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## A Look at Inequality, Workers' Rights, and Race

William E. Spriggs†

### Introduction

Perhaps the most noted argument linking the struggles of the African American Civil Rights Movement and the labor movement in the United States was stated by Dr. Martin Luther King, Jr. when he was invited by George Meany, President of the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) to its fourth annual Constitutional Convention in Miami, Florida on December 11, 1961.<sup>1</sup> This speech was after the Montgomery Bus Boycott had pushed Dr. King onto the national stage and the sit-ins led by students at North Carolina Agricultural and Technical State University, and later Bennett College for Women, at two lunch counters in Greensboro, North Carolina caught the nation's attention.<sup>2</sup> However, it was before the 1963 March on Washington for Jobs and Freedom.<sup>3</sup> Dr. King told the AFL-CIO:

Negroes in the United States read this history of labor and find that it mirrors their own experience. We are confronted by powerful forces, telling us to rely on the goodwill and

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†. Professor, Department of Economics, Howard University, Washington, D.C. and Chief Economist, AFL-CIO. Comments and suggestions welcome; please direct them to [wspriggs@howard.edu](mailto:wspriggs@howard.edu).

1. VII MARTIN LUTHER KING, JR., *Address Delivered at the Fourth Constitutional Convention of the AFL-CIO* (Dec. 11, 1961), in *THE PAPERS OF MARTIN LUTHER KING, JR. VOLUME VII: TO SAVE THE SOUL OF AMERICA, JANUARY 1961–AUGUST 1962* (Clayborne Carson & Tenisha Armstrong eds., 2014) [hereinafter *PAPERS OF MARTIN LUTHER KING, JR.*].

2. Henry J. Richardson III, *From Birmingham's Jail to Beyond the Riverside Church: Martin Luther King's Global Authority*, 59 *HOW. L.J.* 169 (2015); DAVID J. GARROW, *BEARING THE CROSS: MARTIN LUTHER KING, JR., AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE* 32 (Kenneth T. Andrews & Michael Briggs eds., 2006) ("Martin Luther King Jr., was only twenty-six years of age and had lived in Montgomery for hardly fifteen months when he emerged as the [Montgomery Improvement Association]'s preeminent leader during the boycott's early weeks."); see also Kenneth T. Andrews & Michael Biggs, *The Dynamics of Protest Diffusion: Movement Organizations, Social Networks, and News Media in the 1960 Sit-Ins*, 71 *AM. SOC. REV.* 752, 769 (2006).

3. See *March on Washington for Jobs and Freedom*, STAN., THE MARTIN LUTHER KING, JR. RES. & EDUC. INST., <https://kinginstitute.stanford.edu/encyclopedia/march-washington-jobs-and-freedom> (last accessed Apr. 17, 2018).

understanding of those who profit by exploiting us. They deplore our discontent, they resent our will to organize so that we may guarantee that humanity will prevail and equality will be exacted. They are shocked that action organizations, sit-ins, civil disobedience, and protests are becoming our everyday tools, just as strikes, demonstrations, and union organization became yours to ensure that bargaining power genuinely existed on both sides of the table. We want to rely upon the goodwill of those who would oppose us. Indeed, we have brought forward the method of nonviolence to give an example of unilateral goodwill in an effort to evoke it in those who have not yet felt it in their hearts. But we know that if we are not simultaneously organizing our strength, we will have no means to move forward. If we do not advance, and the crushing burden of centuries of neglect and economic deprivation will destroy our will, our spirits, and our hopes. In this way, labor's historic tradition of moving forward to create vital people as consumers and citizens has become our own tradition and for the same reasons.

This unity of purpose is not an historical coincident. Negroes are almost entirely a working people. There are pitifully few Negro millionaires and few Negro employers. Our needs are identical with labor's needs: decent wages, fair working conditions, livable housing, old-age security, health and welfare measures, conditions in which families can grow, have education for their children, and respect in the community. That is why Negroes support labor's demands and fight laws which curb labor. That is why the labor-hater and labor-baiter is virtually always a twin-headed creature, spewing anti-Negro epithets from one mouth and anti-labor propaganda from the other mouth [*applause*].

The duality of interests of labor and Negroes makes any crisis which lacerates you a crisis from which we bleed. And as we stand on the threshold of the second half of the twentieth century, a crisis confronts us both. Those who in the second half of the nineteenth century could not tolerate organized labor have had a rebirth of power and seek to regain the despotism of that era, while retaining the wealth and privileges of the twentieth century. Whether it be the ultra-[W]hite right wing in the form of Birch Societies the alliance which former President [Dwight D.] Eisenhower denounced, the alliance between big military and big business, or the coalition of southern Dixiecrats and northern reactionaries—whatever the form, these menaces now threaten everything decent and fair in American life. Their target is labor, liberals, and Negro people, not scattered Reds or even Justice [Earl] Warren, former Presidents Eisenhower and [Harry S.] Truman, and President [John F.] Kennedy, who are in truth beyond the reach of their crude and vicious falsehoods.<sup>4</sup>

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4. PAPERS OF MARTIN LUTHER KING, JR., *supra* note 1, at 335–336.

