 89, at 50-61.

<sup>98</sup> One writer has described institutional alienation as “an erosion of the legitimacy of specific institutions,” which might be governmental, corporate, or some other form. See PETER SCHOLTEN, MAINSTREAMING VERSUS ALIENATION: A COMPLEXITY APPROACH TO THE GOVERNANCE OF MIGRATION AND DIVERSITY 62 (2020).

<sup>99</sup> David Schweitzer, *Marxist Theories of Alienation and Reification: The Response to Capitalism, State Socialism, and the Advent of Postmodernity*, in ALIENATION, SOCIETY, AND THE INDIVIDUAL: CONTINUITY AND CHANGE IN THEORY AND RESEARCH 27, 30 (Felix Geyer & Walter R. Heinz, eds., 1992).

<sup>100</sup> Melvin Seeman, *On the Meaning of Alienation*, 24 AM. SOC. REV. 783, 786-87 (1959).

a sense becomes more than a human being.”<sup>100</sup>

Lamentably, however, the American workplace has ceased to resemble this lofty vision. Employment among the working class now tends to be short-term and employees regarded as fungible.<sup>101</sup> Loyalty must be reciprocal to have meaning, but employers no longer show loyalty or even regard for their workers,<sup>102</sup> and the feeling has grown mutual. It is a context rife with the possibility of alienation.<sup>103</sup>

Workplace alienation, furthermore, is typically accompanied by

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<sup>101</sup> Pope John Paul II, *Laborem Exercens*, No. 1 and 9 (Sept. 14, 1981), available at [http://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf\\_jp-ii\\_enc\\_14091981\\_laborem-exercens.html](http://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_14091981_laborem-exercens.html).

<sup>102</sup> Alana Semuels, *I Delivered Packages For Amazon and It Was a Nightmare*, THE ATLANTIC (June 25, 2018), <https://www.theatlantic.com/technology/archive/2018/06/amazon-flex-workers/563444>; Emily Guendelsberger, *I Worked at an Amazon Fulfillment Center. They Treat Workers Like Robots*, TIME (July 18, 2019), <https://time.com/5629233/amazon-warehouse-employee-treatment-robots>; Jake Johnson, *As Bezos Wealth Jumps \$30 Billion Amid Pandemic, Amazon to End \$2 per Hour Hazard Pay for Workers*, SALON (May 15, 2020), [https://www.salon.com/2020/05/15/as-bezos-wealth-jumps-30-billion-amid-pandemic-amazon-to-end-2-per-hour-hazard-pay-for-workers\\_partner](https://www.salon.com/2020/05/15/as-bezos-wealth-jumps-30-billion-amid-pandemic-amazon-to-end-2-per-hour-hazard-pay-for-workers_partner). Cf., David Golumbia, *The Amazonization of Everything*, JACOBIN (Aug. 5, 2015), <https://www.jacobinmag.com/2015/08/amazon-google-facebook-privacy-bezos> (“Amazon’s success lies in worker exploitation and intrusions into consumers’ private lives.”).

<sup>103</sup> Consider, for example, the ride-sharing service known as Uber. See Kafui Attoh, et al., *We’re Building Their Data: Labor, Alienation, and Idiocy in the Smart City*, 37 SOC. & SPACE 1007 (2019). Or consider the situation of adjunct professors at many universities. Richard Hall, *Authoritarian Neoliberalism and the Alienation of Academic Labor*, SOCIAL THEORY APPLIED (July 19, 2018), <https://socialtheoryapplied.com/2018/07/19/authoritarian-neoliberalism-and-the-alienation-of-academic-labour>. More generally, the labor-law scholar Antonio Aloisi has written, regarding the modern gig economy, that it has revived “exploitive tendencies similar to those which were already predominant a century ago.” Antonio Aloisi, *Commoditized Workers: Case Study Research on Labor Law Issues Arising from a Set of ‘On-Demand/Gig Economy’ Platforms*, 37 COMP. LAB. L. & POL’Y 653, 655 (2016).

<sup>104</sup> Alienation might take the form of emotional estrangement from society or from other persons. George Monbiot, *Neoliberalism Is Creating Loneliness: That’s What’s Wrenching Society Apart*, THE GUARDIAN (Oct. 12, 2016), <https://www.theguardian.com/commentisfree/2016/oct/12/neoliberalism-creating-loneliness-wrenching-society-apart>. It manifests itself in the collapse of “social connections” and the disappearance of social trust. See Jennifer M. Silva, *Disengagement and Alienation in Modern American Institutions*, in HANDBOOK OF COMMUNITY MOVEMENTS AND LOCAL ORGANIZATIONS IN THE 21<sup>ST</sup> CENTURY 95 (Ram A. Cnaan & Carl Milofsky, eds., (2018).

feelings of powerlessness.<sup>104</sup> And this sense of powerlessness bleeds into workplace alienation's close cousin, political alienation. Political alienation begins with the remoteness of American politics from the lives of most Americans, especially those without economic resources. "Policy decisions have come to favor political donations and preferences of elites, leading to alienation and distrust."<sup>105</sup>

And a favorite refuge of the powerless is conspiracy theory. Conspiracy – only a conspiracy could explain the dark and malevolent forces<sup>106</sup> that have wreaked such havoc in so many persons' lives.<sup>107</sup> Conspiracy theories have been a steady feature of American political life almost from the beginning, but with only a few exceptions they have occupied the fringes.<sup>108</sup> There were few Americans, for instance, who shared the John Birch Society's conviction that President Dwight Eisenhower was secretly a member of the Communist Party.<sup>109</sup>

There seems, however, to be something within the psychology of many persons that welcomes conspiracy theory as an easily-understood

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<sup>105</sup> Blake E. Ashforth, *The Experience of Powerlessness in Organizations*, 43 *ORG. BEHAV. & HUM. DECISION PROCESSES* 207 (1989).

<sup>106</sup> Silva, *supra* note 104, at 99. For an example of anguished alienation one might consult the essay "I am Done," published under the pseudonym "OHMama" – "Ohio Mother" presumably – on the right-wing website Burning Platform, November 7, 2020. "I have witnessed the world I grew up in fall into ruin," the author writes, as she harshly attacks politicians of both the left and right for failing to serve the interests of the working class. OHMama, *I am Done*, THE BURNING PLATFORM (Nov. 7, 2020), <https://www.theburningplatform.com/2020/11/07/i-am-done>.

<sup>107</sup> Thus a "Manichean narrative is common" in conspiracy theory. J. Eric Oliver & Thomas J. Wood, *Conspiracy Theories and the Paranoid Style(s) of Mass Opinion*, 58 *AM. J. POL. SCI.* 952, 954 (2014).

<sup>108</sup> Jan Willem Van Prooijen, *Empowerment as a Tool to Reduce Belief in Conspiracy Theories*, in *CONSPIRACY THEORIES AND THE PEOPLE WHO BELIEVE IN THEM* 432, 433-34 (Joseph E. Uscinski, ed., 2018).

<sup>109</sup> An early exception – an example of a transiently powerful conspiracy theory – was the anti-Masonic movement of the 1820s, which resulted in the creation of a third political party which enjoyed real power for a brief period of time. *See, e.g.*, DAVID G. HACKETT, *THAT RELIGION IN WHICH ALL MEN AGREE: FREEMASONRY IN AMERICAN CULTURE* 111-124 (2014); J. DAVID GILLESPIE, *CHALLENGERS TO DUOPOLY: WHY THIRD PARTIES MATTER IN AMERICAN TWO-PARTY POLITICS* 67-70 (2012); Sophie Bjork-James, *Nearly Two Centuries Ago, a QAnon-Like Conspiracy Theory Propelled Candidates to Congress*, THE CONVERSATION (Sept. 2, 2020), <https://theconversation.com/nearly-two-centuries-ago-a-qanon-like-conspiracy-theory-propelled-candidates-to-congress-144838>.

<sup>110</sup> D.J. MULLOY, *THE WORLD OF THE JOHN BIRCH SOCIETY: CONSPIRACY, CONSERVATISM, AND THE COLD WAR* 15 (2014).



“explanation” for what the larger, less explicable forces that shape and bend the circumstances of their lives.<sup>110</sup> And what stands out today is the breadth and relative power of conspiracy theory.<sup>111</sup> The QAnon conspiracy, centered on the preposterous idea that there is a Satanic/pedophile/cannibal cult at the heart of the “Deep State” which Donald Trump had been appointed to root out,<sup>112</sup> sent an adherent to Congress in November’s election,<sup>113</sup> and was even thanked for its commitment to the public good by the President.<sup>114</sup> Numerous conspiracy theories surround the COVID virus,<sup>115</sup> and the development of the vaccine meant to immunize the public from its effects.<sup>116</sup> One can offer many partial explanations for the spread of such bizarre thinking, from the amplification provided by social media<sup>117</sup> to the megaphone of a President of the United States who saw fit to expand and exploit these and other

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<sup>111</sup> Evangeline A. Wheeler, *How Belief in Conspiracy Theories Addresses Some Basic Human Needs*, in *THE PSYCHOLOGY OF POLITICAL BEHAVIOR IN A TIME OF CHANGE* 263 (Jan D. Sinnott & Joan S. Rabin, eds., 2021).

<sup>112</sup> GABRIELE COSENTINO, *SOCIAL MEDIA AND THE POST-TRUTH WORLD: THE GLOBAL DYNAMICS OF DISINFORMATION* 59-86 (2020).

<sup>113</sup> Creede Newton, *What Is QAnon, the Conspiracy Theory Spreading Throughout the US?*, *ALJAZEERA* (Oct. 8, 2020), <https://www.aljazeera.com/news/2020/10/8/what-is-qanon-the-conspiracy-theory-spreading-throughout-the-us>.

