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## Something for Nothing: Universal Basic Income and the Value of Work Beyond Incentives

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# Something for Nothing: Universal Basic Income and the Value of Work Beyond Incentives

Jonathan D. Grossberg\*

## *Abstract*

*Proponents and opponents of a universal basic income all acknowledge that the most significant political challenge to its adoption in the United States is that a universal basic income would not have a work requirement attached. Often, this is characterized as a problem involving incentives—the availability of a universal basic income would cause many people to stop working (or significantly curtail the number of hours that they work) and simply live off the universal basic income. This Article makes three contributions to the literature related to a universal basic income: First, it provides a typology for understanding the many reasons for*

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*valuing work; second, it argues that the United States is unlikely to implement a universal basic income because a universal basic income does not account for several aspects of the value of work; and, third, it argues that advocates of a universal basic income should instead focus on the more modest goal of redefining the activities that constitute work and broadening the social safety net by expanding existing policies through the use of a broader definition of work. This Article proposes that the value of work in American political culture has four primary dimensions: (1) reciprocity, that one receives rewards for one's labor, that one gets what one gives and that no one should be a free rider, one who gets but does not give; (2) calling or vocation, that work is a calling or vocation that one should have or pursue, and that only those that have or pursue such a calling or vocation have moral standing; (3) self-sufficiency, that work promotes self-sufficiency, which is a necessary component of liberty and which is necessary to avoid dependency; and (4) incentives, of an economic kind, that society should encourage work because it increases the size of the economic pie. These categories provide a new framework for thinking about the value of work and for evaluating policies that relate to the working lives of Americans. As an alternative to the adoption of a universal basic income, this Article proposes that proponents of a universal basic income should focus on expanding and redefining current policies, such as the Earned Income Tax Credit so that they more closely resemble a participation income. In fact, a broader definition of work has even been used in recent conservative policy ideas, such as the Medicaid work requirements that some states have introduced, which include within their definition of work the activities of education, job training, and community service. This Article closes with an outline of a proposal to adopt an expansion of the Earned Income Tax Credit that resembles a participation income and addresses each of the dimensions of the value of work.*

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### I. Introduction

If you open a newspaper or news magazine, you may come across discussions of a universal basic income, either a specific proposal or pilot program, such as the pilot program in Finland<sup>1</sup> or the referendum proposal that was defeated in Switzerland, or a more general discussion of the merits of adopting a universal basic income.<sup>2</sup> Brazil adopted the Bolsa Familia, a program that was intended to function like a universal basic income and was also intended to consolidate several existing social benefits.<sup>3</sup>

The idea of a universal basic income has been around for a long time.<sup>4</sup> Bertrand Russell argued for a form of it in his writing about a “vagabond wage.”<sup>5</sup> Milton Friedman wrote about a version of it in his writings on a “negative income tax.”<sup>6</sup> The idea has roots going back all the way to the writings of Condorcet and Thomas Paine.<sup>7</sup>

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1. See Jon Henley, *Finland to End Basic Income Trial After Two Years*, THE GUARDIAN (Apr. 23, 2018, 12:24 PM), <https://www.theguardian.com/world/2018/apr/23/finland-to-end-basic-income-trial-after-two-years> (last visited Sept. 25, 2019) (explaining Finland’s short-lived basic income trial) [<https://perma.cc/UVK8-6SV5>].

2. See *Switzerland’s Voters Reject Basic Income Plan*, BBC NEWS (June 5, 2016), <https://www.bbc.com/news/world-europe-36454060> (last visited Oct. 6, 2019) (indicating that seventy-seven percent of Swiss voters opposed a guaranteed basic income for all plan) [<https://perma.cc/7VNK-4K4R>].

3. See Deborah Wetzell, *Bolsa Familia: Brazil’s Quiet Revolution*, WORLD BANK NEWS (Nov. 4, 2013), <https://www.worldbank.org/en/news/opinion/2013/11/04/bolsa-familia-Brazil-quiet-revolution> (last visited Sept. 25, 2019) (discussing the impact of Bolsa Familia) [<https://perma.cc/C2AL-CCMN>].

4. See *History of Basic Income*, BASIC INCOME EARTH NETWORK, <https://basicincome.org/basic-income/history/> (last visited Sept. 25, 2019) (tracing the idea of universal basic income back to at least Thomas More’s *Utopia*) (citing THOMAS MORE, *UTOPIA* 43–44 (Paul Turner trans., Penguin Classics 1963)) [<https://perma.cc/HG5K-HFFX>].

5. See BERTRAND RUSSELL, *PROPOSED ROADS TO FREEDOM* 177 (1919) (“[T]he necessities of life should be free . . . to all equally, regardless of whether they work or not.”).

6. See MILTON FRIEDMAN, *CAPITALISM AND FREEDOM: 40TH ANNIVERSARY EDITION* 191–92 (2002) (arguing that a payment in cash from the government to the impoverished would be more cost effective than welfare programs).

7. See *History of Basic Income*, *supra* note 4 (describing Condorcet and Paine’s support of concepts similar to universal income in the sixteenth century).

A universal basic income presents itself as a simple solution to poverty and economic insecurity<sup>8</sup>: Just give every (depending on the variation) citizen or resident (sometimes limited to adults) the same set amount of money every month, usually enough for a basic subsistence.<sup>9</sup>

Poverty is an entrenched problem in American life.<sup>10</sup> 12.3% of Americans live in poverty.<sup>11</sup> One of the most difficult challenges faced by Americans living below or near the poverty line is income insecurity.<sup>12</sup> With employment at will as the predominant form of employment, union membership that is a fraction of other developed economies, and without even a shred of a guaranteed

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8. See *History of Basic Income*, *supra* note 4 (supporting a basic income as a solution to unemployment and problems of poverty and an essential component of a fair and efficient economy).

9. See *About Basic Income*, BASIC INCOME EARTH NETWORK, <http://www.basicincome.org/basic-income> (last visited Sept. 25, 2019) (“A basic income is a periodic cash payment unconditionally delivered to all on an individual basis, without means-test or work requirement.”) [<https://perma.cc/4VBS-46WH>].

10. See Francine Lipman, *(Anti)Poverty Measures Exposed*, 21 FLA. TAX REV. 389, 396 (2017) (“Poverty is expensive, persistent, pervasive, and criminalized in the United States today.”).

11. KAYLA FONTENOT, JESSICA SEMEGA & MELISSA KOLLAR, U.S. CENSUS BUREAU, INCOME AND POVERTY IN THE UNITED STATES: 2017 11 (2018), <https://www.census.gov/content/dam/Census/library/publications/2018/demo/p60-263.pdf> (last visited Dec. 2, 2019) [<https://perma.cc/9FTF-HNG2>]. There are others who use different estimates of poverty and 12.3% might be an underestimate. See CHARLES MURRAY, IN OUR HANDS: A PLAN TO REPLACE THE WELFARE STATE 39 (2016) (“The official poverty line has only the fuzziest relation to actual poverty. Let us assume for purposes of argument that it is too stingy, and substitute the definition of poverty adopted by European social democrats, an income of less than half the national median income.”); Shawn Fremstad, *The Federal Poverty Line is Too Damn Low*, TALK POVERTY (Sept. 13, 2016), <https://talkpoverty.org/2016/09/13/poverty-rate-just-dropped-way-measure-poverty-wrong/> (last visited Oct. 31, 2019) (advocating for adopting half of the median income as a poverty line) [<https://perma.cc/WKB5-NJZM>]; Dylan Matthews, *The Official Poverty Measure is Garbage. The Census has Found a Better Way*, VOX (Sept. 12, 2017), <https://www.vox.com/2015/9/16/9337041/supplemental-poverty-measure> (last visited Oct. 31, 2019) (advocating for the adoption of the Supplemental Poverty Measure as the official poverty measure) [<https://perma.cc/T28D-Y2XW>].

12. See Mark R. Rank, *Rethinking the Scope and Impact of Poverty in the United States*, 6 CONN. PUB. INT. L.J. 165, 173 (2007) (“The findings indicate that the life course risk of poverty increased substantially in the 1990’s, with the risk becoming excessively high.”).

minimum income after welfare reform in the 1990s, poor Americans regularly face income insecurity and uncertainty.<sup>13</sup>

Furthermore, since the 2016 Election, research has focused on the prevalence of feelings of economic insecurity across wide swaths of the American working and middle class.<sup>14</sup> Some of these feelings relate to long-term trends, but many of these trends have been accelerated, or their consequences felt more deeply, since the Great Recession.<sup>15</sup>

Recently, a universal basic income has attracted increased attention as a possible solution to poverty and economic insecurity.<sup>16</sup> Two of the most vocal academic or think-tank proponents of a universal basic income come from opposite sides of the political spectrum, Philippe Van Parijs on the left and Charles Murray on the right.<sup>17</sup> Former Service Employees International Union (SEIU) president Andy Stern wrote a book, *Raising the Floor*, that advocated adoption of a universal basic income.<sup>18</sup>

13. *See id.* at 172

Much has been written about the growing economic insecurity facing Americans in recent years. Analysts point to a number of indicators and patterns over the last three decades to support this claim—job security has weakened, more Americans are without health care, income volatility and downward mobility has increased, the social safety net has been seriously eroded, men’s earnings have stagnated, income and wealth inequality have widened, and so on.

(citations omitted).

14. *See* Joan C. Williams, *What So Many People Don’t Get About the U.S. Working Class*, HARV. BUS. REV. (Nov. 10, 2016), <https://hbr.org/2016/11/what-so-many-people-dont-get-about-the-u-s-working-class> (last visited Oct. 31, 2019) (discussing the importance of supporting programs which would provide poor and working-class Americans better access to stable, good wages) [<https://perma.cc/A4UW-UZ46>].

15. *See id.* (“White working-class men’s wages hit the skids in the 1970s and took another body blow during the Great Recession.”).

16. *See, e.g.*, Philip Alston, *Universal Basic Income as a Social Rights-Based Antidote to Growing Economic Insecurity*, in THE FUTURE OF ECONOMIC AND SOCIAL RIGHTS 337 (Katherine G. Young ed., 2019) (“The idea of replacing or supplementing existing social protection systems with a universal basic income . . . is drawing increased attention from governments, scholars, and practitioners in a range of different fields.”).

17. *See infra* note 65 and accompanying text.

18. *See* ANDY STERN & LEE KRAVITZ, *RAISING THE FLOOR: HOW A UNIVERSAL BASIC INCOME CAN RENEW OUR ECONOMY AND REBUILD THE AMERICAN DREAM* 166 (2016) (“[M]y main reason for supporting UBI is its potential to deliver economic justice and security at a time when globalization and technical progress make it

Hillary Clinton, in her campaign memoir, *What Happened*, acknowledges that she considered making a universal basic income, which she would have called “Alaska for America,” a part of her platform but could not figure out how to fund the program so as to give a meaningful income to every American.<sup>19</sup> Entrepreneur and presidential candidate Andrew Yang wrote a book, *The War on Normal People*,<sup>20</sup> and launched a quixotic presidential campaign on a platform of providing a UBI of \$1000 per month to every U.S. citizen between the ages of eighteen and sixty-four.<sup>21</sup>

Yet, recent trends in provision of benefits to lower income and disadvantaged Americans have been toward the imposition of work requirements and the promotion of work.<sup>22</sup> Most dramatically, the

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harder for Americans to find jobs that pay a living wage.”).

19. HILLARY CLINTON, *WHAT HAPPENED* 238–39 (2017). The reference to “Alaska for America” is a reference to the permanent fund dividend that each resident of Alaska receives from the Alaskan government. *See also Eligibility Requirements*, ALASKA DEP’T OF REVENUE, <https://pfd.alaska.gov/Eligibility/Requirements> (last visited Sept. 25, 2019) [<https://perma.cc/F25F-M2N6>]. The current permanent fund dividend is \$1600. *See Tax Information*, ALASKA DEP’T OF REVENUE, <https://pfd.alaska.gov/Payments/Tax-Information> (last visited Sept. 25, 2019) [<https://perma.cc/Q5ZY-V7KG>]. Of course, UBI advocates have various methods for paying for a UBI, from raising taxes to consolidating existing welfare programs. *See* Catherine Clifford, *Why Everyone is Talking About Free Cash Handouts—An Explainer on Universal Basic Income*, CNBC MAKE IT (June 27, 2019, 2:55 PM), <https://www.cnbc.com/2019/06/27/free-cash-handouts-what-is-universal-basic-income-or-ubi.html> (last updated Aug. 22, 2019, 3:29 PM) (last visited Oct. 8, 2019) (discussing different methods of raising money to pay for UBI) [<https://perma.cc/97HC-E5LH>].

20. *See generally* ANDREW YANG, *THE WAR ON NORMAL PEOPLE: THE TRUTH ABOUT AMERICA’S DISAPPEARING JOBS AND WHY UNIVERSAL BASIC INCOME IS OUR FUTURE* (2018) (imagining an American economy that incorporates a universal basic income).