Those words accurately characterize the present, when many states propose extending right-to-work laws that cripple union finances and the United States Supreme Court will rule on a case that challenges public sector unionism.<sup>5</sup> Unless Congress acts quickly, November 2018 will tie the mark for the longest period the federal minimum wage has gone unchanged, in nominal—not adjusted for inflation—terms, since it became law in 1938.<sup>6</sup>

The share of national income going to workers has been declining, while the share going to profits has been rising.<sup>7</sup> Over the period 1970 to 2014, the share of United States national income going to workers fell a little over ten percent.<sup>8</sup> Further, typical wages are not rising with productivity, which means that, though workers are contributing to economic growth, their wages are not reflecting that.<sup>9</sup> However, the pay of top corporate executives has been exploding compared to that of the typical worker.<sup>10</sup> Chief-executive-officers (CEOs) now make over 250 times their typical employee, because CEO pay rose over 900% since 1978, while wages for typical workers were almost flat.<sup>11</sup>

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5. *Janus v. Am. Fed'n of State, Cty. & Mun. Employees, Council 31*, 851 F.3d 746 (7th Cir. 2017), *cert. granted sub nom. Janus v. Am. Fed'n*, 138 S. Ct. 54 (2017); Adam Liptak, *A Supreme Court Showdown Could Shrink Unions' Power*, N.Y. TIMES, Feb. 22, 2013, at A1; Mark Walsh, *A "View" from the Courtroom: The Dog that Didn't Bark*, SCOTUSBLOG (Feb. 26, 2018, 5:36 PM), <http://www.scotusblog.com/2018/02/view-courtroom-dog-didnt-bark/>; Lisa Nagele-Piazza, *The Resurgence of Right-to-Work Laws*, SOC'Y FOR HUM. RESOURCE MGMT. (July 21, 2017), <https://www.shrm.org/hr-today/news/hr-magazine/0817/pages/the-resurgence-of-right-to-work-laws.aspx>; Gordon Lafer, *The Legislative Attack on American Wages and Labor Standards, 2011—2012*, ECON. POLY INST. (Oct. 31, 2013), <https://www.epi.org/files/2013/EPI-Legislative-Attack-on-American-Wages-Labor-Standards-10-31-2013.pdf>.

6. *History of Federal Minimum Wage Rates Under the Fair Labor Standards Act, 1938—2009*, DEP'T OF LABOR, WAGE AND HOUR DIV., <https://www.dol.gov/whd/minwage/chart.htm> (last accessed April 17, 2018).

7. INT'L LABOUR ORG., ORG. FOR ECON. CO-OPERATION & DEV., *THE LABOUR SHARE IN G20 ECONOMIES* (2015), <https://www.oecd.org/g20/topics/employment-and-social-policy/The-Labour-Share-in-G20-Economies.pdf>.

8. *Id.* at 12.

9. Cyrille Schwellnus, Andreas Kappeler & Pierre-Alain oPonnier, *Decoupling of Wages from Productivity* 5 (OECD Econ. Dep't, Working Paper No. 1371, 2017), <https://www.oecd.org/eco/Decoupling-of-wages-from-productivity-Macro-level-facts.pdf>; Josh Bivins & Lawrence Mishel, *Understanding the Historic Divergence Between Productivity and a Typical Worker's Pay*, ECON. POLY INST. (Sept. 2, 2015), <https://www.epi.org/files/2015/understanding-productivity-pay-divergence-final.pdf>.

10. Grace Donnelly, *Top CEOs Make More in Two Days than an Average Employee does in One Year*, FORTUNE (July 20, 2017), <http://fortune.com/2017/07/20/ceo-pay-ratio-2016/>.