<sup>114</sup> Sam T. Levin, *QAnon Supporter Marjorie Taylor Greene Wins Seat in US House*, *THE GUARDIAN* (Nov. 3, 2020), <https://www.theguardian.com/us-news/2020/nov/03/qanon-marjorie-taylor-greene-wins-congress>.

<sup>115</sup> Kevin Breuninger, *Trump Says He Appreciates Support From Followers of Unfounded QAnon Conspiracy*, *CNBC* (Aug. 19, 2020), <https://www.cbc.com/2020/08/19/trump-says-he-appreciates-qanon-support.html>; E.J. Dickson, *A Timeline of Trump’s QAnon Presidency*, *ROLLING STONE* (Oct. 27, 2020), <https://www.rollingstone.com/culture/culture-features/qanon-trump-timeline-conspiracy-theorists-1076279>.

<sup>116</sup> Jon Henley & Niamh McIntyre, *Survey Uncovers Widespread Belief in ‘Dangerous’ COVID Conspiracy Theories*, *THE GUARDIAN* (Oct. 26, 2020), <https://www.theguardian.com/world/2020/oct/26/survey-uncovers-widespread-belief-dangerous-covid-conspiracy-theories>.

<sup>117</sup> Jack Goodman & Flora Carmichael, *Coronavirus: Bill Gates ‘Microchip’ Conspiracy Theory and Other Vaccine Claims Fact-Checked*, *BBC* (May 29, 2020), <https://www.bbc.com/news/52847648>.

<sup>118</sup> See, e.g., Kim Mortimer, *Understanding Conspiracy Online: Social Media and the Spread of Suspicious Thinking*, 13 *DALHOUSIE J. INTERDISC. MGMT.* 1 (2017); and Claudia Flores-Saviaga, et al., *Mobilizing the Trump Train: Understanding Collective Action in a Political Trolling Community*, in *PROCEEDINGS OF THE TWELFTH INTERNATIONAL ASSOCIATION FOR THE ADVANCEMENT OF ARTIFICIAL INTELLIGENCE CONFERENCE ON WEB AND SOCIAL MEDIA* 82 (2018).

conspiracy theories to serve his own political ambition.<sup>118</sup> But surely one final, partial explanation must be a keenly felt sense of decline – of health, of economic prospects, of status. In a word, inequality.

So rural life, small-town life, post-industrial American life, has been victimized by the rising inequality and related social pathologies characteristic of early-twenty-first century living. Two papers in this symposium address aspects of this feature of the American landscape. The first is adapted from comments made at the symposium by Barry Yeoman, a journalist who works and writes in Durham, North Carolina, and teaches at Wake Forest and Duke Universities. His topic is industrial agriculture, in particular hog-farming as it is conducted in the State of North Carolina.

Barry Yeoman's contribution to the symposium builds on a series of essays he published exploring the practice of industrial agriculture in the American South and its deleterious impact on local populations too disenfranchised to resist. In an article in *The Nation* magazine, Yeoman described in vivid detail the horrors of life adjacent to a North Carolina hog farm.<sup>119</sup> In a pair of articles Yeoman documented the – eventually – successful litigation against Smithfield Foods on the grounds that its practices regarding hog waste had created a nuisance.<sup>120</sup> Smithfield, which earned special notoriety in the spring of 2020 for its maltreatment of meat

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<sup>119</sup> Joseph Zeballos-Roig, et al., *24 Outlandish Conspiracy Theories Donald Trump Has Floated Over the Years*, BUSINESS INSIDER (Oct. 9, 2019), <https://www.businessinsider.com/donald-trump-conspiracy-theories-2016-5>; DANIEL C. HELLINGER, CONSPIRACIES AND CONSPIRACY THEORY IN THE AGE OF TRUMP 26-30 (2019); Michael Barkun, *President Trump and the 'Fringe,'* 29 TERRORISM & POL. VIOLENCE 437 (2017).

<sup>120</sup> Barry Yeoman, *Raising a Stink*, THE NATION, Jan. 13, 2020 at 28. Cf., Barry Yeoman, *For Years, Complaints About North Carolina's Hog Pollution Vanished in State Bureaucracy: Now Officials Are Posting the Complaints*, FOOD & ENV'T REPORTING NETWORK (Aug. 27, 2019), <https://thefern.org/2019/08/for-years-complaints-about-north-carolinas-hog-pollution-vanished-in-state-bureaucracy> (examining the politics of industrial hog farms).

<sup>121</sup> Barry Yeoman, *Here Are the Rural Residents Who Sued the World's Largest Hog Producer Over Waste and Odors – and Won*, FOOD & ENV'T REPORTING NETWORK (Dec. 20, 2019), <https://thefern.org/2019/12/rural-north-carolinians-won-multimillion-dollar-judgments-against-the-worlds-largest-hog-producer-will-those-cases-now-be-overturned>; Barry Yeoman, *As Smithfield Appeals a Multimillion Dollar Verdict, A Hog-Farm Neighbor Awaits His Chance at Justice After 20 Years of Hell*, INDY WEEK (Jan. 21, 2020), <https://indyweek.com/news/northcarolina/smithfield-appeals-hog-farm-verdict-feature>.

processing employees during the COVID pandemic,<sup>121</sup> lost its nuisance case on appeal,<sup>122</sup> and has recently reached a settlement.<sup>123</sup>

In his contribution to this issue of the *Journal of Law and Public Policy*, Yeoman looks variously at the legal structure of hog-farming in North Carolina (a vertically-integrated industry dominated by a few big players), the economics and politics of the business, and finally the human cost inflicted by what has been many years of “preferential treatment to large-animal agriculture.” The human costs, Yeoman makes plain, are borne disproportionately by racial minorities and the poor. The article makes for compelling reading, especially in light of the eventual victory over Smithfield Foods.

Hannah Haksgaard is the Symposium’s other contributor on the issue of rural poverty. The focus of her concern is rural America and access to justice. A professor of law at the University of South Dakota, Haksgaard has written extensively on the special legal issues that confront the rural United States.<sup>124</sup> In her paper in this symposium, Haksgaard begins with the

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<sup>122</sup> Sebastian Martinez Valdivia & Dan Margolies, *Workers Sue Smithfield Foods, Allege Conditions Put Them at Risk for COVID-19*, NPR (Apr. 24, 2020), <https://www.npr.org/2020/04/24/844644200/workers-sue-smithfield-foods-allege-conditions-put-them-at-risk-for-covid-19>; Kate Gibson, *4 Meat Workers At a Smithfield Plant Died From COVID-19: The Feds Fined the Company \$13,494*, CBS NEWS (Sept. 11, 2020), <https://www.cbsnews.com/news/4-smithfield-workers-died-sioux-falls-osha-fined-13494>.

<sup>123</sup> *McKiver v. Murphy-Brown, LLC*, 980 F.3d 937 (4th Cir. 2020). Writing in concurrence, J. Harvie Wilkinson III, a Ronald Reagan appointee to the federal bench, highlighted “the dangers endemic” to the “appalling conditions” created by Smithfield Foods. He spoke of “the ripples of dysfunction [that] would reach farm workers[.]” He wrote of the impact dangerous working conditions had on both employees and on neighbors. Employees suffered from “bronchitis, toxic organ dust syndrome, hyper-reactive airway disease” and a host of other conditions, while neighbors living within a two-mile radius “suffer[ed] from aggravated rates of high blood pressure, depression, and infant mortality.” *Id.*

<sup>124</sup> Lisa Sorg, *Could Defeat in Nuisance Lawsuits Herald a Reckoning for the NC Hog Industry?*, NC POL’Y WATCH, (Nov. 24, 2020), <http://www.ncpolicywatch.com/2020/11/24/could-defeat-in-nuisance-lawsuits-herald-a-reckoning-for-the-nc-hog-industry>.

<sup>125</sup> See, e.g., Hannah Haksgaard, *Rural Practice as Public Interest Work*, 71 ME. L. REV. 209 (2019); Lisa R. Pruitt, Amanda L. Kool, Lauren Sudeall, Michele Statz, Danielle M. Conway & Hannah Haksgaard, *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 HARV. L. & POL’Y REV. 15 (2018); Hannah Haksgaard, *Rural Women and Developments in the Undue Burden Analysis: The Effect of Whole Woman’s Health v. Hellerstedt*, 65 DRAKE L. REV. 663 (2017); Hannah Alsgaard [Hannah Haksgaard], *Rural Incentive Programs for Legal and*

constitutional proposition that representation by counsel is a fundamental right of all those charged with criminal wrong-doing.<sup>125</sup> Where a criminal defendant cannot afford an attorney, it is mandatory for courts to appoint counsel. Additionally, courts might appoint counsel to represent indigent clients in a range of other matters – such as parental termination proceedings, court-ordered medical procedures, quarantines, or civil commitments, among a range of possibilities.<sup>126</sup>

Rural parts of the United States, however, pose special problems for court-appointed counsel. There is a shortage of lawyers in many parts of rural America, and many potential clients simply lack the resources to retain counsel. Haksgaard is focused specifically on one aspect of the larger structural issue of rural access to justice, and that is the problem of compensation for legal services. “If states expect lawyers to take court appointments,” she writes, “the hourly rates must at a minimum be high enough to cover the overhead of running a law office.” And, regrettably, in too many jurisdictions that is not the case. Haksgaard recommends a variety of approaches to solve this problem: states need to incentivize young lawyers (or older ones) to settle (or resettle) in rural areas; states and local authorities must increase funding for access to justice initiatives; and, importantly, new lawyers should be made eligible for student-loan forgiveness by taking appointments.

Haksgaard’s article, in other words, represents a set of creative solutions to a crisis that is rippling across small-town and agricultural America: justice should be equal under the law, and it ought not to be dependent on where one has chosen to live.

### III. HOUSING

COVID is remorseless and deadly as a disease, but it is equally implacable as a truth-teller. It reveals things that we as a society have tried to keep concealed. It has unveiled unpleasant truths about the condition of American labor, about American race relations, about the yawning disparities between rich and poor in America. It has similarly disclosed much information about the state of housing inequality in the United States.