21. *See* Andrew Yang, *What is the Freedom Dividend?*, YANG 2020, <https://www.yang2020.com/what-is-freedom-dividend-faq/> (last visited Sept. 27, 2019) (explaining Andrew Yang’s campaign promise of a national UBI) [<https://perma.cc/6G5Z-82ZB>].

22. *See, e.g., Policy Basics: An Introduction to TANF*, CTR. BUDGET & POL’Y PRIORITIES <https://www.cbpp.org/research/family-income-support/policy-basics-an-introduction-to-tanf> (last updated Aug. 15, 2018) (last visited Sept. 25, 2019) (discussing the movement towards requiring work for welfare recipients in replacing Aid to Families with Dependent Children, which provided cash to needy families with Temporary Assistance for Needy Families which requires recipients to seek work and job opportunities) [<https://perma.cc/UF4Y-PVAN>].



Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) ended the entitlement aspect of Aid to Families with Dependent Children (AFDC) and replaced it with Temporary Assistance for Needy Families (TANF).<sup>23</sup> AFDC was an entitlement, which had provisions that encouraged work, whereas TANF is time-limited for recipients and has specific work requirements.<sup>24</sup> Recent proposals have considered imposing, or strengthening, work requirements for the Supplemental Nutrition Assistance Program (SNAP), better known as food stamps, and Medicaid.<sup>25</sup>

Although it is a universal program, a universal basic income is rightly viewed, by both its proponents and opponents, as, at least partially, an anti-poverty program.<sup>26</sup> Most obviously, this is because a universal basic income is most meaningful to the least well off.<sup>27</sup> For a low-income individual, a universal basic income provides a measure of freedom and security, something both its proponents and opponents acknowledge.<sup>28</sup> For Bill Gates, a universal basic income is a drop in the bucket. And, like EITC and TANF, a universal basic income is an income-support program.<sup>29</sup>

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23. JUNE AXINN & MARK J. STERN, *SOCIAL WELFARE: A HISTORY OF THE AMERICAN RESPONSE TO NEED* 319–20, 328 (5th ed. 2001).

24. *Id.*

25. See Alvin Chang & Tara Golshan, *The Republican Push for Welfare “Work Requirements” Cartoonsplained*, VOX (July 26, 2018, 12:10 PM), <https://www.vox.com/2018/7/26/17465068/work-requirements-medicaid-snap-republican-cartoon> (last visited Sept. 27, 2019) (detailing the Republican Party’s continued actions toward additional requirements to receive welfare) [<https://perma.cc/YX2Q-UAPN>].

26. See generally Rutger Bregman, *Utopian Thinking: The Easy Way to Eradicate Poverty*, THE GUARDIAN (Mar. 6, 2017, 3:00 PM), <https://www.theguardian.com/commentisfree/2017/mar/06/utopian-thinking-poverty-universal-basic-income> (last visited Sept. 25, 2019) (making the case for a universal basic income as a method of poverty eradication) [<https://perma.cc/S3TR-DHNT>].

27. See *Why Do We Need It?*, CITIZEN’S BASIC INCOME TRUST, <https://citizensincome.org/citizens-income/why-do-we-need-it/> (last visited Sept. 25, 2019) (“[A UBI] would reduce the poverty trap for low income families, enabling them to lift themselves out of poverty by seeking new skills, better jobs or additional hours of employment.”) [<https://perma.cc/HTM5-3DFJ>].

28. See *id.* (discussing the benefits that would result from a Citizen’s Basic Income).

29. See *id.* (“[A UBI] would reduce the unemployment trap, so getting a job would always mean additional disposable income.”).

The government provides money to individuals, even if it provides additional welfare programs.<sup>30</sup> Furthermore, because the wealthy pay more in taxes than the poor, and because the universal basic income provides the same cash grant to each individual, a universal basic income is a redistributive cash transfer policy, just as EITC and TANF are redistributive cash transfer policies.<sup>31</sup> Therefore, discussions of universal basic income are framed as either a supplement to, or a replacement of, current anti-poverty programs such as EITC, TANF, SNAP, and even Medicaid. In fact, Charles Murray, a conservative proponent of a universal basic income, would eliminate all of the aforementioned programs as a part of his plan to adopt a \$10,000 per adult citizen universal basic income.<sup>32</sup>

Proponents and opponents of a universal basic income all acknowledge that the most significant political challenge to the adoption of a universal basic income in the United States is that a universal basic income would not have a work requirement attached.<sup>33</sup> Often, proponents focus on addressing the objection of opponents in the context of incentives: the availability of a universal basic income would cause many people to stop working (or significantly curtail the number of hours that they worked) and simply live off the universal basic income.<sup>34</sup> Much popular and scholarly ink is spilled in response to the question of incentives.<sup>35</sup> Some others acknowledge the free rider problem, a derivative of the value of reciprocity, that people are receiving something for

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30. *See id.* (discussing how these benefits can be reduced by additional income sources).

31. *See* Rema Hanna & Benjamin A. Olken, *Universal Basic Incomes Versus Targeted Transfers: Anti-Poverty Programs in Developing Countries*, 32 J. ECON. PERSP. 201, 202 (2018) (“Although universal basic income programs distribute the same value of transfer to everyone, including the very rich, if they are financed through proportional or progressive taxation, they can still result in a substantial redistribution to the poor.”).

32. *See* Charles Murray, *The Social Contract Revisited: Guaranteed Income as a Replacement for the Welfare State*, FOUND. FOR L., JUST. & SOC’Y <https://www.fljs.org/files/publications/Murray.pdf> (last visited Dec. 3, 2019) (“[A] [guaranteed income] of \$10,000 per year for all adults aged twenty-one years and older will cost no more than the projected cost of the current system as of 2001.”) [<https://perma.cc/R9J8-U2RU>].

33. *See infra* notes 184–194 and accompanying text.

34. *See infra* notes 184–194 and accompanying text.

35. *See infra* notes 184–194 and accompanying text.

nothing.<sup>36</sup> However, few examine other dimensions of the value of work.<sup>37</sup>

This Article makes three contributions to the literature related to a universal basic income: First, it provides a typology for understanding the many reasons for valuing work; second, it shows that when one uses that typology to evaluate a universal basic income as a reform proposal to alleviate poverty and address other social problems, it is clear that a UBI is unlikely to be implemented or succeed because it does not account for several aspects of the value of work; and, third, it proposes that advocates of a universal basic income should instead focus on the more modest goal of redefining the activities that constitute work and broadening the social safety net by expanding existing policies through the use of a broader definition of work.<sup>38</sup>

This Article proposes that the value of work in American political culture has four primary dimensions: (1) reciprocity, that one receives rewards for one's labor, that one gets what one gives and that no one should be a free rider, one who gets but does not give; (2) calling or vocation, that work is a calling or vocation that one should have or pursue, and that only those that have or pursue such a calling or vocation have moral standing; (3) self-sufficiency, that work promotes self-sufficiency, which is a necessary component of liberty and which is necessary to avoid dependency;

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36. See *infra* notes 184–194 and accompanying text.

37. See RUSSELL MUIRHEAD, *JUST WORK* 13 (2004) (“Once at the center of political and social theory, work now stands at the margins.”). Charles Murray has a chapter entitled “The Pursuit of Happiness in Advanced Societies” and does see “vocation” as one of the “five raw materials” that everyone employs in the “pursuit of happiness.” MURRAY, *supra* note 11, at 64. However, Murray devotes only two paragraphs (one diagnosing the problem of the decline in the value of work and one suggesting its importance) of a nine-page chapter to the intrinsic value of work. The next chapter, entitled “Work,” does begin by stating that, “A central satisfaction of life comes from the sense of doing something one values and doing it well.” However, it then goes on to discuss utilitarian ways that the UBI will help people to feel secure to change jobs or to save money to pursue further education or start a business, typical arguments that almost all proponents of the UBI make rather than arguments of how the UBI will cause a shift in the mindset of recipients. See PHILIPPE VAN PARIJS & YANNICK VANDERBORGHT, *BASIC INCOME: A RADICAL PROPOSAL FOR A FREE SOCIETY AND A SANE ECONOMY* 99–100 (2017) (illustrating the authors’ dismissiveness of any moral value to work).

38. See *infra* Part V (discussing how to redesign a UBI).

and (4) incentives, of an economic kind, that society should encourage work because it increases the size of the economic pie.<sup>39</sup>

These categories provide a new framework for thinking about the value of work and for evaluating policies that relate to the working lives of Americans.<sup>40</sup> These categories of value are not simply economic or grounded in social science;<sup>41</sup> they have moral and spiritual aspects as well.<sup>42</sup> This is a more expansive view of the value of work than is normally discussed in the literature on the universal basic income and other income support and anti-poverty programs. Furthermore, this typology can serve as a grounding for further discussion, criticism, and improvement of other income support and anti-poverty programs.<sup>43</sup> Work is a fundamental part of any society and a full understanding of the dimensions of the value of work can improve the study of many different social policies as many policies touch on or relate to work.<sup>44</sup>

This Article argues that it is difficult for proponents of a universal basic income to respond to, or account for, all of these dimensions of the value of work in their proposals.<sup>45</sup> This Article will trace the roots of each of these dimensions of the value of work and how these values have led some to support work requirements for those that are to receive assistance from the state, both in traditional intellectual writings of academics and in public opinion writings that appear in newspapers and other media outlets.<sup>46</sup> As an alternative to the adoption of a universal basic income, this Article proposes that proponents of a universal basic income should focus on expanding and redefining current policies, such as the Earned Income Tax Credit, so that they more closely resemble a participation income.<sup>47</sup> This expansion would involve a redefinition of activities that qualify as work, but, unlike a

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39. See *infra* Part IV (discussing the categories of the value of work).

40. See *infra* Part IV (discussing the categories of the value of work).

41. See *infra* Part IV (discussing the categories of the value of work).

42. See *infra* Part IV (discussing the categories of the value of work).

43. See *infra* Part V (discussing how to redesign a UBI).

44. See *infra* Part IV (discussing the categories of the value of work).

45. See *infra* Part IV (discussing the categories of the value of work).

46. See *infra* Part IV (discussing the categories of the value of work).

47. See *infra* Part V (discussing how to redesign a UBI).

universal basic income, would not require a change in the values that underlie work.<sup>48</sup> In fact, a broader definition of work has even been used in recent conservative policy ideas, such as the Medicaid work requirements that some states have introduced, which include within their definition of work education, job training, and community service.<sup>49</sup>

## II. UBI Background

### A. Definition and Recent History

There have been several recent proposals of a universal basic income.<sup>50</sup> They share basic commonalities: They are all universal, in the sense that they are broadly available and have few, if any, requirements.<sup>51</sup> The few eligibility requirements tend to center around age (a different amount of money or no money for children or seniors) and the question of whether it is available to only citizens or to all residents (however residency is defined).<sup>52</sup> The various proposals are all also unconditional: They are available to all simply on the basis of citizenship or residency, without meeting any other qualification, such as fulfilling an income or means test or satisfying a work requirement.<sup>53</sup> They are also individual and not based on household size, marital status, dependency, or other

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48. See *infra* Part V (discussing how to redesign a UBI).

49. See *infra* Part III.B (discussing the move toward “workfare”).

50. See, e.g., YANG, *supra* note 20 (outlining the presidential candidate’s UBI proposal).

51. See MURRAY, *supra* note 11, at 7 (“The UBI does not require much in the way of bureaucratic apparatus. Its administration consists of computerized electronic deposits to bank accounts, plus resources to identify fraud.”); see also VAN PARIJS & VANDERBORGHT, *supra* note 37, at 8–9 (“[A] basic income remains conditional in one important sense. Recipients of it must be members of a particular, territorially defined community.”).

52. See MURRAY, *supra* note 11, at 7 (applying the UBI to citizens only, ages twenty-one and older only, and the same amount until death); see also VAN PARIJS & VANDERBORGHT, *supra* note 37, at 8–9 (defining their idea of basic income as limited to “fiscal residents” who are “subjected to the local personal income tax” and acknowledging some schemes are limited to adults with a “universal child-benefit scheme as their logical complement,” while others are “entitlement[s] from birth” with “lower level” benefits for minors).

53. MURRAY, *supra* note 11, at 7; VAN PARIJS & VANDERBORGHT, *supra* note 37, at 8.

factors.<sup>54</sup> They are all also transfers of cash by the government and do not involve in-kind goods or services.<sup>55</sup>

In the not too distant past, UBI was a significant part of American political debate.<sup>56</sup> Before the 1972 presidential election, both Richard M. Nixon and George McGovern proposed variants of a UBI.<sup>57</sup> Nixon called his proposal the Family Assistance Plan.<sup>58</sup> Nixon promised that it would not lower anyone's benefits below what a person then received through Aid to Families with Dependent Children (traditional welfare).<sup>59</sup> The Family Assistance Plan would replace that program and would also incentivize work by reducing benefits by only fifty cents for each dollar earned.<sup>60</sup> The basic benefit for a family of four with no outside income was \$1600 per year.<sup>61</sup> George McGovern's demogrant proposal was originally fairly straightforward; he suggested that each person receive a cash grant of \$1000 per year.<sup>62</sup>

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54. MURRAY, *supra* note 11, at 8–9; VAN PARIJS & VANDERBORGHT, *supra* note 37, at 8.