11. *Id.*

If policies were pursued to reverse this course, addressing sliding labor standards and increasing union density, African Americans would feel the beneficial effects disproportionately. For instance, economic research suggests a significant portion of wage inequality that grew in the 1980s between earners at the bottom ten percent of the wage distribution and median wage earners was because the federal minimum wage was unchanged between 1981 and 1990.<sup>12</sup> Further, declines in the purchasing power of the minimum wage are also significant in explaining the growth in overall income inequality, as measured by the Gini coefficient, a broad measure of income inequality.<sup>13</sup> Proposals which would raise the federal minimum wage to \$15 an hour by 2024, such as the “Raise the Wage Act of 2017,” would disproportionately benefit African American workers.<sup>14</sup> The Raise the Wage Act proposal would directly raise the wages of 25.6% of African American workers, would likely have spillover effects to maintain portions of intra-firm wage differences between workers and inter-firm wage differences between firms paying higher and lower wages, and an additional 14.5% of African American workers would likely get a raise as well.<sup>15</sup> Combined, that would mean a pay increase for over 40% of African Americans.<sup>16</sup> Overall, this measure would help almost 30% of Americans see a pay raise.<sup>17</sup> This same measure would help 26.5% of White workers and 33.5% of Hispanic workers.<sup>18</sup>

One reason for its greater impact for African Americans is that a higher share of African American workers are women, and women

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12. David H. Autor, Alan Manning & Christopher L. Smith, *The Contribution of the Minimum Wage to US Wage Inequality over Three Decades: A Reassessment*, 8 AM. ECON. J. APPLIED ECON. 58 (2016); John DiNardo, Nicole M. Fortin & Thomas Lemieux, *Labor Market Institutions and the Distribution of Wages, 1973–1992: A Semiparametric Approach*, 64 ECONOMETRICA 1001 (2016); David S. Lee, *Wage Inequality in the United States During the 1980s: Rising Dispersion or Falling Minimum Wage?*, 114 Q.J. OF ECON. 977 (1999).

13. FLORENCE JAUMOTTE & CAROLINA OSORIO BUITRON, INT’L MONETARY FUND, INEQ. AND LAB. MKT. INST. (2015), <https://www.imf.org/external/pubs/ft/sdn/2015/sdn1514.pdf>; Evelyn Lamb, *Ask Gini: How to Measure Inequality*, SCI. AM. (Nov. 12, 2012), <https://www.scientificamerican.com/article/ask-gini/>.

14. DAVID COOPER, ECON. POL’Y INST., RAISING THE MINIMUM WAGE TO \$15 BY 2024 WOULD LIFT WAGES FOR 41 MILLION AMERICAN WORKERS 2–3 (Apr. 26, 2017), <https://www.epi.org/files/pdf/125047.pdf>.

15. *Id.* at 25.

16. *Id.* at 30.

17. *Id.* at 25.

18. *Id.* at 13.



standards.<sup>24</sup> That is why it is difficult to disentangle whether the animus of the laws is aimed at workers or aimed at African Americans.

A problem with this entanglement is that current projections show that the majority of workers with less than a college degree (the “working class”) will be workers of color, sooner than will be true of the population as a whole.<sup>25</sup> A key age demographic—workers ages twenty-five to thirty-four—will be majority workers of color by 2021.<sup>26</sup> So, if the animus toward working conditions is racial, this will condemn White workers as well.

### I. Racial Animus and Labor Laws: Right-to-Work Laws

Perhaps the most obvious example of where the animus against African American workers coincides with general anti-worker policies are right-to-work laws. The Labor Management Act of 1947<sup>27</sup> (commonly referred to as the “Taft-Hartley Act”) amended the National Labor Relations Act of 1935<sup>28</sup> (commonly referred to as the “Wagner Act”) to allow individual states to prevent labor unions from requiring workers represented by a union’s collective bargaining agreement from having to pay dues to the union.<sup>29</sup> The Wagner Act creates a single voice for workers, through their union, to bargain and represent the workers before management. The union is then obligated to represent all workers without discrimination.<sup>30</sup> So, the effect of right-to-work is to create free-riders: workers who are represented by the union and benefit from its efforts, but who do not support the finances of the union.

The passage of the Taft-Hartley Act was the result of a battle by the business community to roll back the Wagner Act.<sup>31</sup> Businesses found a great ally in Vance Muse, who was allied with several racist organizations, and as part of those aims, he found

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24. Valerie Wilson, *People of Color Will Be a Majority of the American Working Class in 2032*, ECON. POLY INST. 10–13 (June 9, 2016), <https://www.epi.org/files/pdf/108254.pdf>.

25. *Id.*

26. *Id.* at 3.

27. Labor Management Relations Act, 1947 (Taft-Hartley), 29 U.S.C. §§ 141–197 (2012).

28. National Labor Relations Act of 1935 (Wagner Act), 29 U.S.C. §§ 151–169 (2010).

29. Marc Dixon, *Limiting Labor: Business Political Mobilization and Union Setbacks in the States*, 19 J. POLY HIST. 313, 315–16 (2007).