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*Medical Professionals: A Comparative Analysis*, 59 S.D. L. REV. 585 (2014); and Hannah Alsgaard [Hannah Haksgaard], *Rural Inheritance: Gender Disparities in Farm Transmission*, 88 N.D. L. REV. 347 (2012).

<sup>126</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963).

<sup>127</sup> Laura K. Abel & Max Rettig, *State Statutes Providing for a Right to Counsel in Civil Cases*, 40 CLEARINGHOUSE REV. 245 (2006).

Multi-generational housing – meaning three or more generations sharing the same living arrangements – can be a loving, embracing, compassionate arrangement. Several generations under one roof! The wisdom of elders partnering with the enthusiasm of the young! Such an arrangement might benefit simultaneously children, parents, grandparents, and grandchildren, promoting greater harmony, providing greater familiarity, and supplying both solidarity and support across the generations.

At the end of the 1970s, multi-generational housing seemed on the verge of becoming a thing of the past, with only 12 % of Americans living in such arrangements.<sup>127</sup> The year 1980, however, proved to be a trough, or at least a turning point. The numbers of persons living in multi-generational housing began to increase in the 1980s, and a steady growth in these arrangements was detectable through the early 2000s, with immigration playing a significant role.<sup>128</sup>

These modest trends surged dramatically in the aftermath of the Great Recession of 2008/2009, when “large numbers of Americans enacted their own anti-poverty program . . . [by] mov[ing] in with relatives. This helped fuel the largest increase in the number of Americans living in multi-generational households in modern history.”<sup>129</sup> These trends, furthermore, have favored the continued expansion of multi-generational housing arrangements. These tendencies are most pronounced in racial and ethnic households.<sup>130</sup> Whether for financial necessity or for social or cultural reasons, it was estimated in 2016 that more than “64 million Americans lived

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<sup>128</sup> Shannon Guzman, *Multigenerational Housing on the Rise, Fueled by Economic and Social Changes*, AARP PUB. POL'Y INST. (2019), <https://www.aarp.org/content/dam/aarp/ppi/2019/06/multigenerational-housing.doi.org.10.26419-2Fppi.00071.001.pdf>.

<sup>129</sup> Jeffrey A. Burr & Jan E. Mutchler, *Nativity, Acculturation, and Economic Status: Explanations of Asian American Living Arrangements in Later Life*, 48 J. GERONTOLOGY S55 (1993); Jeffrey A. Burr & Jan E. Mutchler, *Ethnic Living Arrangements: Cultural Convergence or Cultural Manifestation?*, 72 SOC. FORCES 169 (1993); Haya El Nasser, *More Multigenerational Households in Immigrant Areas*, USA TODAY, (Oct. 25, 2012), <https://www.usatoday.com/story/news/nation/2012/10/25/census-multigenerational-households/1653159/>.

<sup>130</sup> PEW RES. CTR., FIGHTING POVERTY IN A BAD ECONOMY, AMERICANS MOVE IN WITH RELATIVES (2011), <https://www.pewresearch.org/wp-content/uploads/sites/3/2011/10/Multigenerational-Households-Final1.pdf>.

<sup>131</sup> Paula Span, *America At Home: Grandparents in the Attic, Children in the Basement; The New Old Age*, N.Y. TIMES, Feb. 17, 2018, at D5; Matthew Hall, et al., *Living Arrangements and Household Complexity Among Undocumented Immigrants*, 45 POPULATION & DEV. REV. 81 (2019).

in multi-generational households.”<sup>131</sup>

COVID-19, however, made inescapable the stresses and inequalities associated with such arrangements. It is well-known that social distancing – having a space in which to isolate from others, especially when ill with the coronavirus – is critical to halting its spread. And it is just such isolation that has proven to be challenging in many multi-generational homes,<sup>132</sup> especially those housing vulnerable elders who are especially predisposed to adverse outcomes.<sup>133</sup> Multi-generational housing played a role in COVID’s early spread in America’s great urban centers,<sup>134</sup> as well as in numerous immigrant communities.<sup>135</sup> As well, those religious communities particularly known for

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<sup>132</sup> D’Vera Cohn & Jeffrey S. Passel, *A Record 64 Million Americans Live in Multigenerational Households*, PEW RES. CTR. (Apr. 5, 2018), <https://www.pewresearch.org/fact-tank/2018/04/05/a-record-64-million-americans-live-in-multigenerational-households/>.

<sup>133</sup> Lenny Bernstein, *Young People Are Infecting Older Family Members in Shared Homes*, WASH. POST (July 29, 2020), [https://www.washingtonpost.com/health/young-people-are-infecting-older-family-members-in-shared-homes/2020/07/28/b8cdc810-cd0a-11ea-b0e3-d55bda07d66a\\_story.html](https://www.washingtonpost.com/health/young-people-are-infecting-older-family-members-in-shared-homes/2020/07/28/b8cdc810-cd0a-11ea-b0e3-d55bda07d66a_story.html); Editorial Board, Opinion, *The Art of Coronavirus Modeling*, WALL ST. J. (Apr. 7, 2020), <https://www.wsj.com/articles/the-art-of-coronavirus-modeling-11586301975>.

<sup>134</sup> Ian Lovett, et al., *Covid-19 Stalks Large Families in Rural America*, WALL ST. J. (June 7, 2020), <https://www.wsj.com/articles/covid-19-households-spread-coronavirus-families-navajo-california-second-wave-11591553896>; Abdel Jimenez, *‘This Is the Time Where People Can Bottom Out:’ Mental Health Issues Likely To Affect Communities of Color During the Holiday – With COVID-19 Compounding Matters*, CHI. TRIB., Nov. 24, 2020, at 1.

<sup>135</sup> Michael Wayland, et al., *As the Coronavirus Takes Hold in Detroit, Pandemic Magnifies City’s Poverty, Racial Disparities*, CNBC (Apr. 10, 2020), <https://www.cnbc.com/2020/04/10/coronavirus-magnifies-detroits-racial-socioeconomic-disparities.html>; Ray Sanchez, *Coronavirus in Black America: Living in the Eye of a ‘Perfect Storm,’* CNN (Apr. 11, 2020), <https://www.cnn.com/2020/04/11/us/coronavirus-black-americans-deaths/index.html>; Andre M. Perry, et al., *Mapping Racial Inequity Amid COVID-19 Underscores Policy Discriminations Against Black Americans*, BROOKINGS (Apr. 16, 2020), <https://www.brookings.edu/blog/the-avenue/2020/04/16/mapping-racial-inequity-amid-the-spread-of-covid-19>.

<sup>136</sup> Juan Pablo Garnham, *With Three Generations Under One Roof, Pandemic Risks Multiply*, TEX. TRIB. (May 28, 2020), <https://www.texastribune.org/2020/05/28/texas-coronavirus-multigenerational-households>; Silvia Foster-Frau, *Valley of Death: COVID-19 Has Hit Few Places in Texas as Hard as It Has Along the Border*, SAN ANTONIO EXPRESS-NEWS, Aug. 2, 2020, at A1; Celeste Katz Marston, *Asian Americans Most Likely to Live in Multigenerational Homes: How COVID Has Taken a Toll*, NBC NEWS (Sept. 28,

their social insularity and multi-generational living arrangements – Hasidic Jews, for instance, and the Amish – have been particularly hard hit in part because of multi-generational housing.<sup>136</sup>

The housing crisis, however, did not begin with COVID-19 and does not end with multi-generational dwellings. In fact, housing, especially affordable rental housing, has been in crisis for a long time, driven at least in part by exploitative market practices. One might therefore consider the important article by the Princeton sociologist Matthew Desmond and the Massachusetts Institute of Technology's professor of labor and organizations Nathan Wilmers, who concluded that tenants in poor neighborhoods were "exploited consumers" thanks to "the market strategies of landlords" who overcharge rents relative to market value.<sup>137</sup> Desmond and Wilmers, furthermore, are not the only ones to reach such a conclusion. Writing in the same year as Desmond and Wilmers, Madison Powers and Ruth Faden asserted that "rents in poor neighborhoods typically approximate those in other neighborhoods where the housing stock is in far better shape. As a result, along with reduced maintenance costs, housing in poor neighborhoods yields higher returns to landlords."<sup>138</sup>

Distinct from the exploitation of poor renters, a second aspect of the affordable housing crisis, as it developed in the years before 2020, involved urban rental costs, particularly in so-called "world cities," like New York, or San Francisco, or Seattle. Gentrification and displacement are key to understanding the situation in New York as long-time working-class or

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2020), <https://www.nbcnews.com/news/asian-america/asian-americans-most-likely-live-multigenerational-homes-how-covid-has-n1241111>.

<sup>137</sup> Frimet Goldberger, Opinion, *The Challenge of Social Distancing In Hasidic Communities*, N.Y. TIMES (Apr. 9, 2020), <https://www.nytimes.com/2020/04/09/opinion/hasidic-jews-covid-distancing.html>; Liam Stack, *In Hasidic Enclaves, Virus Breached a Firewall of Insularity*, N.Y. TIMES (Apr. 22, 2020), <https://www.nytimes.com/2020/04/21/nyregion/coronavirus-jews-hasidic-ny.html>; Anne Snabes, *Virus Spreads Among the Amish: Some of the Customs in Community Might Have Contributed to Growth of COVID-19*, INDIANAPOLIS STAR, Aug. 27, 2020, at A1.

<sup>138</sup> Matthew Desmond & Nathan Wilmers, *Do the Poor Pay More for Housing? Exploitation, Profit, and Risk in Rental Markets*, 124 AM. J. SOC. 1090, 1093 (2019) ("[W]e find higher levels of renter exploitation in poor neighborhoods. Landlords operating in those neighborhoods also enjoy higher profits, owing to significantly lower mortgage and tax burdens but not significantly lower rents.").