55. MURRAY, *supra* note 11, at 6–7, 10; VAN PARIJS & VANDERBORGHT, *supra* note 37 at 12.

56. See generally James Welch, *Welfare Reform: Born, Aug. 8, 1969; Died, Oct. 4, 1972—A Sad Case Study of the American Political Process*, N.Y. TIMES (Jan. 7, 1973), <https://www.nytimes.com/1973/01/07/archives/welfare-reform-born-aug-8-1969-died-oct-4-1972-a-sad-case-study-of.html> (last visited Dec. 3, 2019) (describing the demise of welfare reform during the Nixon Era) [<https://perma.cc/EF3N-9HDD>].

57. *Id.*

58. See generally Jill Quadagno, *Race, Class, and Gender in the U.S. Welfare State: Nixon's Failed Family Assistance Plan*, 55 AM. SOC. REV. 11, 11 (1990) (providing background on Nixon's plan).

59. See *id.* at 19 (“Nixon's only guarantee to AFDC women (a promise he could not keep) was that ‘in no case would anyone's present level of benefits be lowered.’”) (citations omitted).

60. See *id.* at 11 (“The marginal tax meant that as family earnings moved above [the] \$720 [annual earnings exemption], the benefit would be reduced 50 cents for each dollar of nonexempt earnings until benefits reached zero and earnings were carrying the full load of family support.”).

61. See *id.* at 11 (“A family of four with no working members . . . would be guaranteed a minimum income of \$1600 a year[.]”). Using the Consumer Price Index, it would be \$11,050.72 in today's dollars. See *CPI Inflation Calculator*, BUREAU LAB. STAT., <https://data.bls.gov/cgi-bin/cpicalc.pl> (last visited Sept. 25, 2019) (calculating inflation for \$1,600 in August 1969 to April 2019) [<https://perma.cc/E4BN-F796>].

62. See Lawrence Zelenak & Kemper Moreland, *Can the Graduated Income Tax Survive Optimal Tax Analysis?*, 53 TAX L. REV. 51, 60 (1999) (describing

### B. Recent Popular Proposals

Two of the most discussed recent book-length studies advocating for a universal basic income are Van Parijs and Vanderborght's *Basic Income* and Charles Murray's *In Our Hands*.<sup>63</sup> Partly, these books have been discussed because Van Parijs and Murray first wrote about universal basic income before it was fashionable.<sup>64</sup> Van Parijs published his book *Real Freedom for All: What (If Anything) Can Justify Capitalism?* in 1995 and Murray published *In Our Hands: A Plan to Replace the Welfare State* in 2006.<sup>65</sup> Van Parijs and Vanderborght write from a perspective on the left, and Murray writes from a perspective on the right.<sup>66</sup> As one may expect, this leads to certain differences in their plans.<sup>67</sup> Van Parijs and Vanderborght advocate for the universal basic income to be available to all residents subject to the income tax;<sup>68</sup> Murray advocates for covering only citizens.<sup>69</sup> Van Parijs and Vanderborght have no age requirement, only a possible adjustment for children;<sup>70</sup> Murray would have a UBI for citizens

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McGovern's use of the term "demogrant" and how his proposal would be called a UBI).

63. MURRAY, *supra* note 11; VAN PARIJS & VANDERBORGHT, *supra* note 37.

64. Annie Nova, *More Americans Now Support A Universal Basic Income*, CNBC (Feb. 26, 2018, 2:35 PM), <https://www.cnbc.com/2018/02/26/roughly-half-of-americans-now-support-universal-basic-income.html> (last visited Oct. 8, 2019) ("Forty-eight percent of Americans support a universal basic income.") [<https://perma.cc/3YAG-98CS>].

65. MURRAY *supra* note 11; VAN PARIJS & VANDERBORGHT *supra* note 37.

66. See MURRAY, *supra* note 11, at 3 (describing himself as a Libertarian); GUY STANDING, *BASIC INCOME: A GUIDE FOR THE OPEN MINDED* 50–51 (2017) ("[M]any libertarians have come to espouse a basic income provided by government . . . Such libertarians include Robert Nozick and Charles Murray on the political right, and Philippe van Parijs, who calls his version 'real libertarianism', and Karl Winderquist on the left.>").

67. See *infra* notes 68–71 and accompanying text.

68. See VAN PARIJS & VANDERBORGHT, *supra* note 37, at 9 ("[M]ust be members of a particular, territorially defined community . . . mean[ing] fiscal residence rather than permanent residence or citizenship. This excludes [those] . . . whose earnings are not subject to the local personal income tax.>").

69. See MURRAY, *supra* note 11, at 7 (posing a potential constitutional amendment for a basic income applying only to citizens).

70. See VAN PARIJS & VANDERBORGHT, *supra* note 37, at 9 ("First, it could vary with age . . . In this case, its amount is usually, though not in all proposals, set at a lower level for minors.>").

twenty-one years of age and older.<sup>71</sup> Yet, they are strikingly in agreement in their analysis of what is wrong with the current welfare state and the main criticism of the UBI.<sup>72</sup>

Van Parijs and Vanderborght identify early in their study the seminal problem with guaranteed minimum income schemes that form the basis of most welfare policies, the tendency to create a “class of permanent welfare claimants.”<sup>73</sup> In the United States, this problem manifests itself in the rapid phase-outs of income supports, such as TANF and the EITC.<sup>74</sup> Murray agrees with this and states:

During the second half of the twentieth century, the welfare state confronted accelerating increases in the number of people who were not just poor, but who behaved in destructive ways that ensured they would remain poor, sometimes living off their fellow citizens, sometimes preying on them.<sup>75</sup>

Economist Guy Standing has also proposed a universal basic income.<sup>76</sup> Standing provides three overarching reasons for adopting a universal basic income: (1) social justice and common inheritance; (2) freedom; and (3) reduction of poverty and increasing security.<sup>77</sup> Standing argues that “the social justice argument is linked to the intuitively reasonable claim that society’s wealth is collective in character; our incomes and wealth today are due far more to the efforts and achievements of past generations than to anything we may do ourselves.”<sup>78</sup> With respect

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71. See MURRAY, *supra* note 11, at 7 (“[P]ayment for everyone age twenty-one and older.”).

72. Compare MURRAY, *supra* note 11, with VAN PARIJS & VANDERBORGHT, *supra* note 37.

73. VAN PARIJS & VANDERBORGHT, *supra* note 37, at 7.

74. See VAN PARIJS & VANDERBORGHT, *supra* note 37, at 41 fig.2.4 (illustrating the rapid phase-out of income support created by the current scheme).

75. MURRAY, *supra* note 11, at 2. Van Parijs’s claim is more descriptively accurate even if it does not probe the reasons that some people remain poor. Murray’s claim is inflammatory and portrays welfare claimants in a negative light, a tradition with a long, racialized history.

76. STANDING, *supra* note 66.

77. See STANDING, *supra* note 66, at 25–35, 49–50 (offering an overview of these themes and touching on their historical sources which are the main themes addressed in chapters 2, 3, and 4).

78. STANDING, *supra* note 66, 25–26.



to freedom, Standing proposes that a “basic income can be described as a basic economic right that is a necessary condition for liberal notions of freedom.”<sup>79</sup> Standing goes even further than Van Parijs and Vandeborgh, asserting that UBI is “a basic liberty upon which other basic liberties depend—freedom of speech, freedom of thought, freedom of religion, and freedom to associate.”<sup>80</sup> In the beginning of his discussion of basic income and poverty, Standing notes that the “most common claim in favour of a basic income is that it would be the most effective way to reduce poverty, simply because it would be the most direct and transparent way, with relatively low administrative costs.”<sup>81</sup> Standing further notes that a basic income would protect against the whims of a market economy.<sup>82</sup>

### C. Recent Debates in Legal Scholarship

Legal scholars have begun discussing the concept of, and proposals for, a universal basic income.<sup>83</sup> Miranda Perry Fleischer and Daniel Hemel recently published *Atlas Nods: The Libertarian Case for a Basic Income*.<sup>84</sup> In their article, they argue that a universal basic income “is not only consistent with, but likely required by, several (though not all) strands of libertarian thought.”<sup>85</sup> They note that the periodic payments in cash further autonomy by allowing all citizens to be “the best judges of their needs.”<sup>86</sup> Fleischer and Hemel also have a forthcoming article, *The Architecture of a Basic Income*, in which they lay out a detailed proposal for a basic income.<sup>87</sup> Their proposal is a partial basic

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79. STANDING, *supra* note 66, at 50.

80. STANDING, *supra* note 66, at 50.

81. STANDING, *supra* note 66, at 73.

82. See STANDING, *supra* note 66, at 73 (“[I]n today’s market-oriented global capitalism, the predominant source of insecurity is economic *uncertainty*.”).

83. See generally Miranda Perry Fleischer & Daniel J. Hemel, *Atlas Nods: The Libertarian Case for a Basic Income*, 2017 WISC. L. REV. 1189 (2017) (explaining why libertarians support a policy that seems contrary to libertarian ideals on its face).

84. *Id.*

85. *Id.* at 1189.

86. *Id.*

87. Miranda Perry Fleischer & Daniel J. Hemel, *The Architecture of a Basic*

income of \$6000 per year; it is not enough for individuals to support (or nearly support) themselves on the basic income alone.<sup>88</sup> The cash transfer would go to all citizens and permanent residents, including children and seniors.<sup>89</sup> The UBI would be financed by consolidating existing cash and near-cash transfer programs and imposing a “relatively modest surtax on all earners.”<sup>90</sup> They would also allow the novel feature of a “limited ability to use future payments as collateral for short- and medium-term loans.”<sup>91</sup>

Ari Glogower and Clint Wallace recently discussed in their essay, *Shades of Basic Income*, various basic income proposals and pointed to areas for further research.<sup>92</sup> Glogower and Wallace note that “basic income could respond to these mounting pressures [labor market shifts, inequality], but the devil is in the details, and basic income programs can take various forms and achieve extremely varied purposes.”<sup>93</sup> They note that “[b]asic income could be designed to impose only modest redistribution in the name of efficiency, or it could remake the social compact.”<sup>94</sup>

Other legal scholars have written explicitly in opposition to a universal basic income.<sup>95</sup> Matthew Dimick, in his article *Better than Basic Income: Liberty, Equality, and the Regulation of Working Time*, argues that expanding and reforming the overtime regulations of the Fair Labor Standards Act is a better policy for

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*Income*, U. CHI. L. REV. (forthcoming), <https://ssrn.com/abstract=3346467> (last visited Sept. 27, 2019) [<https://perma.cc/K34R-88CT>].

88. See *id.* at 2 (proposing “a UBI of \$6000 per person per year” while noting that amount only partially satisfies individual income requirements).

89. See *id.* (“We argue—contrary to other UBI proponents—that children and seniors should be included.”).

90. *Id.*

91. *Id.*

92. Ari Glogower & Clint Wallace, *Shades of Basic Income*, (Ohio State Pub. Law Working Paper No. 443, 2017), <https://ssrn.com/abstract=3122146> (last visited Sept. 27, 2019) [<https://perma.cc/4SZL-EYVZ>].

93. *Id.* at 21.

94. *Id.*

95. See, e.g., Matthew Dimick, *Better Than Basic Income: Liberty, Equality, and the Regulation of Working Time*, 50 IND. L. REV. 473 (2017) (comparing universal basic income to regulating the maximum working hours in the labor market).

“not only addressing income inequality but social inequality, as well.”<sup>96</sup>

Law professor Brishen Rogers addresses in a general sense the problems with proponents of a UBI that form an important background for this Article.<sup>97</sup> Rogers argues that a UBI is not preferable “at least not in the short- or medium-term in the United States” to “classic welfare state policies.”<sup>98</sup> Rogers also argues that there is “simply no evidence of an automation wave” and that “growing inequality and precarity today are not an inevitable result of the decline in manufacturing, but rather an effect of policy choices, especially choices to disempower labor.”<sup>99</sup> As an alternative to UBI, Rogers argues for “a more social democratic welfare state: one organized around generous benefits that ensure individuals’ basic needs are met and that help decommodify labor, strong worker rights including powerful and robust unions, and policies that facilitate labor market participation.”<sup>100</sup> Rogers notes that these “policies are both more likely to help the poor and working class in the short-term, and also far more politically feasible.”<sup>101</sup> Rogers does acknowledge that “[i]n the long run, a UBI may be a necessary and important addition to welfare states.”<sup>102</sup>

Rogers also provides a good analysis of the unlikelihood of a UBI being enacted today in developed democracies, especially the United States and the United Kingdom.<sup>103</sup> The norm of reciprocity is the dominant norm underlying the welfare state in the developed world.<sup>104</sup> This norm holds that “those who suffer bad luck will obtain a disproportionate share of benefits, but the expectation is that all will pay in through paid work when and as

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96. *Id.* at 473.