30. *Id.*

31. *Id.* at 313.

common purpose with the business community's views on unions.<sup>32</sup> Muse's support from leading businessmen, including Alfred Sloan and Henry DuPont, was revealed during his testimony at hearings of the United States Senate Special Committee to Investigate Lobbying Activities, chaired by then-Senator Hugo Black.<sup>33</sup> Muse's opposition to President Franklin Roosevelt's New Deal was rooted in the challenge that elements of the program presented to maintain Jim Crow in the South.<sup>34</sup> In particular, Muse objected to the implication that the Wagner Act would require equality between members within the union.<sup>35</sup> He characterized the threat thusly: "[f]rom now on, [W]hite women and [W]hite men will be forced into organizations with [B]lack African apes whom they will have to call 'brother' or lose their jobs."<sup>36</sup>

Muse and his "Christian American" movement were clearly agitated at the prospect of organizing African American workers. Muse's wife, Maria Muse, spoke against the specter of "Eleanor Clubs," a fantasy of Southern Whites who imagined a secret cabal fomenting discontent among African American female domestic workers.<sup>37</sup> In a prophetic forecasting of the Fight for \$15, Mrs. Muse characterized the "Eleanor Clubs" as proposing:

\$15 a week salary for all n----- house help, Sundays off, no washing and no cleaning upstairs . . .<sup>38</sup> My n----- maid wouldn't dare sit down in the same room with me lessen' [sic] she was sittin' [sic] on the floor at my feet.<sup>39</sup>

Clearly, major industries resented the passage of the Wagner Act, and many provisions of President Roosevelt's New Deal, and wanted those laws rolled back or eliminated.<sup>40</sup> Muse claimed credit for passing anti-labor legislation in five of the eleven states that would pass right-to-work provisions by 1947, when the Taft Hartley Act amendments to the Wagner Act passed.<sup>41</sup>

32. *Id.* at 321.

33. STETSON KENNEDY, *SOUTHERN EXPOSURE* 128–29, 251–52 (1946).

34. *Id.* 156–57.

35. *Id.* at 229.

36. *Id.* at 84.

37. *Id.* at 250; *see also* HOWARD W. ODUM, *RACE AND RUMORS OF RACE: THE AMERICAN SOUTH IN THE EARLY FORTIES* 73–90 (BryantSimon ed., 1997).

38. Victor H. Bernstein, *The Antilabor Front*, 3 *ANTIOCH R.* 328, 338 (1943).

39. *Id.* at 336.

40. *Id.*; Dixon, *supra* note 29, at 316; Robert E. Lane, *Notes on the Theory of the Lobby*, 2 *W. POL. Q.* 154, 162 (1949); Robert H. Zieger, *Labor and the Legislative Process: The Long, Twilight Struggle*, 40 *REVS. AM. HIST.* 668, 669 (2012).

41. KENNEDY, *supra* note 33, at 253–255.

The average wages and benefits of workers in right-to-work states are lower than in states that do not have right-to-work laws.<sup>42</sup> Because right-to-work laws limit the finances of unions, they also limit organizing activities, and result in a lower share of workers in unions (union density).<sup>43</sup> Right-to-work laws have the further effect of signaling a decreased threat to non-union firms that they may be organized. The result is lower wages for non-union workers, especially compared to union workers.<sup>44</sup> Smaller union coffers and lower union density also slant the political landscape for states that adopt right-to-work laws. Part of this effect comes from a change in the type of political candidates in these states and part from the policies that pass in the state legislatures of right-to-work states.<sup>45</sup> So, while clearly this anti-union legislation is aimed at decreasing union power, and it has deep roots in racial animus, it hurts all workers through downward wage pressures and by tilting state policies away from workers.

Because there is a high correlation between the percent of the labor force that is African American in a state and passage of right-to-work laws, a higher share of African Americans live in states that have right-to-work-laws than do Whites.

## II. Worker Welfare and Racial Animus—Social Security and the Exclusion of Agricultural Workers

While some scholars consider the exclusion of agricultural workers and domestic workers from the benefits of the Social Security Act as an unfortunate outcrop of general theories of designing social welfare policies that many nations adopted during the global Great Depression, or as stemming from the unfortunate impracticality of designing a way to collect wage data and taxes

42. ELISE GOULD & HEIDI SHIERHOLZ, ECON. POL'Y INST., THE COMPENSATION PENALTY OF "RIGHT-TO-WORK LAWS" 1 (Feb. 17, 2011), <https://secure.epi.org/files/page/-old/briefingpapers/BriefingPaper299.pdf>.

43. ROBERT BRUNO ET AL., THE ECONOMIC EFFECTS OF ADOPTING A RIGHT-TO-WORK LAW: IMPLICATIONS FOR ILLINOIS 5, 15 (2013); Ozkan Eren & Serkan Ozbeklik, *What Do Right-to-Work Laws Do? Evidence from a Synthetic Control Method Analysis*, 35 J. POL'Y ANALYSIS AND MGMT. 173, 176 (2015).