<sup>139</sup> MADISON POWERS & RUTH FADEN, STRUCTURAL INJUSTICE: POWER, ADVANTAGE, AND HUMAN RIGHTS 214 (2019).

lower-middle-class tenants are “displaced” by more affluent classes of renters,<sup>139</sup> in a process fueled in part by private-equity “financialization” of rental housing.<sup>140</sup> San Francisco has become unaffordable for most members of the working and middle classes, furthermore, because of a combination of density and scarcity<sup>141</sup> – problems, it has been proposed, that might be alleviated through a process of rent control or other creative measures.<sup>142</sup> Corporate growth in Seattle – see, for instance, Amazon, or Microsoft – has driven rents to levels that are unaffordable to working and middle-class households, although that city has apparently responded by constructing “a lot more housing.”<sup>143</sup>

And that was before COVID. The pandemic has added to this crisis of affordability an additional crisis of precariousness. In the spring of 2020, as the United States entered into a lockdown to halt or at least slow the spread of COVID-19, a wave of unemployment swept the nation. Headlines from the *New York Times* tell the story. *Layoff Surge Overwhelms Claims Staffs*.<sup>144</sup> *‘It’s a Wreck:’ 3.3 Million File Unemployment Claims as Economy Comes*

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<sup>140</sup> Elvin Wyly, et al., *Displacing New York*, 42 ENV’T & PLAN. A 2602 (2010); Chiara Valli, *A Sense of Displacement: Long-Time Residents’ Feelings of Displacement in Gentrifying Bushwick, New York*, 39 INT’L J. URB. & REGIONAL RES. 119 (2015).

<sup>141</sup> Desiree Fields & Sabina Uffer, *The Financialisation of Rental Housing*, 53 URB. STUD. 1486 (2016); Desiree Fields, *Unwilling Subjects of Financialization*, 41 INT’L J. URB. & REGIONAL RES. 588 (2017); Desiree Fields, *Contesting the Financialization of Urban Space: Community Organizations and the Struggle to Preserve Affordable Rental Housing in New York City*, 37 J. URB. AFF. 144 (2015).

<sup>142</sup> Stephen E. Barton, *Land Rent and Housing Policy: A Case Study of the San Francisco Bay Area Housing Market*, 70 AM. J. ECON. & SOC. 845 (2011).

<sup>143</sup> Rebecca Diamond, et al., *The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco*, (Nat’l Bureau of Econ. Research, Working Paper No. 24181, 2018); Bernard Nzau & Claudia Trillo, *Harnessing the Real Estate Market For Equitable Affordable Housing Provision Through Land Value Capture: Insights From San Francisco City, California*, 11 SUSTAINABILITY, no. 13, 2019, Art. No. 3649.

<sup>144</sup> RANDY SHAW, GENERATION PRICED OUT: WHO GETS TO LIVE IN THE NEW URBAN AMERICA 108 (2018).

<sup>145</sup> Tiffany Hsu & Tara Siegel Bernard, *Layoff Surge Overwhelms Claims Staff*, N.Y. TIMES, Mar. 20, 2020, at B1.



*Apart.*<sup>145</sup> *Decade of Job Growth Comes to an End, Undone by a Pandemic.*<sup>146</sup>  
*At Least 16,780,000 Americans Have Lost Their Jobs. It Took 21 Days.*<sup>147</sup>  
*'Nowhere to Hide' as Unemployment Permeates the Economy.*<sup>148</sup> *More Than 4 Million Filed Unemployment Claims Last Week.*<sup>149</sup>

The entirely reasonable fear that a wave of evictions and homelessness would follow this economic catastrophe took hold. Writing about conditions in Minneapolis, Conor Dougherty documented: “First it was the waitress whose restaurant closed. Then the waiter, the bartender, the substitute teacher, the hairdresser, the tattoo artist, and the Walgreen’s manager. One after another, the tenants called and emailed their landlord.”<sup>150</sup> “A massive wave of evictions is coming,” predicted Alieza Durana and Matthew Desmond.<sup>151</sup> “I don’t know how I’m going to pay my rent. But I know it’s not my fault,” declared Tiana Caldwell, a community college instructor in Kansas City.<sup>152</sup> There was an enormous fear that a cascading effect would follow – tenants unable to make rent would thereby cause landlords to default on mortgages, which would in turn trigger bank

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<sup>146</sup> Ben Casselman, et al., ‘*It’s a Wreck: 3.3 Million File Unemployment Claims as Economy Comes Apart*, N.Y. TIMES (Apr. 3, 2020), <https://www.nytimes.com/2020/03/26/business/economy/coronavirus-unemployment-claims.html>.

<sup>147</sup> Nelson D. Schwartz & Patricia Cohen, *Decade of Job Growth Comes to an End, Undone by a Pandemic*, N.Y. TIMES (Apr. 3, 2020), <https://www.nytimes.com/2020/04/03/business/economy/coronavirus-jobs-report.html>.

<sup>148</sup> Caitlin Dickerson, *At Least 16,780,000 Americans Have Lost Their Jobs. It Took 21 Days*, N.Y. TIMES, Apr. 10, 2020, at B1.

<sup>149</sup> Nelson D. Schwartz, ‘*Nowhere to Hide’ as Unemployment Permeates the Economy*, N.Y. TIMES (Apr. 17, 2020), <https://www.nytimes.com/2020/04/16/business/economy/unemployment-numbers-coronavirus.html>.

<sup>150</sup> *More Than 4 Million Filed Unemployment Claims Last Week*, N.Y. TIMES (Apr. 24, 2020). <https://www.nytimes.com/2020/04/23/business/stock-market-coronavirus-live.html>.

<sup>151</sup> Conor Dougherty, *As Multitudes Lose Jobs, Rent Comes to the Forefront*, N.Y. TIMES, Apr. 9, 2020, at B1.

<sup>152</sup> Alieza Durana & Matthew Desmond, *A Massive Wave of Evictions Is Coming. Temporary Bans Won’t Help*, WASH. POST (Apr. 8, 2020), <https://www.washingtonpost.com/outlook/2020/04/08/eviction-coronavirus-rent-homelessness>.

<sup>153</sup> Tiana Caldwell, ‘*I Don’t Know How I’m Going to Pay My Rent. But I Know It’s Not My Fault*’, JACOBIN (Mar. 30, 2020), <https://www.jacobinmag.com/2020/03/coronavirus-rent-zero-homes-guarantee-tenants-crisis>.

failures.<sup>153</sup> And then, of course, there was the human dimension as millions of persons came face-to-face with eviction, destitution, and nowhere to lay their heads.<sup>154</sup>

Political pressure built.<sup>155</sup> Renters in many places achieved a hitherto unimagined level of political consciousness and credibly threatened rent

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<sup>154</sup> Conor Dougherty, et al., *Officials Act as Millions Risk Losing Their Homes*, N.Y. TIMES, Mar. 19, 2020, at B1; Brendan Pedersen & Jim Dobbs, *Will Coronavirus Lead to a Wave of Bank Failures?* AM. BANKER (Mar. 26, 2020), <https://www.americanbanker.com/news/will-coronavirus-lead-to-a-wave-of-bank-failures>; Swayta Shah, *First Bank Collapses Amid Coronavirus Woes: More in Store?*, YAHOO! FINANCE (Apr. 6, 2020), <https://finance.yahoo.com/news/first-bank-collapses-amid-coronavirus-151303366.html>.

<sup>155</sup> Jessica Contrera & Tracy Jan, *Facing Eviction, as Millions Shelter in Place*, WASH. POST (Mar. 22, 2020), <https://www.washingtonpost.com/dc-md-va/2020/03/22/evictions-coronavirus-renters-shelter-in-place>; Matt Pritchard, *How to Protect the Homeless During the Coronavirus Pandemic: The COVID-19 Pandemic Will Produce a Surge In Homelessness*, BOS. GLOBE (Mar. 24, 2020), <https://www.bostonglobe.com/2020/03/23/opinion/how-protect-homeless-during-coronavirus-pandemic>; Matthew Haag, *For Tenants and Landlords, Rent Is Due and Pressure Is On*, N.Y. TIMES, Apr. 1, 2020, at A17.

<sup>156</sup> Peter Gowan, *Coronavirus Calls for an Emergency Rent Freeze and Eviction Moratorium*, JACOBIN (Mar. 12, 2020), <https://www.jacobinmag.com/2020/03/coronavirus-housing-security-rent-freeze-eviction>.

strikes or protests.<sup>156</sup> Social organizations made the case for rent relief,<sup>157</sup> and local governments made well-meaning but haphazard responses.<sup>158</sup> At the end of March, 2020, Congress took action by including as part of the CARES Act – the Coronavirus Aid, Relief, and Economic Security pandemic relief bill signed by Donald Trump on March 27 – a 120-day rent moratorium that protected somewhere “between 12.3 and 19.9 million households, or 18.1 to 45.6 percent of all renter households, preventing them from being evicted if they were unable to pay the rent.”<sup>159</sup>

Katy Ramsey Mason, Assistant Professor of Law and Director of the Medical-Legal Partnership of the University of Memphis School of Law, means to address at least some dimensions of this crisis. Her article begins with an historical acknowledgment:

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<sup>157</sup> Mindy Isser, *Millions of People Can't Pay Rent. Here's How Some Are Organizing*, IN THESE TIMES (Mar. 31, 2020), <https://inthesetimes.com/article/rent-mortgage-tenants-housing-strike-eviction-moratorium-organizing>; Alex Burness, *As April 1 Looms, Desperate Renters Are Ready To Strike*, DENVER POST (Mar. 31, 2020), <https://www.denverpost.com/2020/03/29/coronavirus-housing-rent-eviction-foreclosure-colorado>; Renae Merle, et al., *A New Rallying Cry Among America's Working Class: No One Should Pay Rent Until the Coronavirus Pandemic Ends*, WASH. POST (Apr. 1, 2020), <https://www.washingtonpost.com/business/2020/04/01/rent-strike-coronavirus-april/>; Jesse Bogan, *Statewide Protest Calls Attention to Plight of Missouri Renters Amid Coronavirus Outbreak*, ST. LOUIS POST DISPATCH, Apr. 21, 2020, at A5; Marissa J. Lang, *Renters Are Planning Citywide Strike*, WASH. POST, May 1, 2020, at B1; Jake Johnson, *'Can't Pay, Won't Pay: ' Tens Of Thousands Take Part In COVID-19 Rent Strike Across US on May Day*, COMMON DREAMS (May 1, 2020), <https://www.commondreams.org/news/2020/05/01/cant-pay-wont-pay-tens-thousands-take-part-covid-19-rent-strike-across-us-may-day>; Lucy Piccochi & Fox Rinne, *'Can People Pay Rent This Month?' The Consensus Was No*, JACOBIN (May 10, 2020), <https://www.jacobinmag.com/2020/05/rent-strike-new-york-tenant-organizing-coronavirus>.