97. Brishen Rogers, *Basic Income and the Resilience of Social Democracy*, 40 COMP. LAB. L. & POL’Y J. 199 (2019).

98. *Id.* at 200.

99. *Id.*

100. *Id.* at 200–01.

101. *Id.* at 201.

102. *Id.*

103. *See id.* at 220–21 (discussing the American attitudes towards a UBI and preference for alternatives).

104. *See id.* at 201 (“That notion of justice is implicit in classic social insurance programs . . . and the public support for it reflects a norm of reciprocity.”).

they are able.”<sup>105</sup> On this view, “[a] UBI thus appears perverse and requires a different political morality.”<sup>106</sup> Rogers predicts that “the political morality” necessary for a UBI will not take “root anytime soon, absent a massive exogenous shock such as another Great Depression, a major war, ecological collapse, widespread technological unemployment, or the like.”<sup>107</sup> Rogers also makes the essential point that “in the United States, meager benefits and work requirements are inseparable from the long-standing trope of African Americans as lazy or licentious—itsself a legacy of post-Reconstruction efforts to reassert white racial hegemony and ensure that Freedmen were maintained as a subordinate laboring class.”<sup>108</sup> Rogers properly notes that for large scale social change, an overwhelming moral case must be made.<sup>109</sup> As he puts it, “a groundswell of public support and organizing is insufficient. The cause must be sufficiently righteous that dominant groups’ resistance is overcome.”<sup>110</sup> Rogers endorses as promising the proposals of Chris Hughes and Ro Khanna, discussed further below.<sup>111</sup>

Rogers also provides a thorough discussion of the evidence indicating that artificial intelligence and other emerging technologies are not suddenly going to create massive unemployment necessitating a UBI.<sup>112</sup> Labor productivity is actually increasing at a slower rate and firms actually invest less in information technology and intellectual property than they did during the period from 2000 to 2007.<sup>113</sup>

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105. *Id.* at 201.

106. *Id.*

107. *Id.* at 203.

108. *Id.* at 202. Although, as Rogers notes, race is an essential part of the construction of the welfare state in the United States, this Article is not going to specifically engage the question of the role of race in views of, and barriers to adoption of, a UBI, as that could be its own separate article. *Id.* at 215.

109. *See id.* at 204 (“[L]arge and general changes to the social order can only be driven by moral considerations.”).

110. *Id.*

111. *See id.* at 206 (“[Hughes’ and Khanna’s proposals] would nevertheless be transformative to tens of millions of recipients, and are well worth pursuing for that reason alone.”).

112. *See id.* at 207–11 (discussing how predictions of rising unemployment due to automation failed).

113. *See id.* at 209 (pointing to decline in productivity from 13.5% in 2000–

One issue that is discussed in the literature is the practical implementation of a UBI or, alternatively, of a participation income similar to the type of scheme that I advocate for later in this paper.<sup>114</sup> One criticism of a participation income scheme is that it would be a bureaucratic nightmare.<sup>115</sup> However, a UBI faces similar difficulties.<sup>116</sup> As some commentators point out, a UBI, if implemented through the tax system, as its advocates often propose, would necessitate significant changes in the tax forms, requiring that even more people file returns, and shifting the system from the current married filing jointly model, which is standard in many countries, including the United States, to an individual filing model.<sup>117</sup> Thus, it is not clear that a UBI, despite the simplicity of its description, stemming from its universality and individuality, would be simpler in its administrative implementation.<sup>118</sup> Furthermore, as some commentators have pointed out, a UBI would not appear to be truly universal, as those whose basic income was entirely cancelled by the payment of taxes, would likely understand this result as this would be apparent on the face of their tax returns.<sup>119</sup>

Law professor Anne Alstott has argued that welfare reform ignored the “woeful condition of the low-wage labor market.”<sup>120</sup>

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2007 to 4.8% over the last decade).

114. See, e.g., Jose A. Noguera, *The Second-Best Road Ahead for Basic Income*, 40 COMP. LAB. L. & POL'Y J. 223, 225–26 (2019) (addressing four practical difficulties in implementing a UBI).

115. See Jose A. Noguera, *Citizens or Workers? Basic Income vs. Welfare-to-Work Policies*, 2 RUTGERS J.L. & URB. POL'Y 103, 111 (2005) (“Its implementation, however, would involve a far higher cost, because it would be necessary to make remarkable investments in inspection, control, and selection of the claimants, only to exclude, at most, the potential five percent of idlers.”); see also Philippe Van Parijs & Yannick Vanderborght, *Ethically Justifiable, Economically Sustainable, Politically Achievable: A Response to van der Veen & Groot, Rogers, and Noguera*, 40 COMP. LAB. L. & POL'Y J. 247, 254 (2019) (acknowledging the difficulties of implementing a participation income scheme).

116. See Noguera, *supra* note 114, at 225–26 (discussing the administrative difficulty of a means tested basic income).

117. See Noguera, *supra* note 114, at 227 (“[A] non-naive tax administration would increase surveillance and control before disbursing payments.”).

118. See Noguera, *supra* note 114, at 227–28 (discussing the increased difficulties of administering basic income compared to current systems).

119. See Noguera, *supra* note 114, at 225–26 (exploring tax integration of basic income proposals).

120. Anne L. Alstott, *Work vs. Freedom: A Liberal Challenge to Employment*

Low-wage jobs pay “sub-poverty wages and [have] little job security.”<sup>121</sup> Thus, although welfare reform will shrink welfare rolls, it will not relieve poverty.<sup>122</sup> Alstott argues that a “program of unconditional cash grants would enhance the freedom and economic security of the least advantaged.”<sup>123</sup> Her basic arguments of freedom and security are similar to those of Van Parijs and Vanderborght. Alstott notes that her argument in the book that she co-authored with Bruce Ackerman, *The Stakeholder Society*, is a complementary one to her argument in favor of a basic income.<sup>124</sup>

#### *D. The Benefits of a UBI According to Its Proponents*

Most proponents of a universal basic income focus on several benefits of the policy.<sup>125</sup> This Article will briefly describe and categorize these benefits. In the discussion of the alternative proposal at the end of this article, this Article will discuss the ability of the proposal to capture the benefits of a UBI claimed by its proponents.<sup>126</sup>

According to its proponents, both on the left and the right, the benefits of a universal basic income are both practical or consequential, positive consequences for recipients and society as a whole that proponents claim would occur after the adoption of a UBI, and philosophical or theoretical, positive benefits that are rooted in arguments that a UBI would vindicate conceptions of freedom and community.<sup>127</sup> The practical or consequential benefits

*Subsidies*, 108 YALE L.J. 967, 969 (1999).

121. *Id.*

122. *See id.* at 970 (“The result is that TANF-style welfare reform will shrink the welfare rolls—but only by swelling the ranks of the working poor.”).

123. *Id.* at 971.

124. *See id.* at 974 (“In *The Stakeholder Society*, Bruce Ackerman and I pursue a somewhat different, though complementary, approach.”).

125. *See* STANDING, *supra* note 66, at xii (“In what follows, I consider what is meant by basic income and discuss the three main perspectives—justice, freedom and security—that have been used to justify it, as well as the economic rationale.”).

126. *See infra* Part V.B.4 (proposing a UBI alternative).

127. *See* STANDING, *supra* note 66, at xii (“In what follows, I consider what is meant by basic income and discuss the three main perspectives – justice, freedom and security—that have been used to justify it, as well as the economic rationale.”); *see also* MURRAY, *supra* note 11, at v (showing the table of contents);

include reducing poverty, providing security—knowing that one will always receive some money every month, providing independence for those in difficult situations, such as abused housewives, rewarding voluntary and care work, and allowing people to pursue creative ventures and passions.<sup>128</sup> The philosophical or theoretical benefits include nonjudgment with respect to life choices, libertarian independence or real freedom, and the strengthening of a sense of community.<sup>129</sup>

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VAN PARIJS & VANDERBORGHT, *supra* note 37 (showing that Chapter 5 is titled “Ethically Justifiable? Free Riding Versus Fair Shares” and Chapter 6 is titled “Economically Sustainable? Funding, Experiments, and Transitions”).

128. See generally STANDING, *supra* note 66 (setting forth the benefits of a universal basic income); VAN PARIJS & VANDERBORGHT, *supra* note 37, at 25–26

A basic income makes it easier for anyone to work part-time or to interrupt work altogether in order to acquire further skills, to look for a more suitable job, to engage in voluntary activities, or simply to take a badly needed break . . . it is . . . economically clever to give all, not just the better endowed, greater freedom to move easily among paid work, education, caring, and volunteering.

129. See *supra* note 125 and accompanying text; see also VAN PARIJS & VANDERBORGHT, *supra* note 37, at 99, 104

[T]he shaping of our social institutions should not be guided by a specific conception of the good life but by a coherent and plausible conception of justice . . . An unconditional basic income is what we need, we argued, if what we care about is freedom, not for just a few but for all. We thereby appeal to an egalitarian conception of distributive justice that treats freedom not as a constraint on what justice requires but as the very stuff that justice consists in distributing fairly. This requires that freedom be interpreted as “real freedom,” not just ‘formal freedom’—that is, as involving not only the sheer right but also the genuine capacity to do whatever one might wish to do.

See also MURRAY, *supra* note 11, at 71, 81

The UBI gives people a way of accumulating enough money to try to realize their ambitions: to go to college after all, even though they’ve got a family to support; to start their own business; or to leave Dubuque and move to Alaska. The dreams can take numberless variations, but people working in low-income jobs and responsible for families usually have to abandon them . . . The effects of the UBI on America’s civic culture are potentially transforming and, in my view, are likely to constitute the most important single contribution of the UBI.

### *III. Work Requirements, Welfare, and Universal Basic Income*

#### *A. Brief History of Work Requirements*

Work requirements have been connected to the receipt of income support from the state dating back to at least the time of the New Poor Laws of 1834.<sup>130</sup> These requirements were intended to differentiate between the “deserving” and “undeserving” poor.<sup>131</sup> They were also intended to “deter claimants from applying for benefits.”<sup>132</sup> Furthermore, some proponents of the poor law viewed “reducing the number of applicants as an end in itself, and the existence of a system of relief was viewed as a concession.”<sup>133</sup>

The largest system of income support in the United States is the Supplemental Security Income program (“SSI”), administered by the Social Security Administration.<sup>134</sup> SSI is structured and presented as a public insurance scheme.<sup>135</sup> Productive contribution is not a factor in the calculation of SSI.<sup>136</sup> SSI beneficiaries receive their benefits based upon a formula which subtracts a recipient’s monthly countable income from a maximum baseline established by the federal government.<sup>137</sup> Social Security is specifically intended to assist the elderly and the disabled, groups that elicit

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130. See Amir Paz-Fuchs, *Behind the Contract for Welfare Reform: Antecedent Themes in Welfare to Work Programs*, 29 BERKELEY J. EMP. & LAB. L. 405, 418 (2008) (discussing the historical context of government relief contemporary to the enactment of the New Poor Law of 1834).

131. *Id.* at 419.

132. *Id.* at 418.

133. *Id.*

134. GENE FALK ET. AL, CONG. RESEARCH SERV., R45097, FEDERAL SPENDING ON BENEFITS AND SERVICES FOR PEOPLE WITH LOW INCOME: IN BRIEF 6 (2018) (demonstrating in Table 2 that SSI is the largest federal expenditure of cash aid for low-income people).

135. See SOC. SEC. ADMIN., 2019 ANNUAL REPORT OF THE SUPPLEMENTAL SECURITY INCOME PROGRAM 6 (2019) (“Federal entitlement programs for the aged, blind, or disabled have their roots in the original Act of 1935. The act established an old-age social insurance program administered by the Federal government.”).

136. See *id.* at 2 (“SSI provides eligible recipients monthly payments after considering any countable income and resources an individual can access.”) (citations omitted).