44. Ozkan Eren & Serkan Ozbeklik, *Union Threat and Nonunion Wages: Evidence from the Case Study of Oklahoma 15* (unpublished manuscript) (on file with Louisiana State University College of Business), [http://faculty.bus.lsu.edu/oeren/eren\\_ozbeklik\\_paper3.pdf](http://faculty.bus.lsu.edu/oeren/eren_ozbeklik_paper3.pdf).

45. James Feigenbaum, Alexander Hertel-Fernandez & Vanessa Williamson, *From the Bargaining Table to the Ballot Box: Political Effects of Right to Work Laws* 27–30 (Nat'l Bureau of Econ. Research, Working Paper No. 24259, 2018), <http://papers.nber.org/tmp/94645-w24259.pdf>.

from such workers, there is general recognition that the exclusion of those workers disproportionately hurt African Americans.<sup>46</sup> Yet, African American leaders voiced strong opposition to the disparate impacts of the Social Security Act and other provisions of the New Deal.<sup>47</sup> George Edmund Haynes, who had helped co-found the National Urban League, testified to the United States Senate and House on the Social Security Act, pointing to the disparate impact of giving states responsibility for administering unemployment insurance and Aid to Families with Dependent Children provisions and to the disparate impact of the exclusion of agricultural and domestic workers from Social Security's benefits.<sup>48</sup> His piece, *Lily-White Social Security*, for the NAACP's magazine *Crisis*, clearly showed his view about these exclusions.<sup>49</sup> Charles Hamilton Houston, head of the NAACP Legal Defense Fund (LDF), testified before the United States House on behalf of the NAACP LDF and the NAACP, making points about the disparate share of African Americans who would be excluded because they were either sharecroppers, and therefore not employees under the Act, agricultural workers, or domestics.<sup>50</sup> He further argued that the low pay earned by African Americans made tying benefits to wages a double penalty for African American workers who faced wage discrimination on the job.<sup>51</sup> The NAACP's editorial on the Act, put it simply as *Social Security—for White Folk*.<sup>52</sup>

The frustration with the Social Security Act came from having had the same struggles in earlier New Deal programs, most notably the National Industrial Recovery Act of 1933 (NIRA).<sup>53</sup> Southern

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46. Richard Rodems & H. Luke Shaefer, *Left Out: Policy Diffusion and the Exclusion of Black Workers from Unemployment Insurance*, 40 SOC. SCI. HIST. 385, 388 (2016); Larry DeWitt, *The Decision to Exclude Agricultural and Domestic Workers from the 1935 Social Security Act*, 70 SOC. SECURITY BULL. 49, 52 (2010); Gareth Davies & Martha Derthick, *Race and Social Welfare Policy: The Social Security Act of 1935*, 112 POL. SCI. Q. 217, 217 (1997).

47. Raymond Wolters, *The New Deal and the Negro*, in THE NEW DEAL 175 (John Braeman, Robert H. Bremner & David Brody eds., 1975) (discussing criticism of the New Deal and several of its programs by the NAACP and other African American leaders).

48. Economic Security Act: Hearings on H.R. 4120 Before the H. Comm. on Ways and Means, 74th Cong. 108 (1935).

49. George Edmund Haynes, *Lily-White Social Security*, 42 CRISIS 85 (1935).

50. Juan F. Perea, *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 OHIO ST. L.J. 95, 112–13 (2011).

51. *Id.*

52. Editorial, *Social Security—For White Folk*, 42 CRISIS 80 (1935).

53. *Id.*; Perea, *supra* note 50, at 104–105.

firms lobbied to pay different wages by race.<sup>54</sup> While encoding a racial wage difference was rejected in drafting language for NIRA, the Act did adopt occupation and regional categories for wages that netted a disproportionate effect similar to that of the racial categories.<sup>55</sup> The experience of NIRA showed that Southern Democrats would cooperate with the New Deal if it did not threaten racial order in the South.<sup>56</sup> The compromise reached with the Social Security Act to create a new federal income insurance program at the price of excluding a disproportionate share of African American workers was one that had already been reached with the passage of NIRA.<sup>57</sup>

Those who argue that the issue of excluding agricultural workers should not be viewed from a racial lens point to the fact that while roughly 65% of African Americans were excluded by the Act, African Americans actually comprised only about 23% of the agricultural and domestic workforce that was excluded from benefits.<sup>58</sup> The odd issue here is that more Whites had to suffer a loss of benefits to achieve the elimination of African Americans from the program. In the end, this exclusion affected 27% of Whites.<sup>59</sup> The lack of coverage meant the potential loss of about \$143 billion (in 2016 dollars) to African American families, which was most likely absorbed as reduced consumption by the elderly, who were unable to work; lost education by children who worked to help support the elderly; or diminished health and quality of life by the elderly who continued to work.<sup>60</sup>

### III. Myth of the White Working Class

What the fight to enact right-to-work laws and the exclusion of agricultural and domestic workers from the Social Security Act highlighted is that many White workers had to sacrifice higher incomes to deny benefits to African Americans that would have

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54. *Id.*

55. *Id.* at 104–06.