<sup>158</sup> Cary Spivak, *Nonprofit Calls for Ban on Evictions: Homelessness Could Add to Spread of Coronavirus*, MILWAUKEE J. SENTINEL, Mar. 18, 2020, at A11.

<sup>159</sup> Jason Laughlin, *Council Sick of Evictions With Virus Spreading*, PHILA. DAILY NEWS, Mar. 13, 2020, at 13; Marina Starleaf Riker, *County Courts To Halt Evictions During Outbreak: Justices of the Peace Won't Hear Cases Through April 16*, SAN ANTONIO EXPRESS-NEWS, Mar. 17, 2020, at A2; *Governor Should Stop Evictions*, Editorial S.F. CHRONICLE, Mar. 27, 2020, at A12.

<sup>160</sup> Sonya Acosta, et al., *Extend CARES Act Eviction Moratorium, Combine with Rental Assistance to Promote Housing Stability*, CTR. ON BUDGET & POL'Y PRIORITIES (July 27, 2020), <https://www.cbpp.org/sites/default/files/atoms/files/7-24-20hou.pdf>.

“Twice in the past fifteen years, Congress has passed huge financial relief bills to address the effects of the Great Recession and the coronavirus pandemic. The first, the Toxic Asset Relief Program (TARP) was passed in 2009 in the wake of the foreclosure crisis . . . . The second, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, was passed in 2020.”

Both legislative measures addressed at least in part a crisis concerning rental housing. Under the larger rubric of TARP, Professor Ramsey Mason notes, there was the Protecting Tenants in Foreclosure Act (PTFA). Since the Great Recession was triggered by a wave of foreclosures, the PTFA was “designed to assist residential renters in foreclosed properties.” In the first part of her contribution to the Symposium, Professor Ramsey Mason explores the many weaknesses in this legislation – its failure to ensure that tenants received adequate notice of the foreclosed status of their rental housing, its absence of any enforcement mechanism, and its many other deficiencies.

Professor Ramsey Mason then turns the same critical eye towards the CARES Act. The CARES Act, Professor Ramsey Mason notes, protected tenants from eviction for 120 days following its enactment (protection later extended to December, 2020),<sup>160</sup> but restricted its shielding umbrella to properties with “federally-backed . . . mortgages.” But how were tenants to know that they resided in such properties? This was among the questions the CARES Act left unresolved. As she did with TARP and PTFA, so also with the CARES Act: Professor Ramsey Mason analyzes its many gaps and weaknesses.

But she does not stop there. An important section of Ramsey Mason’s paper identifies the numerous measures taken by state and local government to protect tenants. And the paper closes with a series of sensible and sound recommendations to enhance the security of tenants in their homes, centered especially on the giving of adequate notice and the inclusion of enforcement mechanisms in future legislation.

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<sup>161</sup> Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55292 (Sept. 4, 2020). Without a further extension, it is expected that an eviction crisis will ensue, beginning in January, 2021. Will Parker, *U.S. Poised for Wave of Evictions in January as Federal Ban Expires*, WALL ST. J. (Dec. 13, 2020), <https://www.wsj.com/articles/u-s-poised-for-wave-of-evictions-in-january-as-federal-ban-expires-11607855401>.

Professor Ramsey Mason is a prudent, practical, pragmatic scholar. Her recommendations for reform focus on steps that are likely to gain broad, even bipartisan support in subsequent legislative action. But there is also a place for opening ever wider the Overton Window – that mythical limitation on what is doable and acceptable to say or demand in a given political environment. And in the interest of expanding the realm of the speakable, one might consider Representative Ilhan Omar's proposed Emergency Rent and Mortgage Cancellation Act – co-sponsored by Alexandria Ocasio-Cortez, Rashida Tlaib, Ayanna Pressley, and other members of the House Progressive Caucus. Representative Omar's legislation recognizes that tenants have interests in remaining in their residences<sup>161</sup> and that they should not lose their homes for circumstances outside of their control.<sup>162</sup> It is a tacit acknowledgment that private property has a social character. The proposed legislation further recognizes that rent moratoria can often make matters worse for tenants as unpaid obligations accumulate into a single, unmanageable balloon payment at the moratorium's conclusion.

If Ramsey Mason is concerned with the federal government's emergency response and its impact on tenants, Diane Klein, former Professor of Law at the University of La Verne, takes a different angle. She examines the emerging response to the question of affordability known as “co-living” – popularized by such trends as Podshare Living and the Tiny Homes movement.

American ideology has long prized the home and all that comes with it – the fixed abode, property ownership, a stake in society, the romanticism

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<sup>162</sup> One can imagine a range of interests that are at least worthy of protection. Tenants might be close to their place of employment; they may find the commute easy by way of public transportation, thus forgoing the need to purchase an automobile; they might rely on networks of neighbors for such matters as child care; they might be close to shopping districts that offer healthy dietary options.

<sup>163</sup> Representative Omar's proposal attempts to strike a balance of interests: landlords and property owners, like tenants, would receive federal financial protection in the event of catastrophic economic downturns. *See* Ilhan Omar, *On Homes For All*, JEWISH CURRENTS (Oct. 23, 2020), <https://jewishcurrents.org/on-homes-for-all>; Ilhan Omar, *Coronavirus Pandemic*, STAR TRIBUNE (MINNEAPOLIS), Mar. 23, 2020, at A11; Rebecca Klar, *Omar Introduces Legislation To Cancel Rent, Mortgage Payments During Pandemic*, THE HILL (Apr. 19, 2020), <https://thehill.com/homenews/house/493558-omar-introduces-legislation-to-cancel-rent-mortgage-payments-during-pandemic>. *Cf.*, H.R. 6515: Rent and Mortgage Cancellation Act of 2020 (2020).

and nostalgia that goes into long-remembered and long-celebrated family gatherings around the hearth, or, for that matter, the backyard grill. But from the earliest days of the Republic, Americans were willing to explore alternatives to “the home.” There were, in the early nineteenth century – and later – numerous experiments in communal living. New Harmony, Indiana,<sup>163</sup> the Oberlin Colony in Ohio,<sup>164</sup> Brook Farm in Massachusetts,<sup>165</sup> are just a few of the ante-bellum arrangements that endured at least for a time. And if utopian communities formed one type of alternate living arrangement, boarding houses were equally commonplace. “[I]f the nineteenth century was the golden age of the bourgeois home,” writes Wendy Gamber, “it was also the age of the boardinghouse. In cities and many towns, people of all classes were at least as likely to live in boardinghouses as in homes.”<sup>166</sup> Thus, for instance, in the early Republic, Members of Congress frequently – indeed, usually – resided in boardinghouses when the House or Senate was in session.<sup>167</sup>

If the United States has always featured both an ideological preference for home ownership and a parallel alternative to that preference, then should one see the new forms of “co-living” as part of that long historical record? Is co-living a matter of choice or convenience? Or is it, rather, the product of financial exigency and diminishing prospects? And in that sense, is co-living really an exciting alternative way of life, or rather something like the nineteenth-century tenements of New York or Chicago – dire places of refuge for those in desperate need of shelter?

This is the first set of questions Professor Klein explores in her article. In addressing these questions, furthermore, she reveals herself as a sound scholar, who knows that the answer is not either/or, but that the co-

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<sup>164</sup> DOUGLAS A. WISSING, IN WRITING: UNCOVERING AN UNEXPECTED HOOSIER STATE 45-51 (2016).

<sup>165</sup> Robert S. Fletcher, *The Government of the Oberlin Colony*, 20 MISS. VALLEY HIST. REV. 179 (1933).

<sup>166</sup> See, e.g., Sterling F. Delano, ‘We Have Abolished Domestic Servitude:’ *Women and Work at Brook Farm*, in TOWARD A FEMALE GENEALOGY OF TRANSCENDENTALISM 179 (Jana L. Argersinger, ed., 2014); Richard Francis, *The Ideology of Brook Farm*, in STUDIES IN THE AMERICAN RENAISSANCE 1 (Joel Myerson, ed., 1977).

<sup>167</sup> WENDY GAMBER, THE BOARDINGHOUSE IN NINETEENTH-CENTURY AMERICA 3 (2007).

<sup>168</sup> Indeed, a Member’s living arrangements sometimes even influenced political preference. See Paolo Parigi & Patrick Bergemann, *Strange Bedfellows: Informal Relations and Political Preference Formation Within Boardinghouses, 1825-1841*, 122 AM. J. SOC. 501 (2016).

living and Tiny Home movements represent both a response to the adventure of being new in a big city, the thrill of the open road, and the final, fleeting hope of those facing personal financial disaster. She also recognizes that the co-living movement poses real problems for the way human beings constitute themselves *qua* persons. Looking to the work of Professor Lisa T. Alexander of Texas A & M School of Law, and Margaret Jane Radin of the University of Michigan, Professor Klein knows well that persons require for their essential character as persons both privacy and property.<sup>168</sup>

The second group of questions Professor Klein sets for herself concerns the co-living experiment in the age of COVID-19. Writing of one form of co-living – PodShares – she states: “It is not overstatement to say that isolation and physical distancing are antithetical to the PodShare model. PodShare’s boast about ‘[m]aximum collisions’ could equally be described as ‘maximum transmissions.’” Will COVID prove PodShare’s undoing? It is a question Klein explores in depth and with sympathy.