137. See *id.* (“Recipients’ monthly SSI payments are determined by subtracting their monthly countable income from the maximum monthly benefit.”).



certain sympathies based on their perceived condition of dependency.<sup>138</sup>

Aid to Dependent Children (ADC), was the United States' answer to the need to provide support to children who could not count on a father for support.<sup>139</sup> ADC came into existence in 1935 as a part of the Social Security Act.<sup>140</sup> As Edward McCaffery has pointed out, the system of income support for poor, just as its social security system for the elderly, is based on a certain conception of the ideal household.<sup>141</sup> ADC, as the name indicates, does not even consider whether there is a parent in the picture, even though the aid would obviously have to flow to an adult responsible for the child or children.<sup>142</sup> The single parent (usually the mother) was absent in the program name.<sup>143</sup> The benefits were viewed as a replacement for the father who was actually absent.<sup>144</sup> The benefits were provided because this situation, a single woman with children, represented a “sympathetic non-core case or Cinderella story,” a displaced individual, a “poor abandoned mother” who the state rightfully ought to assist.<sup>145</sup> From its start the program included a “mix of some good intentions with a good deal of racism, elitism, and other forms of prejudice.”<sup>146</sup>

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138. *See id.* (“SSI provides a federally administered income- and assets-tested monthly cash benefit to individuals who are elderly or blind, and to people with disabilities.”).

139. *See* Edward J. McCaffery, *The Burdens of Benefits*, 44 VILL. L. REV. 445, 473–74 (1999) (describing the original purpose of ADC as based in patriarchy and gendered stereotypes).

140. *See* Social Security Act of 1935, Pub. L. No. 74-271, § 401, 49 Stat. 620 (1935) (current version at 42 U.S.C. § 301 (2012)) (authorizing the appropriation of federal funds to states with approved “plans for aid to dependent children”).

141. *See* McCaffery, *supra* note 139, at 445–46 (illustrating the fact that the contemporary family does not resemble the traditional notion of the ideal family structure).

142. *See* McCaffery, *supra* note 139, at 473 (“The mother was an invisible phenomenon in this label, presumed in the fact of there being a child who needed aid.”).

143. *See* McCaffery, *supra* note 139, at 473 (describing the terminology issues with the social benefits program).

144. *See* McCaffery, *supra* note 139, at 473 (describing the perceived familial structure in which the benefits program was intended to fit into).

145. McCaffery, *supra* note 139, at 447–48, 473.

146. McCaffery, *supra* note 139, at 473–74.

*B. The Move Toward “Workfare”*

There has always been a strong link in the United States between work and income support.<sup>147</sup> Even during the depths of the Great Depression, public opinion polls showed support of “work relief” over “cash relief” by a nine-to-one margin.<sup>148</sup> When President Lyndon B. Johnson issued his 1964 Economic Report, the year in which he declared a “war on poverty,” he acknowledged that the United States could provide income supplements to lift the poor out of poverty but it was “far better, even if more difficult to equip and permit the poor of the Nation to produce and earn the additional’ money required to escape from poverty.”<sup>149</sup>

The early intellectual roots of the modern EITC actually lay in the debate surrounding the adoption of a Negative Income Tax (NIT), guaranteed annual income, or work bonus.<sup>150</sup> One benefit of a negative income tax was that it would relieve the working poor of their tax burden while preventing them from going on welfare.<sup>151</sup> Milton Friedman, an early advocate of the NIT, argued that the gentler phase-out of the NIT compared to AFDC (fifty percent versus one hundred percent, respectively), along with other features, meant that AFDC and other government programs were more like a guaranteed income than the NIT.<sup>152</sup> However, Friedman’s views fell on deaf ears and President Johnson and others still saw the NIT as a work disincentive.<sup>153</sup>

President Nixon introduced his family assistance plan as an attempt to provide both adequate benefits to the poor and work

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147. See Dennis J. Ventry, Jr., *The Collision of Tax and Welfare Politics: The Political History of the Earned Income Tax Credit, 1969-99*, 53 NAT’L TAX J. 983, 985–86 (2000) (describing how the national pro-work sentiment influenced public benefit policy proposals).

148. *Id.* at 986.

149. *Id.* at 985.

150. See *id.* at 992–96 (discussing the social benefits debate of the 1970s and how it evolved into the EITC).

151. See *id.* at 986 (“[T]he tax system could be a useful ‘device’ in removing individuals from poverty . . .”).

152. See *id.* at 987 (“[Friedman] argued that the use of fractional tax rates distinguished negative income taxation not only from guaranteed incomes, but also from conventional welfare programs.”).

153. See *id.* at 988 (“In Johnson’s eyes, both an NIT and a GAI amounted to a cash benefit, and thus, a work disincentive.”).

incentives.<sup>154</sup> His plan was attacked from both the right and the left.<sup>155</sup> Liberals wanted more generous benefits and conservatives wanted more stringent work requirements.<sup>156</sup> As the FAP became more unpopular, Senator Russell Long, a Democratic senator from Louisiana in the Nixon Era, proposed a work bonus, with a phase-in and phase-out.<sup>157</sup> Unlike an NIT, which gave the most benefits to those with zero earned income, the work bonus had a sweet spot, a point above zero earned income that yielded the most benefits.<sup>158</sup>

In 1975, the Earned Income Credit was codified as Section 32 of the Internal Revenue Code.<sup>159</sup> It was originally intended to exist for one year only.<sup>160</sup> It had a phase-in up to a maximum benefit of \$400 for those with \$4000 of earned income.<sup>161</sup> It phased out at ten percent, and benefits ceased for those with \$8000 or more of income.<sup>162</sup>

President Carter and his Administration viewed the EITC as having both “anti-poverty and anti-welfare potential.”<sup>163</sup> President Carter proposed greatly expanding the EITC.<sup>164</sup> His goal was to

154. *See id.* (describing how President Nixon’s plan sought to “strike a balance between ‘the mutually inconsistent goals of adequate benefit levels and work incentives’”).

155. *See id.* at 989 (explaining that “opposition formed quickly” to the plan).

156. *See id.* (describing how liberals “demanded higher benefit levels” while conservatives criticized the proposal for resembling “cash giveaways”).

157. *See id.* at 991–92 (“Long proposed an alternative to FAP that directed benefits towards the ‘deserving’ poor, that is, those willing to work.”).

158. *See id.* at 992 (describing how Long’s plan “phased in benefits” which distinguished it from the NIT).

159. *See* I.R.C. § 32 (2018) (implementing a refundable tax credit for individuals with incomes up to \$8000).

160. *See* Ventry, *supra* note 147, at 995 (explaining that the Earned Income Credit was originally created for one year as part of the Tax Reduction Act of 1975).

161. *See* Ventry, *supra* note 147, at 992 (detailing the tax benefits of the Earned Income Credit).

162. *See* Ventry, *supra* note 147, at 995 (describing the maximum income threshold for tax benefit eligibility under the Earned Income Credit).

163. Ventry, *supra* note 147, at 984.

164. *See* Ventry, *supra* note 147, at 997 (describing the Carter Administration’s Program for Better Jobs and Income, which included various welfare initiatives like expanding both the EITC and federal job training programs).

“reward[] work, not dependency.”<sup>165</sup> The Administration viewed using a tax mechanism as politically more attractive than a welfare mechanism.<sup>166</sup>

As part of the Tax Reform Act of 1986, Congress raised the maximum credit amount, raised the phase-out amount, and indexed the changes to inflation.<sup>167</sup> As one senator noted, this would ensure that “low-income citizens [were] no longer taxed into poverty.”<sup>168</sup> Congress further expanded the EITC in 1990 and 1993 by increasing the maximum benefit amount, raising the breakeven point, and expanding the phase-out rate.<sup>169</sup> Congress also, for the first time, provided benefits to childless workers and increased benefits to workers with two or more children.<sup>170</sup> However, the 1990s also saw for the first time push back against the EITC with investigations into fraud and legislation designed to combat fraud.<sup>171</sup> Furthermore, analysts and researchers started to focus on the labor disincentives from the high marginal effective rates of tax on recipients whose income fell in the phase-out range.<sup>172</sup>

The focus on conditionality and work requirements reached an apex with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).<sup>173</sup> President Clinton had campaigned on a promise to “end welfare as we have come to know

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165. Ventry, *supra* note 147, at 999.

166. *See* Ventry, *supra* note 147, at 999 (“Administration officials were confident in the proposal’s political attractiveness.”).

167. *See* Ventry, *supra* note 147, at 1002 (detailing the revised Earned Income Tax Credit benefits).

168. Ventry, *supra* note 147, at 1002.

169. *See* Ventry, *supra* note 147, at 1004 (describing the EITC expansions and the criticisms that they received for being “overly generous” and “an implicit work disincentive”).

170. *See* Ventry, *supra* note 147, at 1004 (“[C]hanges made in the early 1990s signaled to some observers that the program was headed in the direction of welfare.”).

171. *See* Ventry, *supra* note 147, at 1005–06 (describing the high rates of noncompliance that pushed Congress to investigate potential EITC abuses).

172. *See* Ventry, *supra* note 147, at 1006–07 (“Several analysts . . . concluded that the EITC created aggregate work disincentives.”).

173. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform Act), Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended at 42 U.S.C. § 1305 (2012)) (ending certain entitlement programs and replacing them with work requirement programs such as TANF).

it.”<sup>174</sup> The PRWORA ended the entitlement aspect of AFDC and replaced it with TANF.<sup>175</sup> AFDC was an entitlement, which had provisions that encouraged work, whereas there is a lifetime limit on the receipt of TANF benefits and TANF has specific work requirements.<sup>176</sup>

Even today, there are proposals to further condition benefit programs on a work requirement.<sup>177</sup> Most prominently, there is a push to condition Medicaid benefits on fulfilling a work requirement.<sup>178</sup> The Medicaid conditionality push has been endorsed by the Trump Administration.<sup>179</sup> Eight states have received federal approval for a work requirement for Medicaid.<sup>180</sup> An additional eight states are awaiting federal approval.<sup>181</sup> The work requirements generally require that individuals engage in paid employment, search for paid employment, volunteer, or

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174. Mary Pilon, *How Bill Clinton's Welfare Reform Changed America*, HIST. CHANNEL (Apr. 26, 2018), <https://www.history.com/news/clinton-1990s-welfare-reform-facts> (last updated Aug. 29, 2018) (last visited Sept. 23, 2019) (quoting President Bill Clinton) [<https://perma.cc/6FQ7-MXAS>].

175. See AXINN & STERN, *supra* note 23, at 319–20, 328 (detailing the changes to the welfare system that shifted the policies from entitlement to work requirement programs).

176. See AXINN & STERN, *supra* note 23 (describing the difference between the two welfare programs).

177. See Chang & Golshan, *supra* note 25 (describing modern welfare proposals that include work requirements).

178. See Chang & Golshan, *supra* note 25 (“In January, the Trump administration allowed states to impose work requirements for Medicaid, which provides health care to Americans who are poor and disabled.”).

179. See Phillip M. Singer & Charley E. Willison, *Medicaid Waivers: Public Health Consequences Under the Trump Administration*, 109 AM. J. PUB. HEALTH 892, 892 (2019) (“The Trump administration has sought to reshape Medicaid through their approval of waivers.”).

180. See *id.* (stating that the eight approved states are Arizona, Arkansas, Indiana, Kentucky, Maine, Michigan, New Hampshire, and Wisconsin).

181. See *id.* (stating that there is a trend towards increasing the severity of consequences for noncompliant states that have been approved or are awaiting approval for work requirements).

attend school.<sup>182</sup> The work requirements are limited to individuals between nineteen and sixty-four who are not pregnant.<sup>183</sup>

### *C. UBI Proponent Responses to a Lack of a Work Requirement*

At the outset of their chapter on the ethical case for a universal basic income, Van Parijs and Vanderborght explicitly identify and label the most common criticism of a universal basic income:

Of all objections to a basic income, one sticks out above all others—and is more emotional, more principled, and more decisive in the eyes of many. It relates to its being unconditional in the sense of being obligation-free, of not requiring its recipients to work or be willing to work.<sup>184</sup>

Van Parijs and Vanderborght then acknowledge that this criticism has two main variants, one version that says that “work is part of the good life and hence that an income granted without some work requirement amounts to rewarding a vice: idleness,” and a second version that says that it is “unfair for able-bodied people to live off the labor of others.”<sup>185</sup> Van Parijs and Vanderborght then spend the remainder of this chapter of their book addressing the problems raised by the second version.<sup>186</sup>

Before embarking on this rebuttal, Van Parijs and Vanderborght breezily dismiss arguments related to the inherent value or dignity of work:

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182. *See id.* (“Work requirements condition eligibility in Medicaid on individuals either working, searching for employment, volunteering, or attending school . . . .”); *see also CMS OKs 4th Medicaid Work Requirement Proposal, but Rejects Lifetime Coverage Limits*, AM. HEALTH LINE, May 8, 2018, [hereinafter *CMS OKs*] (explaining the increase in work requirements).

183. *See CMS OKs, supra* note 182 (specifying who can be subject to work requirements); *see also* Angela Rachidi, *New CMS Medicaid Work Requirement Guidance Offers States an Opportunity*, AEI.ORG (Jan. 12, 2018, 1:06 PM), <http://www.aei.org/publication/new-cms-medicaid-work-requirement-guidance-offers-states-an-opportunity/> (last visited Sept. 23, 2019) (“CMS indicated they will approve appropriate waiver requests under the objective that it ‘improves the health and well-being of participants.’”) [<https://perma.cc/DB2P-ZCPN>].