56. *Id.* at 99.

57. *Id.* at 125; see also Ira Katznelson, Kim Geiger & Daniel Kryder, *Limiting Liberalism: The Southern Veto in Congress, 1933–1950*, 108 POL. SCI. Q. 283, 284–85 (1993) (mapping the political compromises made by Democrats through legislative veto).

58. DeWitt, *supra* note 46, at 53.

59. *Id.*

60. David Stoesz, *The Excluded: An Estimate of the Consequences of Denying Social Security to Agricultural and Domestic Workers* 9 (Ctr. for Soc. Dev., Working Paper No. 16-17, 2016).

otherwise closed racial income divides or changed racial power dynamics. Hidden in these dynamics are clearly other agendas related to gender and patriarchy that make it politically possible for some White workers to lose in order for African Americans to suffer more.<sup>61</sup> The nature of the animus is clear in a pattern that mimics the Southern plantation economy, leaving African American workers with no bargaining leverage through denial of access to social insurance programs that protect workers' incomes, weakening their collective voice, and ensuring low or inadequate legal floors for wages, hours, and working conditions.<sup>62</sup>

The echoes of these strategies are reflected in the more recent failure to extend Medicaid coverage in nineteen states, as allowed by the Affordable Care Act, primarily in states that are right-to-work or have large shares of African American workers.<sup>63</sup> Of those workers hurt by the failure to extend Medicaid coverage, forty-eight percent are White.<sup>64</sup> Recent rollbacks in benefit amounts or duration for receiving unemployment benefits have also happened in right-to-work-states—such as North Carolina, South Carolina, Georgia, Florida, Louisiana, and Arkansas—that also have above-national-average shares of African Americans in their work forces.<sup>65</sup>

While African American Civil Rights leaders have worked closely with the Labor Movement—because as Dr. King said, it is not possible to improve the lives of African Americans without measures that help all workers lift wages, improve working conditions, or stabilize their hours—that does not mean the relationship between organized labor and African Americans has been smooth.<sup>66</sup> Clearly, the record shows problems of exclusion.<sup>67</sup>

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61. Terri Nilliasca, *Some Women's Work: Domestic Work, Class, Race, Heteropatriarchy, and the Limits of Legal Reform*, 16 MICH. J. RACE & L. 377, 381 (2011).

62. Perea, *supra* note 50, at 99.

63. RACHEL GARFIELD & ANTHONY DAMICO, HENRY J. KAISER FAMILY FOUND., *THE COVERAGE GAP: UNINSURED POOR ADULTS IN STATES THAT DID NOT EXPAND MEDICAID 2* (2017).

64. *Id.*

65. ANDREW STETTNER, THE CENTURY FOUN., *UNEMPLOYMENT TRUST FUND RECOVERY IS HELPING EMPLOYERS, NOT WORKERS* (Dec. 7, 2017), <https://tcf.org/content/report/unemployment-trust-fund-recovery-helping-employers-not-workers/>.

66. PAPERS OF MARTIN LUTHER KING, JR., *supra* note 1, at 335–336.

67. STERLING D. SPERO & ABRAM L. HARRIS, *THE BLACK WORKER: THE NEGRO AND THE LABOR MOVEMENT* 17 (1931) (discussing the disputes between labor unions and recently emancipated slaves); *see also id.* at 56 (“While race prejudice is a very fundamental fact in the exclusion of the Negro, the desire to restrict competition so as to safeguard job monopoly and to control wages is inextricably interwoven with

And, even within the labor movement, there have been issues of inequality in accessing training or occupations.<sup>68</sup> Given the record, it would be impossible to deny the existence of a view that claims it is possible to advance White workers and maintain the racial hierarchy. But, clearly, to attempt to do that with “race neutral” policies will have costs for many White workers.

February 2018 marked the fiftieth anniversary of the Memphis sanitation workers’ strike, and March 2019 will mark the fiftieth anniversary of the Charleston hospital workers’ strike. The stories told by these strikes demonstrate that lifting African American workers can prove beneficial to all workers. The fight won by the sanitation workers opened the path for public sector unions in Memphis. So, the firefighters and police officers of Memphis were able to organize because of the sanitation workers.<sup>69</sup> As the Charleston strike was similarly among low-wage workers, but was an overwhelmingly female union, their victory showed new might for women in the labor movement and added important precedent in establishing a right of public employees to organize and strike, even in a state that lacked laws granting public employees bargaining rights.<sup>70</sup>

So, why does a myth of hard work and grit appear to characterize discussions around White workers and not African American or now Latinx people? Why doesn’t the labor heroism of African American workers create a sense of class solidarity?