#### IV. WOMEN

As the calendar turned from 2019 to 2020, there was seemingly good news about women in the workforce. “More women than men held jobs in December [2019],” declared Andrew Keshner in *Marketwatch* – “a sign of women’s progress in the workplace.”<sup>169</sup> “What’s driving the surge in female employment?” asked Tara Law in *Time*. Her answer was the service sector, especially “health care and retail.”<sup>170</sup> Indeed, Rachel Ngai and Barbara Petrongolo, professors of economics at the London School of Economics and the University of London respectively, observed that “the entire (net) rise in female hours took place in the broad service sector.”<sup>171</sup>

Still, this development amounted to only qualified good news.

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<sup>169</sup> See Lisa T. Alexander, *Community in Property: Lessons From Tiny Homes Villages*, 104 MINN. L. REV. 385 (2019); Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957 (1982).

<sup>170</sup> Andrew Keshner, *Women Now Have More Jobs Than Men – But That’s Not Necessarily a Sign of Progress*, MARKETWATCH (Jan. 13, 2020), <https://www.marketwatch.com/story/women-now-have-more-jobs-than-men-but-thats-not-necessarily-sign-of-progress-2020-01-13>.

<sup>171</sup> Tara Law, *Women Are Now the Majority of the U.S. Workforce – But Working Women Still Face Serious Challenges*, TIME (Jan. 16, 2020), <https://time.com/5766787/women-workforce>.

<sup>172</sup> Rachel Ngai & Barbara Petrongolo, *How the Rise of the Service Sector Boosted the Demand for Women Workers*, LONDON SCH. ECON. BUS. REV. (July 28, 2017), <https://blogs.lse.ac.uk/businessreview/2017/07/28/how-the-rise-of-the-service-sector-boosted-the-demand-for-women-workers>.

Women's wages, on average, drew closer to men's wages,<sup>172</sup> but there was still a substantial difference – a pay gap – between women's average earnings in 2019, and men's.<sup>173</sup> And, furthermore, women's employment was concentrated, to a greater extent than men's, in the service sector, where job protections tended to be weaker<sup>174</sup> and vulnerability to economic downturns correspondingly greater.<sup>175</sup>

And that was before COVID. COVID-19 has been particularly devastating on service sector employment. Thus, the restaurant industry was catastrophically impacted by governmental shutdown orders in the spring of 2020. Governors across the nation used their emergency powers to close restaurants.<sup>176</sup> Predictably, this action was followed by a wave of

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<sup>173</sup> Elise Gould, *State of Working America Wages 2019*, ECON. POL'Y INST. (2020), <https://files.epi.org/pdf/183498.pdf>; Nikki Graf, et al., *The Narrowing, But Persistent, Gender Gap in Pay*, PEW RES. CTR. (Mar. 22, 2019), <https://www.pewresearch.org/fact-tank/2019/03/22/gender-pay-gap-facts>.

<sup>174</sup> Shahar Ziv, *3 Ways the Gender Pay Gap Is Even Bigger Than You Think*, FORBES (July 11, 2019), <https://www.forbes.com/sites/shaharziv/2019/07/11/gender-pay-gap-bigger-than-you-thnk/?sh=54bc64ab7d8a>.

<sup>175</sup> Alana Semuels & Malcolm Burnley, *Low Wages, Sexual Harassment, and Unreliable Tips: This Is Life in America's Booming Service Industry*, TIME (Aug. 22, 2019), <https://time.com/magazine/us/5658416/september-2nd-2019-vol-194-no-8-u-s>; Danielle Paquette, *The Industries with the Worst Sexual Harassment Problem*, WASH. POST (Nov. 24, 2017), <https://www.washingtonpost.com/news/wonk/wp/2017/11/24/the-industries-with-the-worst-sexual-harassment-problem>.

<sup>176</sup> Robert Schnorbus & Aileen Watson, Economic Brief, *The Service Sector and the 'Great Recession: A Fifth District Perspective*, FED. RES. BANK RICHMOND (2010), [https://www.richmondfed.org/~/media/richmondfedorg/publications/research/economic\\_brief/2010/pdf/eb\\_10-12.pdf](https://www.richmondfed.org/~/media/richmondfedorg/publications/research/economic_brief/2010/pdf/eb_10-12.pdf); Daniel Schneider & Kristen Harknett, *Income Volatility in the Service Sector: Contours, Causes, and Consequences*, ASPEN INST. (2017), [https://www.aspeninstitute.org/wp-content/uploads/2017/07/ASPEN\\_RESEARCH\\_INCOME\\_VOLATILITY\\_WEB.pdf](https://www.aspeninstitute.org/wp-content/uploads/2017/07/ASPEN_RESEARCH_INCOME_VOLATILITY_WEB.pdf).

<sup>177</sup> Allyson Chiu, *New York Is Shutting Down Its Bars and Restaurants. What Does That Mean For Service Workers?*, WASH. POST (Mar. 16, 2020), <https://www.washingtonpost.com/nation/2020/03/16/coronavirus-new-york-city-shutdown/>; Farley Elliott, *California Governor Gavin Newsom Calls For Statewide Closure of Dine-In Restaurants*, EATER L.A. (Mar. 17, 2020), <https://la.eater.com/2020/3/17/21183590/california-governor-gavin-newsom-shut-down-covid-19-coronavirus-statewide-dine-in-restaurants>; Brandon Conrads, *Illinois, Ohio Closing All Bars, Restaurants, In Response to Coronavirus*, THE HILL (Mar. 15, 2020),



unemployment.<sup>177</sup> The same phenomenon was repeated in the day-care and child-care industry.<sup>178</sup> “Pink-collar” occupations, the Brookings Institute observed, are typically lower-wage and more precarious, and “lay-offs hit

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<https://thehill.com/policy/healthcare/487684-illinois-ohio-closing-all-bars-restaurants-in-response-to-coronavirus>; Daniel J. Munoz, *NJ To Close Bars, Restaurants, Casinos, and More To Stop COVID-19 Spread*, NJBiz (Mar. 16, 2020), <https://njbiz.com/breaking-nj-close-bars-restaurants-gyms-theaters-stop-covid-19-spread>; Beth LeBlanc, *Whitmer Bans Large Gatherings, Including at Churches and Casinos, to Fight Spread of Virus*, DETROIT NEWS (Mar. 13, 2020), <https://www.detroitnews.com/story/news/local/michigan/2020/03/13/whitmer-bans-gatherings-larger-than-250-people-prevent-spread-covid-19/5042130002>.

<sup>178</sup> Michelle Gant, *Thousands of Restaurant Workers Have Already Lost Their Jobs Due to Coronavirus*, TODAY (Mar. 18, 2020), <https://www.today.com/food/thousands-restaurant-workers-have-already-lost-their-jobs-due-coronavirus-t176196>; Yuki Noguchi, *Closed All at Once: Restaurant Industry Faces Collapse*, NPR (Mar. 22, 2020), <https://www.npr.org/2020/03/22/819189939/closed-all-at-once-restaurant-industry-faces-collapse>; Rachel Vigoda, *In Pennsylvania, Over 80 Percent of Restaurant Workers Are Out of a Job*, EATER PHILA. (Apr. 21, 2020), <https://philly.eater.com/2020/4/21/21229372/pennsylvania-restaurant-employees-laid-off-national-restaurant-association-report-coronavirus>; Deepti Hajela, *New York City Restaurant Workers Face a New Fear: The Future*, PORTLAND PRESS HERALD (May 1, 2020), <https://www.pressherald.com/2020/05/01/new-york-city-restaurant-workers-face-a-new-fear-the-future>.

<sup>179</sup> Aliyya Swaby, *Texas Day Cares Are Closing Just When Some Parents Need Them More Than Ever*, TEX. TRIB. (Mar. 24, 2020), <https://www.texastribune.org/2020/03/24/coronavirus-closes-texas-day-cares-some-parents-need-them-more-ever>; Annie Rose Ramos, *Coronavirus Closings: Child Care Providers In Maryland to Close By Friday Night*, CBS BALTIMORE (Mar. 26, 2020), <https://baltimore.cbslocal.com/2020/03/26/coronavirus-closings-child-care-providers-in-maryland-to-close-by-friday-night>; Lillian Mongeau, *Coronavirus Is Closing Day Cares: Child Care Providers Worry They May Never Reopen*, USA TODAY (Apr. 5, 2020), <https://www.usatoday.com/story/news/education/2020/04/05/coronavirus-daycare-child-care-center-essential-cares-act-unemployment/2946710001>; *cf.*, Noah Cohen, *N.J. Closes Adult Daycare Facilities Statewide as Coronavirus Cases Increase to More Than 800*, NJ.COM (Mar. 20, 2020), <https://www.nj.com/coronavirus/2020/03/nj-closes-adult-day-care-facilities-statewide-as-coronavirus-cases-increase-to-more-than-800.html>.

women especially hard,”<sup>179</sup> from the pandemic’s first days to the present.<sup>180</sup>

If service-sector devastation was one source of burgeoning female unemployment, a second factor was the sudden closing of schools and the shifting onto women responsibilities for education and day-time child-care. In October, 2020, the *New York Times* estimated that some 900,000 women left the workforce specifically to see to the educational or child-care needs of their offspring.<sup>181</sup> And it is believed that these decisions will have a long-term impact. Thus Alicia Sasser Modestino, Professor of Public Policy and Urban Affairs at Northeastern University, wrote in the *Washington Post* that “child-care closures will probably lead to more costly career sacrifices for women.”<sup>182</sup> In fact, by the end of summer, 2020, a sad conclusion had become obvious. As a headline in *USA Today* put it, *Coronavirus Pandemic Creates America’s First Female Recession Amid Child Care, Unemployment*

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<sup>180</sup> Nicole Bateman & Martha Ross, *Why Has COVID-19 Been Especially Harmful for Working Women?*, BROOKINGS (Oct. 2020), <https://www.brookings.edu/essay/why-has-covid-19-been-especially-harmful-for-working-women>.