184. VAN PARIJS & VANDERBORGHT, *supra* note 37, at 99.

185. VAN PARIJS & VANDERBORGHT, *supra* note 37, at 99 (citations omitted).

186. *See* VAN PARIJS & VANDERBORGHT, *supra* note 37, at 100 (“It is therefore on this second version that we shall focus, even though much of what we say in response to it also applies to the first version.”).

If one adopts the view, as we do, that the shaping of our social institutions should not be guided by a specific conception of the good life but by a coherent and plausible conception of justice, this second version of the objection [fairness] is far more serious than the former [inherent dignity of work]. We do not mind people adopting a work ethic in their personal lives. Indeed, we may subscribe to some version of it ourselves . . . . However, none of this justifies making basic material security conditional upon work or willingness to work. The imposition of such a condition would only be legitimate if it could be derived, as implied by the second version of the ethical objection, from a compelling conception of what fairness requires.<sup>187</sup>

After dismissing the dignity of work argument and spending a fair amount of time on the free rider argument, Van Parijs and Vanderborght spend an entire chapter of their book discussing incentives.<sup>188</sup>

Murray, in the first sentence of chapter seven, “Work Disincentives,” of his book-length study, identifies that “[t]he most serious practical objection to the UBI is its potential effect on work.”<sup>189</sup> Murray then proceeds to discuss how his plan for a UBI is designed to minimize work disincentives through: (1) a high payback point (the point at which income received from the UBI becomes taxable) and (2) a UBI starting point at age twenty-one rather than age eighteen so that high-school graduates must either find support to enroll in college (to enhance their future job prospects) or begin employment.<sup>190</sup> After working for three years (even with job changes), many people will likely be making enough that they would not quit to receive a UBI.<sup>191</sup> And, after three years of college, many people are close to achieving both a degree and the higher income jobs that are available to college graduates, and

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187. VAN PARIJS & VANDERBORGHT, *supra* note 37, at 99–100.

188. See VAN PARIJS & VANDERBORGHT, *supra* note 37, at 99–132 (arguing that the concept of fairness does not mandate that a work requirement be attached to a UBI program), 133–70 (focusing on the economics of a universal basic income).

189. MURRAY, *supra* note 11, at 52.

190. See MURRAY, *supra* note 11, at 53 (defining these two features as “buffer zones” that should incentivize people to stay in the work force).

191. See MURRAY, *supra* note 11, at 54–55 (“The high school graduate who has been working has already reached the point where quitting usually carries an unacceptably high price tag.”).

thus quitting college to live off the UBI would be unattractive.<sup>192</sup> Murray acknowledges that some people will choose not to work (or work significantly less) but he thinks it will not be that many people and that it will mostly be young people after college.<sup>193</sup> However, his articulation that some people might decide to spend time on the beach creates a class of people that many across the political spectrum, even liberal egalitarians such as John Rawls and Ronald Dworkin, do not think are worthy of government support.<sup>194</sup>

In chapter nine of his book, Murray discusses work as it connects to happiness and the search for a vocation.<sup>195</sup> This is closer to addressing the inherent dignity of work.<sup>196</sup> However, Murray divides this chapter into two parts: “Changing Jobs” and “Pursuing Dreams.”<sup>197</sup> In the first part he lauds the American economy for high labor mobility and the ability to “find[] a job that makes one happy.”<sup>198</sup> He argues that a UBI would increase labor mobility.<sup>199</sup> In the second part, Murray argues that a UBI will help people to realize dreams such as starting a business, moving to a different part of the country, or advancing one’s education.<sup>200</sup> The

192. See MURRAY, *supra* note 11, at 55–56 (“There’s no reason to think that the number [of graduates who choose not to work] is going to be much larger than the number of college graduates in the 1960s who became permanent hippies.”).

193. See MURRAY, *supra* note 11, at 52–53 (listing the likely work consequences of adopting a UBI program and stating that the “decrease in work effort will be acceptable”).

194. See MURRAY, *supra* note 11, at 52 (discussing a hypothetical scenario in which a group of young adults choose to use their UBI grants to live together and surf for the rest of their lives); see also, e.g., John Rawls, *The Priority of Right and Ideas of the Good*, 17 PHIL. & PUB. AFF. 251, 255 (1988) (“[W]e then work out what citizens need and require when they are regarded as . . . normal and fully cooperating members of society over a complete life.”); RONALD DWORKIN, *SOVEREIGN VIRTUE: THE THEORY AND PRACTICE OF EQUALITY* 335–38 (2000) (comparing various hypothetical insurance policies to combat unemployment).

195. MURRAY, *supra* note 11, at 69–72.

196. See MURRAY, *supra* note 11, at 69 (describing the value of work and the happiness it can bring to an individual).

197. MURRAY, *supra* note 11, at 69–70.

198. MURRAY, *supra* note 11, at 69.

199. See MURRAY, *supra* note 11, at 70 (describing how “the freedom of millions more people to look for a better job will be increased” because the UBI will act as “portable retirement accounts and medical insurance”).

200. See MURRAY, *supra* note 11, at 71 (“The dreams can take numberless variations, but people working in low-income jobs and responsible for families



problem is that Murray's scheme does not require that one do anything to earn the money that would later free one to pursue one's dreams.<sup>201</sup> Murray here seems to agree with Van Parijs and Vanderborght that many jobs are simply unenjoyable, at least for many people.<sup>202</sup> There is a snobbishness to this argument, even if Murray's version seems to be a little less snobbish in that he acknowledges that conditions of a job, such as "working outdoors" or "working at home," may make the job more attractive, setting aside the work itself.<sup>203</sup> Reciprocity really underlies the free rider problem, the first category that I constructed, which is the idea that no one deserves something for which they have not worked. In fact, philosopher Elizabeth Anderson explicitly notes that the complaint of conservatives is that they do not want to "subsidiz[e] people who they believe are free-riding on others."<sup>204</sup>

Anne Alstott has made the most extensive response to a work requirement.<sup>205</sup> She has done this through the comparison of a policy of employment subsidies with a negative income tax or a universal basic income.<sup>206</sup> She has argued that, from a liberal perspective, the freedom provided to individuals by some form of unconditional assistance outweighs any community values or moral values that encourage work and any good consequences for the worker, the worker's family, or the worker's community from focusing social benefits on employment subsidies, which condition assistance on work.<sup>207</sup>

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usually have to abandon them.").

201. See MURRAY, *supra* note 11, at 70–71 (opining that a universal basic income is preferable without additional requirements such as mandatory retirement contributions).

202. See MURRAY, *supra* note 11, at 69 ("For many people, work never becomes a vocation."); see also VAN PARIJS & VANDERBORGHT, *supra* note 37, at 21–22 (noting that "the freedom from obligation [to work] prevents [the UBI] from subsidizing those [jobs] that are lousy or degrading").

203. MURRAY, *supra* note 11, at 69.

204. Elizabeth Anderson, *Welfare, Work Requirements, and Dependent-Care*, 21 J. APPLIED PHIL. 243, 244 (2004).

205. See Alstott, *supra* note 120 (discussing the merits of having a work requirement to receive universal basic income).

206. See Alstott, *supra* note 120, at 969–75 (explaining advantages and disadvantages of different ways to fulfill the work requirement in universal basic income programs).

207. See Alstott, *supra* note 120, at 981–89 (arguing that freedom given to individuals under an unconditional universal basic income system outweighs

Alstott is critical of arguments against a UBI or negative income tax on the basis of morality or community values.<sup>208</sup> Alstott argues that these sorts of arguments ignore the different roles that women play in families and societies.<sup>209</sup>

Alstott is also critical of the argument that work is good because it has good consequences for the worker.<sup>210</sup> Alstott argues that from both a utilitarian and a liberal standpoint, cash grants (such as a UBI or negative income tax) are better than employment subsidies.<sup>211</sup> Although there are likely to be some work disincentive effects from a cash grant, Alstott does not think they would be large.<sup>212</sup> She also thinks that the freedom provided by a cash grant makes it a superior policy.<sup>213</sup>

In my view, Alstott's argument is persuasive from a liberal standpoint.<sup>214</sup> It also pointedly and effectively critiques the tensions inherent in the moral arguments for work and the consequentialist arguments regarding the benefits of work and work subsidies.<sup>215</sup> Thus, it is very good for rationally responding to

community and moral values to encourage work through a work requirement).

208. See Alstott, *supra* note 120, at 989–90 (“Once one accepts this moral premise, work is an appropriate precondition for assistance.”).

209. See Alstott, *supra* note 120, at 991–95 (“The tension between market work and freedom takes on a special resonance for women, who remain disproportionately responsible for nonmarket work—caring for children, the frail elderly, and so on[.]”).

210. See Alstott, *supra* note 120, at 990 (explaining that for many workers their vision of a good life does not revolve around market work).

211. See Alstott, *supra* note 120, at 999–1001 (“[C]ash grants are a superior method of raising income and producing the attendant good consequences whether one adopts a liberal or utilitarian perspective.”).

212. See Alstott, *supra* note 120, at 1001–02 (discussing that a cash grant alternative may not be better because “the magnitude of the work disincentives is uncertain, but probably is not large, given the inelasticity of even poor workers’ labor supply”).

213. See Alstott, *supra* note 120, at 1001–03 (arguing that differences in work disincentives between cash grants and employment subsidies arise because an employment subsidy is linked to work effort and therefore less freedom).

214. See Alstott, *supra* note 120, at 980–89 (concluding that a universal basic income would expand the range of choices that people of all earning levels have with respect to how they balance work and leisure).

215. See Alstott, *supra* note 120, at 990–94 (criticizing the moral arguments for work by showing that community values are hard to define and values of work put poor single mothers in a difficult position when they lose their benefits if they work, but don’t earn enough to take care of their children and must pay for child care); see also Alstott, *supra* note 120, at 998–1003 (critiquing arguments for

the arguments of those who favor employment subsidies and the expansion of work-conditioned income support.<sup>216</sup> However, it does not provide an approach for understanding how policy proposals may be modified to gain the support of those who devoutly believe that work has moral value or who believe that the consequences are so positive that the tradeoff with freedom is worthwhile.<sup>217</sup> Nor does it suggest a way that policies may be framed or sold to such individuals.<sup>218</sup>

Guy Standing argued that the fundamental problem with conditional and means-tested programs is that they violate a basic principle of liberalism, that they target paternalistic policies toward a specific class of people and are more paternalistic toward those people than toward the general population.<sup>219</sup> This argument is strong and provides a liberal grounding for a universal basic income.<sup>220</sup> However, this Article argues that with respect to policies that aid low income individuals and those unable to work, paternalism has been the norm in the United States and other similar societies for a long time.<sup>221</sup> A dramatic shift in policy orientation would be required to change that norm.

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employment subsidies and policies stressing work by showing that universal basic income would more effectively increase income among poorer individuals and that the increased employment from employment subsidies would not be great enough to create significant other positive externalities and might be outweighed by negative externalities).

216. See Ventry, *supra* note 147, at 992 (outlining the benefits of a work requirement for different government welfare and subsidy programs).

217. See Alstott, *supra* note 120, at 1056–58 (discussing briefly the prospects for adoption of a universal basic income and the expansion of the EITC as a next best alternative).

218. See Ventry, *supra* note 147, at 995 (explaining the inadequacies in the earned income tax credit policy).

219. See Guy Standing, *Why Basic Income is Needed for a Right to Work*, 2 RUTGERS J.L. & URB. POL'Y 91, 92 (2005) (outlining the “paternalism test principle,” which argues a policy or institutional change is just only if it does not impose controls on some group that are not imposed on the freest groups in society, to discredit workfare).

220. See *id.* (arguing that his “security difference principle” and his “paternalism test principle” require that a just state adopt a universal basic income).

221. *Contra id.* (arguing that paternalism has been ignored as a principle over the last decade).

*IV. Categories of the Value of Work in Debates over Welfare and Social Policy*

While much of the debate on a universal basic income centers on incentives, it ignores many reasons why individuals value work.<sup>222</sup> This Article argues that the value of work has four main components: (1) reciprocity, that one receives rewards for one's labor, that one gets what one gives and that no one should be a free rider, one who gets but does not give; (2) calling or vocation, that work is a calling or vocation that one should have or pursue, and that only those that have or pursue such a calling or vocation have moral standing: this is an intrinsic value of work, the value of work for its own sake and not for its consequences or its contribution to society; (3) self-sufficiency, that work promotes self-sufficiency, which is a necessary component of liberty and which is necessary to avoid dependency; and (4) incentives, of an economic kind, that society should encourage work because it increases the size of the economic pie. The sections below discuss the derivation of these categories generally and the specific contours of each category.