A fault line the New Deal created was a class of workers who were better protected in terms of wages, who now had the ability to organize, and who had access to a reliable safety net.<sup>71</sup> While a minority of White workers fell through the cracks of that invention, the overwhelming majority of African American workers were left

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it.”). Spero and Harris provide a comprehensive look at race relations and the early labor movement, focusing on railroad workers, longshoremen, miners, and craftsmen, among others. *Id.* at 53, 182, 206, 284.

68. See HERBERT HILL, *BLACK LABOR AND THE AMERICAN LEGAL SYSTEM: RACE, WORK, AND THE LAW* (1977).

69. See Charles Steven Palmer, *Economics, Grievances, Protective-Employee Unionization, and the 1978 Memphis Fire and Police Strikes*, 22 *ESSAYS IN ECON. & BUS. HIST.* 183 (2004).

70. See Eugene G. Eisner & I. Philip Sipser, *The Charleston Hospital Dispute: Organizing Public Employees and the Right to Strike*, 45 *ST. JOHN’S L. REV.* 254 (1970); Jewell Charmaine Debnam, *Black Women and the Charleston Hospital Workers’ Strike of 1969* (2016) (unpublished PhD dissertation, Michigan State University) (on file with Michigan State University Libraries).

71. See Eric Rauchway, *Learning from the New Deal’s Mistakes*, *AM. PROSPECT* (Dec. 19, 2008), <http://prospect.org/article/learning-new-deals-mistakes>.

out.<sup>72</sup> The result was that it was far easier for Whites to avoid poverty through work than for African Americans.<sup>73</sup> In 1967, the median income of a White male worker was \$39,534 per year (in 2016 dollars).<sup>74</sup> That income was enough to support a married couple with three children at a little over 35% above the poverty line, on that single income. Since then, White male workers reached a median-income low of \$38,162 (in 2016 dollars) in 1982 and recovered to a record high of \$44,175 by 2016.<sup>75</sup> During the same period, the highest median earnings for African American male workers was \$34,547 (in 2016 dollars) in 2003; a number lower than the low experienced by White men.<sup>76</sup> From 1967 until 1994, the median earnings of African American men were insufficient to keep a married couple with three children above poverty. An interpretation is that White men are “workers” and African American men are the “working poor.”

The challenge of a market-based economic system is that price is used to allocate goods and services. In a middle-income country, where half the income is held by the middle three quintiles of the income distribution, it means that most buying power is held by the middle.<sup>77</sup> This means the price point for a good that clears most

72. *Id.* (“When New Deal policies did help workers, they disproportionately benefited [W]hite men . . . . Although the New Deal did help African Americans enough to make a difference in their voting, as [B]lack voters increasingly backed Democrats—[B]lack Americans did not benefit equally to their [W]hite neighbors.”).

73. Charles Lane, *The New Deal as Raw Deal for Blacks in Segregated Communities*, WASH. POST (May 25, 2017), [https://www.washingtonpost.com/opinions/the-new-deal-as-raw-deal-for-blacks-in-segregated-communities/2017/05/25/07416bba-080a-11e7-a15f-a58d4a988474\\_story.html?utm\\_term=.06234f722b3e](https://www.washingtonpost.com/opinions/the-new-deal-as-raw-deal-for-blacks-in-segregated-communities/2017/05/25/07416bba-080a-11e7-a15f-a58d4a988474_story.html?utm_term=.06234f722b3e). The author escribes the embedded racism in New Deal housing initiatives that disproportionately benefitted Whites over African Americans. New Deal housing initiatives left African Americans in the post-war United States with limited opportunity for homeownership, which is important because “[h]omeownership was a key path to wealth in postwar America, yet many [B]lacks were excluded..”

74. TABLE P-WORK41WWORK EXPERIENCE—WHITE WORKERS BY MEDIAN EARNINGS AND SEX: 1967 TO 2016, CENSUS BUREAU, <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-income-people.html> (last accessed Apr. 20, 2018).

75. *Id.*

76. TABLE P-41B WORK EXPERIENCE—BLACK WORKERS BY MEDIAN EARNINGS AND SEX: 1967 TO 2016, CENSUS BUREAU, <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-income-people.html> (last accessed Apr. 20, 2018).