<sup>181</sup> Jessie Van Berkel, *On Front Lines, Women Feel COVID-19's Sting*, STAR TRIB. (MINNEAPOLIS) (Apr. 6, 2020), <https://www.startribune.com/on-front-lines-women-feel-covid-19-s-sting/569409172>; Danielle Kurtzleben, *Women Bear the Brunt of Coronavirus Job Losses*, NPR (May 9, 2020), <https://www.npr.org/2020/05/09/853073274/women-bear-the-brunt-of-coronavirus-job-losses>; Alisha Haridasani Gupta, *Why Some Women Call This Recession a 'Shecession'*, N.Y. TIMES (May 13, 2020), <https://www.nytimes.com/2020/05/09/us/unemployment-coronavirus-women.html>; Courtney Connley, *Coronavirus Job Losses Are Impacting Everyone, But Women Are Taking a Harder Hit Than Men*, CNBC (May 14, 2020), <https://www.cnbc.com/2020/05/14/coronavirus-job-losses-disproportionately-impact-women.html>; Sarah Chaney & Lauren Weber, *Coronavirus Employment Shock Hits Women Harder Than Men*, WALL STREET J. (May 15, 2020), <https://www.wsj.com/articles/coronavirus-employment-shock-hits-women-harder-than-men-11589535002>.

<sup>182</sup> Ernie Tedeschi, *How Many Mothers Have Left Work Because of School Closings?* N.Y. TIMES, Oct. 30, 2020, at B6.

<sup>183</sup> Alicia Sasser Modestino, *Child-Care Crisis Could Set Women Back a Generation*, WASH. POST, Aug. 2, 2020, at G1. Cf., Lisa Levenstein, *With Schools and Daycare Closed, the Coronavirus Is Worsening Women's Inequality*, WASH. POST (June 26, 2020), <https://www.washingtonpost.com/outlook/2020/06/26/with-schools-daycare-closed-covid-19-is-worsening-womens-inequality/> (“women are . . . disproportionately shouldering burdens – from lost wages to additional unpaid care and household labor, to an uptick in domestic violence”).

*Woes*.<sup>183</sup>

Women's employment plainly suffered because of the COVID crisis. But so also did women-owned businesses. In August, 2020, the United States Chamber of Commerce published a *Special Report on Women-Owned Small Businesses During COVID-19*.<sup>184</sup> Summarizing its findings, the Report stated that "[w]omen-owned small businesses have been more heavily impacted by the coronavirus pandemic than male-owned small businesses, and they are less likely to anticipate a strong recovery in the year ahead."<sup>185</sup> Whether one considers "investment plans," "revenue projections," or "staffing expectations," the outlook for women-owned small business is bleaker than for male-owned enterprises.<sup>186</sup> "Scared about the future," is the way *USA Today* described the state of mind of many women entrepreneurs in November, 2020.<sup>187</sup>

Nancy Jurik's contribution to this symposium did not directly address the pandemic and its attendant disruptions, but instead focused on an important and perennial problem involving women-owned businesses: the social construction of expectations. What is it that we should value about women-owned businesses? Is it their capacity for economic growth? Their ability not only to survive but to thrive, to expand, and to grab increasing market share in a competitive environment? Or should it be something else?

These are important questions, not least because a whole set of decisions are based upon how they are answered. Depending on how these questions are resolved, women-owned businesses might (or might not) be eligible for grants or loans; might (or might not) be permitted to participate

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<sup>184</sup> Chabeli Carrazana, *Coronavirus Pandemic Creates America's First Female Recession Amid Child Care, Unemployment Woes*, USA TODAY (Aug. 3, 2020), <https://www.usatoday.com/story/news/politics/elections/2020/08/03/coronavirus-pandemic-sets-women-back-amid-unemployment-child-care-crisis/5573123002>.

<sup>185</sup> *Special Report on Women-Owned Small Businesses During COVID-19*, U.S. CHAMBER OF COM. (Aug. 26, 2020), <https://www.uschamber.com/report/special-report-women-owned-small-businesses-during-covid-19>.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> Aimee Picchi, *'Scared About the Future: 'Female Small-Business Owners Face Extra Hurdles During Pandemic Shutdowns*, USA TODAY (Nov. 2, 2020), <https://www.usatoday.com/story/money/usaandmain/2020/11/02/ppp-loans-gone-leaving-female-small-business-owners-worried-covid/6113837002>. Cf., Titan Alon, et al., *The Impact of COVID-19 on Gender Equality* (Nat'l Bureau of Econ. Research, Working Paper No. 26947, 2020) ("Taken together, these factors [many of which have been reviewed above], suggest that the COVID-19 pandemic will have a disproportionate impact on women and their employment opportunities").

in certain strategically-important networks; might (or might not) gain the kind of public approval that determines whether a particular business succeeds, survives, or dies a death of dashed dreams that leaves owners and stake-holders worse off for their experiences.

In posing the questions that she does, Professor Jurik implicitly challenges a set of deeply held and cherished assumptions about markets and businesses. Businesses, it is commonly said, should grow. Growth is the highest and greatest good. Businesses that succeed in this ambition have proven themselves worthy of our attention and our support. Businesses that do not grow, on the other hand, have failed. They have become stagnant. They have shown themselves unworthy, and by the social Darwinian rules that still govern the mind of the marketplace they should get out of the way and permit sturdier businesses to take their place.

These assumptions, Professor Jurik reminds us, are not necessarily and naturally the values we should prize in assessing business success. They are social constructions. We could just as easily value businesses not for their capacity for expansion and dominance, but for their ability to lift owners and employees alike out of poverty, for their capacity to meet the needs of human fulfillment, or for their success in expanding the circle of dignity, friendship, and cooperation.<sup>188</sup>

The impetus for Professor Jurik's paper was an analysis of women business owners in one of the western states. The analysis consisted of two parts – a survey, which required terse replies to pre-designed questions, and interviews that allowed for more open-ended responses. Participants, furthermore, were drawn from different pools of women business owners, which meant that the two groups only partially overlapped. Professor Jurik was a participant in the early stages of the process but developed misgivings about its direction. Her article is meant to criticize the final report, but, because of her early involvement, she chose to give the group a pseudonymous acronym – WOW – standing for “Western Ownership by Women.”

In its search to satisfy the expectations of certain external constituencies – bankers, perhaps, or the financial press – the organization's

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<sup>189</sup> As Pope Francis has written: “Business abilities, which are a gift from God, should always be clearly directed to the development of others and to eliminating poverty, especially through the creation of diversified work opportunities.” Pope Francis, *Fratelli Tutti*, No. 123 (Oct. 3, 2020), available at [http://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco\\_20201003\\_enciclica-fratelli-tutti.html#\\_ftnref102](http://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20201003_enciclica-fratelli-tutti.html#_ftnref102).

final report downplayed certain aspects of its findings. Family and child-care concerns were larger factors than the report admitted, as were the self-doubts and tenuous confidence levels of women business owners. By looking predominantly to relatively affluent business owners, furthermore, the report deemphasized the fact that many such enterprises are “necessity-based ventures” led by women who are “generally poorer than men.” Only when the precariousness of many women-owned businesses is acknowledged, Professor Jurik argues, can society come to meet their needs “either with additional safety net programs or alternatives to business ownership.”

Professor Jurik has, in other words, written a rebuttal to a report that is both realistic and critical in its appraisal of what the report’s proponents wished to measure. Business is about more than growth. Affluent, well-connected, mostly white women business owners should not be held up as the exemplar and paradigm of what it means to be a woman business owner. On the contrary, the range of women business owners, their experiences, and their expectations are vast and varied, and this far-reaching span of interests must be fully described and explained if we are to have any chance at progress.

## V. TAXATION

No discussion of inequality would be complete, finally, without consideration of tax policy. It is acknowledged that the income tax policy favored since the 1980s has correlated with and likely contributed to rising economic inequality in the United States.<sup>189</sup> The 2017 tax cuts signed into law by Donald Trump were merely the latest iteration of the theme first set by the Ronald Reagan tax cuts of 1981.<sup>190</sup> It surprised no one that the benefits of the Trump tax cuts flowed chiefly to the wealthiest segments of society

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<sup>190</sup> Alice Gresham Bullock, *The Tax Code, the Tax Gap, and Income Inequality: The Middle Class Squeeze*, 53 *HOW. L.J.* 249, 250 (2010) (“Since 1981, federal tax laws have supported and even encouraged the creation of the extreme income gap. After helping to create this gap, . . . tax laws subsidize the richest Americans, thereby exacerbating income inequality”).