These four components of the value of work are important because they point to the aspects of work that are not economic but rather are moral, spiritual, and social.<sup>223</sup> Unlike economic aspects, these later aspects cannot be quantified.<sup>224</sup> It is these aspects that proponents of a UBI avoid, do not think as important, or simply do not respond to.<sup>225</sup> These categories, especially reciprocity, calling and vocation, and self-sufficiency, deserve attention because they are fundamental to a complete understanding of American conceptions of work.<sup>226</sup> Any effort to address poverty and inequality

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222. See Alstott, *supra* note 120, at 1056 (arguing that emphasis should not be put on the value of work as many individuals do not view a good life in terms of their market work); see also MURRAY, *supra* note 11, at 64 (outlining different ways the value of work can be realized).

223. See MUIRHEAD, *supra* note 37, at 13 ("Once at the center of political and social theory, work now stands at the margins.").

224. See MUIRHEAD, *supra* note 37 (arguing that while economic arrangements have demonstrable effects, other values of work have effects that are impactful despite not being demonstrable).

225. See Alstott, *supra* note 120, at 990 ("The community values claim discounts the freedom of any low-earner whose vision of the good life does not revolve around market work.").

226. See MUIRHEAD, *supra* note 37, at 26–29 (explaining how interactions between social and economic categories work together to define the value of work).

requires an understanding of the role that the several aspects of the value of work play in the understanding of the circumstances of the poor and the public debate surrounding income support and anti-poverty programs.<sup>227</sup> This section of the paper proceeds by first discussing the derivation of these categories of the value of work, then showing how each category is deployed in popular and academic debate regarding income support and anti-poverty programs.

### *A. Defining Work*

Before discussing the categories of the value of work, this Article will provide some background on the definition of work. The word “work” itself has a long history.<sup>228</sup> The entry for “work” in the Oxford English Dictionary has twenty-four subentries and many of those subentries have multiple categories under them.<sup>229</sup> Several subentries trace their origins back to Old English.<sup>230</sup>

Several of the entries suggest the expansive meaning of work, that it can be applied to both remunerative and nonremunerative efforts.<sup>231</sup> For example, subentry 4a defines work as “[a]ction or activity involving physical or mental effort and undertaken in order to achieve a result, esp. as a means of making one’s living or earning money; labour; (one’s) regular occupation or employment.”<sup>232</sup> While this definition points to the basic *meaning* of work, that it is paid employment, it also points to a possible expansion, that certain forms of unpaid employment that achieve a beneficial result, such as housework, have historically been

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in America).

227. See MUIRHEAD, *supra* note 37, at 45–48 (recognizing that different aspects of work must be evaluated to get an accurate picture of how welfare programs can alleviate poverty); see also Alstott, *supra* note 120, at 989–98 (examining welfare reform through the potential impact of employment subsidies on the moral and community values categories of the value of work).

228. *Work*, OED ONLINE, <https://www.oed.com/view/Entry/230216?isAdvanced=false&result=1&rskey=DIvshn&> (last visited Oct. 31, 2019) [<https://perma.cc/QJF3-354H>]

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

considered a form of “work.” The OED gives two examples that demonstrate the dominant and alternative meaning dating back to the nineteenth century.<sup>233</sup> The example from 1871 is, “S. SMILES[,] *Character* iv. 98 [:] Work—employment, useful occupation—is one of the great secrets of happiness.”<sup>234</sup> The example from 1841 is “C. DICKENS[,] *Old Curiosity Shop* I. xxxiv. 286[:] I do all the work of the house.”<sup>235</sup> Here we see that work has been connected to individual happiness. Traditionally this has been connected to paid employment. However, there has also been a sense that some other types of activities are work as well. In later sections, this paper will explore how using this broader definition can serve as the basis for an expansion and improvement of the safety net.

### *B. How These Categories Are Derived*

This Article derives these categories of the value of work by examining both the academic literature that discusses the theoretical foundations of work requirements and the role of work in American society and public policy and by examining the public discourse, as especially found in opinion-editorial and unsigned editorial pieces in newspapers, surrounding the recent debate about Medicaid expansion.<sup>236</sup> This Article next lays out the historical background of the debates regarding welfare reform and EITC expansion during the Clinton Administration.<sup>237</sup> Proponents of work requirements, and of policies perceived as promoting work use many of the same arguments that are reflected in the theoretical and academic literature and used by current proponents of work requirements for Medicaid recipients.<sup>238</sup>

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233. *Id.*

234. *Id.*

235. *Id.*

236. *See infra* Part IV (discussing employment rates for Medicaid recipients).

237. *See infra* Part IV (examining the impact on poverty after adding a work requirement to receive welfare benefits during the Clinton Administration).

238. *See infra* Part IV.B.2 (comparing arguments between proponents for value of work considerations in welfare programs and work requirements for Medicaid recipients).

1. *History, Public Debate, and the Derivation of the Categories*

The most significant change to income-support policy in the United States in the last quarter century has been the move from a policy that provided entitlements, and unconditional support to certain poor persons, historically known as welfare and embodied most significantly in Aid to Families with Dependent Children (AFDC), to a policy that provides support to the working poor, with limitations based on proof of work status.<sup>239</sup> This move culminated in the Clinton welfare reform, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which created Temporary Assistance to Needy Families (TANF), and the expansion of the Earned Income Tax Credit (EITC).<sup>240</sup>

This Article examines the public debates and legislative history related to the PRWORA and the expansion of the EITC in 1993.<sup>241</sup> An examination of this literature reveals that proponents of welfare reform were concerned with much more than just incentives and the free rider problem.<sup>242</sup> Morality and notions of desert (the idea that one should be treated as one deserves) played a significant role in the policy debates during those years.<sup>243</sup>

The prominence of morality and notions of desert is seen in the first two pages of the House Budget Committee report for the act that would become the PRWORA.<sup>244</sup> The introduction to the report is entitled, “A Helping Hand, Not a Handout.”<sup>245</sup> The first section, entitled “Reforming Welfare,” begins: “There is little doubt that the current welfare system is a failure. It traps recipients in a cycle of

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239. See AXINN & STERN, *supra* note 23, at 328 (outlining the major transition from unconditioned welfare programs to the introduction of work requirements with the welfare program TANF).

240. See *generally* AXINN & STERN, *supra* note 23 (describing the impact of welfare reform undertaken by the Clinton Administration).

241. See *infra* Part IV (recounting policy and legislative rationales for implementing new welfare programs and the expansion of current programs during welfare reform in the 1990s).

242. See *infra* Part IV.B.2 (arguing proponents for welfare reform had underlying moral concerns relating to the value of work).

243. See *infra* Part IV.B.2 (examining the moral justifications for the addition of a work requirement to welfare programs).

244. See H.R. REP. NO. 104-651, at 1 (1996) (outlining policy rationale behind Personal Responsibility and Work Opportunity Reconciliation Act of 1996).

245. *Id.* at 3.

dependency. It undermines the values of work and family that form the foundation of America's communities."<sup>246</sup> Work is presented here as a value along with family.<sup>247</sup> Work is not simply about contributing to the economy but about the "foundation of America's communities."<sup>248</sup>

The report continues: "The welfare system contradicts fundamental American values that ought to be encouraged and rewarded: Work, family, personal responsibility, and self-sufficiency. Instead, the system subsidizes dysfunctional behavior."<sup>249</sup> Again, the emphasis is on values.<sup>250</sup> Work is not simply valued as a contribution to the economy or because it prevents people from free riding off the efforts of others.<sup>251</sup> Work is valuable in and of itself.<sup>252</sup> It is also valuable for promoting two other values, "personal responsibility" and "self-sufficiency."<sup>253</sup>

The public debate, especially as reflected in newspaper opinion-editorial pieces, evidences similar values-based arguments that were used in support of welfare reform.<sup>254</sup> In fact, one opinion piece in 1996 noted that polling indicated that "Americans believe welfare reform should center on ending idleness and promoting core values such as work, community, and responsibility."<sup>255</sup> It is notable how similar this language is to the conference report.<sup>256</sup>

246. *Id.* at 1.

247. *See id.* (showing that Congress understood the impact of the value of work on American families).

248. *Id.*

249. *Id.* at 4.

250. *See id.* at 1 (explaining that Congress saw unconditioned welfare programs as contradicting with the value of work).

251. *See id.* (arguing that work requirements for welfare programs have benefits outside of economic value and preventing exploitation).

252. *See id.* ("The welfare system contradicts fundamental American values that ought to be encouraged and rewarded: work . . .").

253. *Id.*

254. *See CMS OKs, supra* note 182 (highlighting that columns with different opinions on welfare reforms used social and moral value of work arguments); *see also* Rachidi, *supra* note 183 (describing similar value-based justifications for welfare reform).

255. Ann Scott Tyson, *Americans Say Work is Key to Welfare Reform*, CHRISTIAN SCI. MONITOR (Apr. 24, 1996), <https://www.csmonitor.com/1996/0424/042496.us.us.4.html> (last visited Oct. 31, 2019) [<https://perma.cc/Z5QS-QJUP>].

256. *See* H.R. REP. NO. 104-651, at 1 (1996) (stating that the report uses moral



Work is valued for itself and valued as the foundation of the community.<sup>257</sup> It is clear that incentives clearly played a role and that many viewed the free rider problem as significant.<sup>258</sup> However, even some who held these views also emphasized other aspects of the value of work.<sup>259</sup> For example, another opinion piece from the time quoted a report from the Democratic Leadership Council as saying in support of Wisconsin’s welfare reform (which served as a national model):

Replacing welfare with an employment system abolishes welfare’s perverse incentives. A work-based system will move people from dependence on government to self-sufficiency; replace the indignity of handouts with the dignity of work; reward initiative, not punish it; and make opportunity, responsibility, family and community the organizing principles of life for the nation’s poor.<sup>260</sup>

The expansion of the earned income tax credit in 1993 was designed to provide more support for the working poor.<sup>261</sup> In the popular imagination, it was a better program than welfare because it explicitly encouraged work and discouraged sloth.<sup>262</sup> Even some of those who worked in social services for lower income individuals saw it as the better program.<sup>263</sup> As one such individual put it

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and social arguments in regard to the value of work to justify the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996); *see also* Tyson, *supra* note 255 (emphasizing that the concerns expressed by the American public was driven by the unethical nature of unconditioned welfare programs).

257. *See* Tyson, *supra* note 255 (“Americans believe welfare reform should center on ending idleness and promoting core values such as work, community, and responsibility . . .”).

258. *See* Tyson, *supra* note 255 (“Most Americans say they feel disgusted by the current welfare system—not because of its cost or wastefulness but because it undercuts the ethical cornerstone of an honest day’s work . . .”).

259. *See* William Raspberry, *Sink-or-Swim Welfare Reform*, ST. LOUIS POST-DISPATCH, July 21, 1996, at B3 (arguing that work requirements to receive welfare will benefit many aspects of recipients’ lives).

260. *Id.* (quoting a report of “work first” strategies and recommendations put together by Lyn Hogan for the Democratic Leadership Council).

261. *See* MURRAY, *supra* note 11, at 40 (arguing that programs created as a result of welfare reform will benefit a certain section of welfare recipients).

262. *See* Raspberry, *supra* note 259 (emphasizing that incentives to work instead of unconditioned welfare instills in recipients the value of work).

263. *See Earned-Income Tax Credit May Be the Most Helpful*, COLO. SPRINGS GAZETTE-TELEGRAPH, Feb. 19, 1993, at A3 (discussing the expansion of the earned

during the debate over Clinton's proposed expansion of the EITC, "It (the tax credit) is a magnificent program . . . . It rewards people who try hard. If you're sitting back getting a welfare check, you get nothing."<sup>264</sup> Rewards should go to those who make a big effort, even if the effort amounts to little in the way of economic gain for the individual.<sup>265</sup> It is the effort itself that is important.<sup>266</sup> This is the intrinsic value of work as self-improvement.<sup>267</sup> Opinion pieces often noted the danger of idleness and the intrinsic value of work.<sup>268</sup> One such piece from the *Christian Science Monitor* was entitled, "Rewarding Work, Not Idleness."<sup>269</sup> The piece acknowledged that reducing poverty would require "reshaping the economy and creating higher-paying jobs" as well as "job training and education" for the "working poor."<sup>270</sup> However, the piece commended Clinton's expansion of the EITC as "one way of aiding parents who are making an honest effort to support their families, playing by the rules but still losing ground economically."<sup>271</sup>

The news reporting on the EITC shows that those who support the EITC do so for many different reasons.<sup>272</sup>

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income tax credit on the local population in Colorado Springs, Colorado).