77. For example, the World Bank considers Brazil a quintessential “middle-income country.” In Brazil, the middle three quintiles of the income distribution hold a forty percent share of the nation’s annual income from labor. See *LAC Equity Lab: Income Inequality-Composition by Quintile*, WORLD BANK, <http://www.worldbank.org/en/topic/poverty/lac-equity-lab1/income-inequality/>

markets is within reach of the middle.<sup>78</sup> Those in the middle appear free to choose to buy, or not buy, those things they want. But, for those in the bottom quintile, which in the United States is close to the poverty line, many things end up priced too high, and therefore out-of-reach.<sup>79</sup> The “economic peace”<sup>80</sup> in our system was bought by subsidizing those in the bottom quintile: with housing subsidies, child care block grants, supplemental nutrition assistance, Medicaid, etc. This was all to supplement market outcomes.

But, to those in the middle, subsidizing the poor can make it appear as if the poor are cheating the system. This appearance is that the middle is being held down to subsidize the poor. In her new book, Joan C. Williams tries to address why better paid workers would resent those who are paid less.<sup>81</sup> With the right politician able to frame the poor as “takers” it is possible to cut subsidies to the poor and make those in the middle believe this is giving them some kind of relief.<sup>82</sup> It is even easier to do if the disproportionate share of those being hurt are African American and a narrative can be constructed that it is the hard-working class who is being used by government elites to support an agenda for the lazy.

The crisis in the current economic situation is that the United States is no longer a middle-income nation.<sup>83</sup> The majority of income is with the top twenty percent, and soon it will be with the top ten percent.<sup>84</sup> Many prices no longer track those in the middle.<sup>85</sup>

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composition-by-quintile (follow hyperlink; then select Brazil from the “Country” drop down menu and 2015 from the “Year” drop down menu).

78. Clearing price is defined as the price at which the quantity of a good supplied matches the demand for that good. See *Definition of ‘Clearing Price’*, ECON. TIMES, <https://economictimes.indiatimes.com/definition/clearing-price> (last accessed Apr. 19, 2018).

79. The 2015 Health and Human Services Services poverty guideline for a single-person household was an annual income of \$11,770. See *2015 Poverty Guidelines*, DEP’T OF HEALTH & HUMAN SERVS. (Sept. 3, 2015), <https://aspe.hhs.gov/2015-poverty-guidelines>. In comparison, the Tax Policy Center’s mean income for the bottom quintile of incomes in the United States in 2015 was \$12,457. See *Household Income Quintiles*, TAX POL’Y CTR. (May 3, 2017), <http://www.taxpolicycenter.org/statistics/household-income-quintiles>.

80. Jordan Weissmann, *60 Years of American Economic History, Told in 1 Graph*, ATLANTIC (Aug. 23, 2012), <https://www.theatlantic.com/business/archive/2012/08/60-years-of-american-economic-history-told-in-1-graph/261503/>.

81. JOAN C. WILLIAMS, *WHITE WORKING CLASS: OVERCOMING CLASS CLUELESSNESS IN AMERICA* (2017).

82. *Id.* at 13–23.

83. PEW RESEARCH CTR., *THE AMERICAN MIDDLE CLASS IS LOSING GROUND: NO LONGER THE MAJORITY AND FALLING BEHIND FINANCIALLY 4* (2015).

84. *Id.*

85. CTR. FOR AM. PROGRESS, *THE MIDDLE CLASS SQUEEZE: A PICTURE OF*

Prices for housing, college, child care, and health are moving with the incomes of those in the top of the income distribution.<sup>86</sup> This means it is increasingly a challenge for the middle to choose housing and colleges they want. Worker fears increased during the Great Recession because subsidies were cut, weakening the safety net they once had.<sup>87</sup> Removing supports for the working poor is, after all, cutting support for workers.

The challenge will only grow, and because of changing demographics that will make a larger share of the workforce people of color, designing programs with racial animus, or with indifference, will mean putting more White workers in the crosshairs. A market-based democracy is difficult to maintain when those with the most income are a minority. The tensions are high when market-based allocation of goods and services no longer deliver rising lifestyles for the democratic majority. And, the challenge grows more complex in a society that for so long made race-based decisions, but in which the former minority is becoming the democratic majority.

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STAGNANT INCOMES, RISING COSTS, AND WHAT WE CAN DO TO STRENGTHEN AMERICA'S MIDDLE CLASS 7 (Jennifer Erickson ed., Sept. 2014) ("When looking at the changes in consumer price indices for core elements of middle-class security, it is painfully easy to see the squeeze in action; prices for many cornerstones of middle-class security have risen dramatically at the same time that real incomes have fallen.").

86. *Id.* at 3 ("[F]or a married couple with two children, the costs of key elements of middle-class security—child care, higher education, health care, housing, and retirement—rose by more than \$10,000 in the 12 years from 2000 to 2012, at a time when this family's income was stagnant.").

87. See Tracy Gordon, *State and Local Budgets and the Great Recession*, BROOKINGS INST. (Dec. 21, 2012) (describing the significant cuts to education, health, and social services many states made in response to the Great Recession and the resulting job loss).