<sup>191</sup> The direct economic record of the Reagan tax cuts is mixed. See David Wessel, *What We Learned from Reagan’s Tax Cuts*, BROOKINGS (Dec. 8, 2017), <https://www.brookings.edu/blog/up-front/2017/12/08/what-we-learned-from-reagans-tax-cuts>. The Reagan tax cuts, and those that followed, have, however, had a deleterious impact on government services, from the federal government to the smallest locality. See MONICA PRASAD, *STARVING THE BEAST: RONALD REAGAN AND THE TAX CUT REVOLUTION* 4 (2018) (“It turns out that if you try to starve the beast of government of tax revenue, it eats whatever else it can find”).

while the promise of huge tax savings for most Americans simply never materialized.<sup>191</sup>

In its origins, however, federal tax policy was conceived in very different terms. It was explained and justified as a means of equalizing the condition of American citizens. This was certainly the position taken by President Theodore Roosevelt, one of the foremost exponents, early in the twentieth century, of using the tax code to level the playing field between the wealthy and the rest. Speaking in 1907, following the Supreme Court's invalidation of the progressive income tax in *Pollock v. Farmers' Loan and Trust Company*,<sup>192</sup> President Roosevelt expressed his hope that a way might be found to enact a constitutionally valid income tax, but he also called for the enactment of a federal estate tax. The purpose of such a tax, Roosevelt declared, was to achieve greater equality: "The inheritance tax . . . is . . . far more important for the purpose of having the fortunes of the country bear in proportion to their increase in size a corresponding increase and burden of taxation."<sup>193</sup> There should be, Roosevelt insisted, "at least an approximate equality in the conditions under which each man obtains the chance to show the stuff that is in him when compared to his fellows."<sup>194</sup> Ruggedness, struggle, competition, these values showed through brightly in Theodore Roosevelt's proposed tax policy, but the struggle must be a fair one. Tax policy was the means of ensuring fair competition.

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<sup>192</sup> Frank Clemente, *Eight Ways the Trump-GOP Tax Cuts Have Made the Rich Richer While Failing Working Families*, INEQUALITY.ORG (Jan. 3, 2020), <https://inequality.org/research/trump-tax-cuts-inequality> ("Promise: Working families will quickly get a \$4,000 to \$9,000 raise. Median family income grew by just \$514 after the enactment of the tax law"). Cf., Dylan Scott & Alvin Chang, *The Republican Tax Bill Will Exacerbate Income Inequality in America*, VOX (Dec. 4, 2017), <https://www.vox.com/policy-and-politics/2017/12/2/16720952/senate-tax-bill-inequality> ("[T]he tax overhaul . . . passed through the Senate . . . would make America's income inequality worse. Maybe a lot worse, economists say").

<sup>193</sup> *Pollock v. Farmers' Loan and Trust Company*, 157 U.S. 429 (1895).

<sup>194</sup> Theodore Roosevelt, Seventh Annual Message to the Senate and House Representatives (Dec. 3, 1907) (transcript available at <https://millercenter.org/the-presidency/presidential-speeches/december-3-1907-seventh-annual-message>).

<sup>195</sup> *Id.* There are those who continue to assert that the United States should return Theodore Roosevelt's vision of using the estate and gift tax as a means of equalizing the playing field. Thus Paul Caron and James Repetti write: "Although much maligned, the estate tax is an ideal place to begin [to reduce inequality] because it can address inequality concerns more efficiently than the income tax." See Paul J. Caron & James R. Repetti, *Occupy the Tax Code: Using the Estate Tax to Reduce Inequality and Spur Economic Growth*, 40 PEPP. L. REV. 1255, 1256 (2013).

The idea that tax policy should be used as a means of achieving rough economic equality reached its apogee in the 1950s – a period characterized, it must be noted, of exceptional economic growth.<sup>195</sup> It was then that Walter Blum and Harry Kalven stated their case for using specifically the federal income tax as a means of achieving greater levels of equality.<sup>196</sup> While acknowledging that inequality had many causes – Blum and Kalven noted in particular that cultural and familial inequalities posed intractable problems far beyond the reach of the tax code – they believed that the progressive income tax filled an important role “as a means of reducing economic inequalities.”<sup>197</sup>

Progressive scholars have in recent years returned to what might best be called the egalitarian principle animating federal tax policy as it was originally conceived and have even begun to state the case for a federal wealth tax.<sup>198</sup> “The idea that people should be treated as equals is . . . part of the bedrock of modern democracy,” Kenneth Scheve and David Stasavage assert,<sup>199</sup> and a return to progressive ideals is therefore likeliest to succeed by “appeal[ing] to the logic of equal treatment.”<sup>200</sup>

The Symposium features a single contributor on the relationship of tax policy and inequality and that is Professor Fabio Ambrosio of Central Washington University. Professor Ambrosio concentrates not on the large

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<sup>196</sup> Steven Strauss, *Record Debt and Inequality Gap? It's Almost Like 40 Years of Republican Tax Cuts Failed*, USA TODAY (Oct. 3, 2019), <https://www.usatoday.com/story/opinion/2019/10/03/republican-tax-cuts-fail-record-debt-and-inequality-gap-column/3833546002> (“[I]t turns out U.S. economic growth was substantially higher during the period of high taxes”).

<sup>197</sup> Walter J. Blum & Harry Kalven, Jr., *The Uneasy Case for Progressive Taxation*, 19 U. CHI. L. REV. 417 (1952).

<sup>198</sup> *Id.* at 520.

<sup>199</sup> See, e.g., Emmanuel Saez & Gabriel Zucman, *Progressive Wealth Taxation*, BROOKINGS PAPERS ON ECON. ACTIVITY, Fall 2019 at 437. Significantly, the nation of Argentina has enacted a wealth tax to fund the public health response to COVID. See *Argentina's Senate Passes 'Millionaire's Tax' For COVID-19 Relief*, AL JAZEERA (Dec. 5, 2020), <https://www.aljazeera.com/news/2020/12/5/argentina-senate-passes-millionaires-tax-for-covid-19-relief>. Cf., Miles Howard, *The Moral Case for a Wealth Tax Has Never Been Clearer*, WBUR (Dec. 10, 2020), <https://www.wbur.org/cognoscenti/2020/12/10/massachusetts-wealth-tax-pandemic-covid-19-miles-howard> (making the case that Massachusetts faces many of the same stresses as Argentina, and should accordingly follow its lead by adopting a wealth tax to finance COVID relief measures).

<sup>200</sup> KENNETH SCHEVE & DAVID STASAVAGE, *TAXING THE RICH: A HISTORY OF FISCAL FAIRNESS IN THE UNITED STATES AND EUROPE* 4 (2016).

<sup>201</sup> *Id.* at 23.

issues of federal tax policy but narrowly and closely on the inequities of a single state system of taxation. He chose for his focus the State of Washington, which he asserts has the “most regressive [tax system] in the nation.” The State of Washington, he notes, has no state income tax and funds its needs principally through sales taxes.

Local government in such a system has also become ever more reliant on sales taxes despite their regressive nature. Like most states, Washington permits municipalities to impose what are known as “special purpose local option sales taxes.” So long as the criteria for determining the existence of special purpose are met, localities in Washington may fund not only education and transportation from such special purpose taxes (a practice common to many states), but also – unique among the fifty states – public safety. Drawing analogies between the field of criminology and tax law, Professor Ambrosio notes that the regions most in need of professional, competent, public safety are also those that are most hard-pressed to obtain the necessary funding.

There are important lessons in Professor Ambrosio’s paper for national tax policy. As more progressive forms of taxation – income taxation, estate and gift taxation, capital gains taxation – come under steady political assault, jurisdictions are increasingly required by the exigencies of governance to impose the harshest burdens upon those least able to afford to meet those requirements. And the result is not only a radically unequal education system, but a deeply unequal criminal-justice system, and finally, a society ever more divided between those few who have the sophistication and the resources to thrive in a desperately unfair system and the many who are deprived of those opportunities.

## VI. OBSERVATIONS

The debates reflected in this Symposium, of course, are not new. Indeed, the question of how best to divide society’s resources is among the oldest issues in political thought. Aristotle framed the question neatly with his theory of distributive justice. As Aristotle understood it, “[d]istributive justice calls for honor or political office or money to be apportioned in accordance with merit.”<sup>201</sup> This was a theme that Thomas Aquinas borrowed

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<sup>202</sup> SAMUEL FLEISCHACKER, *A SHORT HISTORY OF DISTRIBUTIVE JUSTICE* 19 (2004).



and adapted, particularly in his commentaries on Aristotle.<sup>202</sup>

But what was “merit?” Merit implies just desserts. But what of unearned merit? Or, as we might rephrase the question, what of unearned privilege? A half a millennium ago, John Calvin confronted that question in his theological speculations. Why was it – and it seemed obvious to Calvin – that some persons were destined for salvation, and others for damnation? Calvin’s answer was that God had chosen to bestow grace upon some and to withhold it from others. God was sovereign, the ruler of all creation, God’s mind and will were inscrutable, and God can save whom He wishes to save.<sup>203</sup> Inequality was thus encoded into the divinely ordained structure of the cosmos. While Calvin did not represent the whole of Christian thought on this matter, his inquiry formed a substantial strand of it.

At its most fundamental level, therefore, at the level of the divine plan itself, the world was unequal, divided between the elect and the condemned. “God wills it,” however, is no longer an adequate answer to the problem of inequality, if it ever was. Certainly, a deep philosophical response is called for, but that is not for this Symposium.

The scholars whose works are collected here share in common the perspective that society has grown deeply unequal and has thus become increasingly unjust. They have offered many and important insights on how to rebuild a United States that has grown ever more gravely flawed by a burgeoning and unbridgeable inequality. They propose means by which to restore the American nation to principles of justice, and to create mechanisms that would allow all persons to flourish in accord with their talents regardless of the accidents of birth. The problem of inequality in today’s world is many faceted, and so are the solutions proposed by our group of scholars. It is our fond hope that their lessons are attended to.

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<sup>203</sup> Charles J. Reid, Jr., *Thomas Aquinas (1225-1274)*, in *LAW AND THE CHRISTIAN TRADITION IN ITALY: THE LEGACY OF THE GREAT JURISTS* 98, 99-100 (Orazio Condarelli & Rafael Domingo eds., 2020).

<sup>204</sup> Roland Boer, *POLITICAL GRACE: THE REVOLUTIONARY THEOLOGY OF JOHN CALVIN* 42-43 (2009).