264. *Id.*

265. See VAN PARIJS & VANDERBORGHT, *supra* note 37 (identifying the criticism of universal basic income that it rewards idleness); see also STEVEN M. SHEFFRIN, *TAX FAIRNESS AND FOLK JUSTICE* 133 (Cambridge Univ. Press ed., 2013) ("The American public has a strong distaste for any programs that provide direct monetary assistance to the poor without preconditions.").

266. See SHEFFRIN, *supra* note 265, at 135 ("Equity theory provides a natural explanation for the 'work tested state.' The theory predicts that individuals will require effort in exchange for any provision of income, as they attempt to ensure that society matches outputs with inputs.").

267. See Editorial, *Rewarding Work, Not Idleness*, CHRISTIAN SCI. MONITOR (Mar. 15, 1993), <https://www.csmonitor.com/1993/0315/15204.html> (last visited Oct. 20, 2019) ("Yet as Mr. Clinton has pointed out, politicians have long said they want to reward work, not idleness. The earned income tax credit does just that, signaling that work is important and will be rewarded. It also offers an incentive to report income.") [<https://perma.cc/G5P9-NRVH>].

268. See *id.* (discussing the rationale behind expanding the earned income tax credit and adding a work requirement to social services programs during welfare reform under the Clinton Administration).

269. See *id.* (emphasizing the need to assist the working poor in order to reach the goal of alleviating poverty through welfare programs).

270. *Id.*

271. *Id.*

272. See Guy Gugliotta, *How to Aid 'Working Poor'? Tax Credit Serves as*

2. *The Rhetoric of Welfare Reform and the Academic Literature  
Related to Work*

Much of the rhetoric and many of the arguments of proponents of welfare reform is similar to arguments and rhetoric of proponents of the expansion of the earned income tax credit. In this piece, I propose that while philosophers, political theorists, and commentators have proposed many different categorization schemes, most of the arguments fall into four categories. In this section, this Article illustrates these four categories through a discussion of the arguments of these thinkers and how their arguments fit into the proposed categories.

The arguments in the legislative history and newspaper commentary centered around certain themes. Although they have a different tenor and tone, arguments from each of the categories also appear in scholarly literature examining work requirements whether in sociology, economics, political theory, or philosophy. As will be seen below, some aspects of the categories are most prominently conservative and libertarian philosophical viewpoints.

During the years following the passage of welfare reform, several scholars wrestled with understanding the arguments that led to its passage.<sup>273</sup> Approximately eight years after the passage of welfare reform, philosopher Elizabeth Anderson wrote an article in which she examined the “justice of requiring employment as a condition of public assistance.”<sup>274</sup> She examined the question from several philosophical viewpoints, including liberal contractualist, libertarian, conservative, and utilitarian.<sup>275</sup> She noted that welfare reform was a compromise among the first three theories of justice.<sup>276</sup> She also emphasized the importance of examining the

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*Lifeline but Has Its Critics*, WASH. POST, Apr. 15, 1993, at A1 (outlining the economic and social advantages and disadvantages to expanding the earned income tax credit).

273. See *infra* notes 274–294 and accompanying text.

274. Anderson, *supra* note 204, at 243.

275. See Anderson, *supra* note 204, at 244 (explaining that the more standard philosophical ideologies of justice throughout the world are libertarian, utilitarian, and liberal contractualist views, while conservatism is more prominent in America).

276. See Anderson, *supra* note 204, at 243 (“The law reflected a compromise among three theories of justice: libertarianism, conservatism, and liberalism.”).

work requirement from a conservative philosophical viewpoint, a viewpoint that she found was “nearly invisible in standard philosophical typologies of theories of justice.”<sup>277</sup> She argued that it was “high time that philosophers considered it.”<sup>278</sup> She found that conservatives maintained an underlying principle of justice “based on reciprocity” and that conservatives also envisioned an “ideal of life, based on self-sufficiency.”<sup>279</sup> The view that work is good for society also has some basis in conservative viewpoints.<sup>280</sup> Anderson notes that conservatives and libertarians share the idea that “justice in relations among unrelated adults is fundamentally a matter of reciprocity—of receiving goods in virtue of having made a productive contribution.”<sup>281</sup> She then notes that while libertarian reciprocity is rooted in market exchange, conservative reciprocity is rooted in citizenship that is “earned by fulfilling civic obligations to contribute to society.”<sup>282</sup>

About a decade after welfare reform, two sociologists embarked on a comparative study of welfare reform and the nineteenth-century campaign to abolish outdoor relief, a form of cash assistance for the poor under the Elizabethan Poor Law, and found that these reform efforts “were the product of ideational, material, and political forces.”<sup>283</sup> They found that without the convergence of all three factors, the reform efforts would not have flourished.<sup>284</sup> Ideas were an essential part of the push for reform.<sup>285</sup> The authors noted that “[i]n the Old Testament, the command to

277. Anderson, *supra* note 204, at 244.

278. Anderson, *supra* note 204, at 244.

279. Anderson, *supra* note 204, at 244.

280. See Anderson, *supra* note 204, at 244 (stating that conservatism, a popular American theory of justice, is based on reciprocity and self-sufficiency).

281. Anderson, *supra* note 204, at 244.

282. Anderson, *supra* note, at 244.

283. Kenneth Hudson & Andrea Coukos, *The Dark Side of the Protestant Ethic: A Comparative Analysis of Welfare Reform*, 23 SOC. THEORY 1, 2 (2005).

284. See *id.* at 2 (stating that the combination of two conditions, the first facilitated by the existence of tight labor markets and the second a product of sustained political organization and mobilization by public officials and elite actors, was necessary for the occurrence and relative success of the nineteenth and twentieth century campaigns).

285. See *id.* (“[T]he modern welfare reform movement and the 19th-century campaign to abolish outdoor relief represent extreme manifestations of the ethos . . .”).

labor is divinely sanctioned: Both Jewish and later Catholic believers were exhorted to adopt an ethic of industry, thrift, and sobriety.”<sup>286</sup> The authors go on to note that Calvinism was distinct in its emphasis on this ethic only in degree, not in kind.<sup>287</sup> The authors note that English Puritan notions of “vocational calling as a duty” became ingrained in American and English culture, even as the religious sense lessened.<sup>288</sup> The accompanying “spirit of capitalism” also emphasized that “poverty arises, not only from the absence of diligent labor, but also from the absence of thrift, frugality, and savings.”<sup>289</sup> Thus, vocation was connected to many forms of work and to attributes related to work and diligence, not just to traditional educated professions, such as ministry, medicine, and law.<sup>290</sup>

Around the time that Elizabeth Anderson wrote about conservative arguments opposing welfare, law professor Amy Wax was evaluating the popularity of unconditional support for the poor among academics compared to the overwhelming popularity of conditional support among non-academics.<sup>291</sup> She categorized arguments in favor of conditional support as being of two types, consequentialist and moralistic.<sup>292</sup> The consequentialist arguments include economic arguments, including incentives, such as whether people would work less if money were available

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286. *Id.* at 4.

287. *See id.* at 4–5 (explaining that Calvinism was not unique because of its work ethic, but because of its willingness and ability to enforce this ethic and its intensity).

288. *Id.* at 5.

289. *Id.* at 6.

290. *Cf. id.* at 5 (explaining Weber’s connection between the concept of work ethic and the concept of the spirit of capitalism).

291. *See* Amy L. Wax, *Something for Nothing: Liberal Justice and Welfare Work Requirements*, 52 EMORY L.J. 1 (2003) (examining the notion that individuals must work if they are able to in order to receive public financial support).

292. *See id.* at 7 (“Arguments for or against the opposed possibilities of universal guaranteed income for all or work requirements for the able-bodied can be divided into those grounded in consequentialist or pragmatic concerns and those based on judgements that are normative, moralistic, or prescriptive in form.”).

without work as a condition.<sup>293</sup> The moralistic arguments focused on notions of fairness.<sup>294</sup>

In more recent debates about universal basic income, some scholars have identified some of the categories that I described above.<sup>295</sup> For example, in their article *Atlas Nods: The Libertarian Case for a Basic Income*, Miranda Perry Fleischer and Daniel Hemel, identify several common criticisms of the universal basic income, including the possibility of recipients wasting cash and being disincentivized to work.<sup>296</sup> These relate to what I call self-sufficiency and incentives, my third and fourth categories. Furthermore, economists who have studied the reforms of the 1990s, specifically, the encouragement to combine welfare and work, the time limits on welfare, and the dramatic expansion of the EITC, have found that these reforms all incentivized employment among lower-income individuals.<sup>297</sup> During the discussion of welfare reform during the early 1990s, the issue of the incentives of welfare and encouraging employment were extensively studied by economists and debated by the public.<sup>298</sup>

Anne Alstott categorized two types of arguments that favor the use of employment subsidies, which are conditioned upon work, over a universal basic income or negative income tax.<sup>299</sup> The first

293. See *id.* (“The first set of objections look to the economic, personal, and social consequences of doling out public assistance with no strings attached.”).

294. See *id.* (“The second set of objections, while not heedless of practical economic and social consequences, treats those factors as informing ultimate judgements about fairness.”).

295. See Anderson, *supra* note 204, at 244 (discussing four different ideologies of justice); see also Hudson & Coukos, *supra* note 283, at 4–6 (evaluating conservative arguments opposing the welfare system); Wax, *supra* note 291, at 7 (evaluating arguments in favor of welfare reform).

296. Fleischer & Hemel, *supra* note 83, at 1190, 1244, 1248 (expounding upon the common criticisms of the universal basic income).

297. See generally Jeffrey Grogger, *The Effects of Time Limits, The EITC, and Other Policy Changes on Welfare Use, Work, and Income Among Female-Headed Families*, 85 REV. ECON. & STAT. 394 (2001) (examining the effect of time limits on welfare use, employment, labor supply, earnings, and income among female-headed families).

298. See Robert Moffitt, *Welfare Reform: An Economist’s Perspective*, 11 YALE L. & POL’Y REV. 126, 126–27 (1993) (“Despite only sporadic debate on the issue, extensive research on the U.S. welfare system has been conducted since the 1960s.”).

299. See Alstott, *supra* note 120, at 990 (“Here, I want to distinguish between the claim that hard work is good because it meets community standards and the

she identifies as a “moral claim.”<sup>300</sup> According to Alstott, those who held a moral view of work see hard work as “morally required, and people who display this virtue should be guaranteed a job at a decent wage. Put another way, full-time work is both necessary and sufficient as a condition for a decent level of subsistence.”<sup>301</sup> Alstott summarizes this claim as “hard work is good because it meets community standards.”<sup>302</sup> This is similar to my second category, vocation. Alstott separates this claim from the argument that hard work is “good because it has good consequences for the worker, her family, her community, etc.”<sup>303</sup> Alstott identifies the “asserted good consequences of raising wages and employment levels for low-wage workers” as a second type of argument.<sup>304</sup> Under this argument, “putting the poor to work could enhance the welfare of poor individuals, their families, their communities, and society at large.”<sup>305</sup> This is similar, in its consequentialist focus, to my fourth category, incentives.

Stephen Nathanson, in his chapter, “The Comprehensive Welfare State: Objections and Replies,” identifies five main objections to what he calls a “comprehensive welfare state,” which “guarantees all citizens the resources needed for living a decent life.”<sup>306</sup> Nathanson identifies those objections as (1) “Libertarianism and the Functions of Government,” (2) “Encouraging Dependency,” (3) “Incentives, Again,” (4) “Do Non-Workers Deserve Resources?” and 5) “Is Equal Opportunity Enough?”<sup>307</sup> Before laying out these objections, Nathanson notes that “[o]pponents of the welfare state often base their opposition on the same values I began with, and I have tried to show that a serious commitment to these values should lead to acceptance of

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claim that it is good because it has good consequences for the worker, her family, her community, etc.”).

300. Alstott, *supra* note 120, at 989.

301. Alstott, *supra* note 120, at 990.

302. Alstott, *supra* note 120, at 990.

303. Alstott, *supra* note 120, at 990.

304. Alstott, *supra* note 120, at 998.

305. Alstott, *supra* note 120, at 998.

306. STEPHEN NATHANSON, ECONOMIC JUSTICE 114–29 (Tom L. Beauchamp et al. eds., 1998).

307. *Id.* at 115, 118, 121, 123, 127.

the welfare state and not its rejection.”<sup>308</sup> The last three objections that Nathanson identifies correspond to work value categories that I identified above, his “Encouraging Dependency” to my self-sufficiency, his “Incentives, Again” to my incentives, and his “Do Non-Workers Deserve Resources?” to my reciprocity.<sup>309</sup> Nathanson’s framing for his response identifies one of the main tasks that proponents of the UBI must undertake to sell any version of it: to speak in terms of values that they and their opponents share.<sup>310</sup>

The popular commentators discussed below mostly write in the opinion or editorial format in newspapers and magazines, or in opinion pieces posted to websites. Most of them, in their support for work requirements, express ideas that are rooted in more than one category discussed above.<sup>311</sup> Self-sufficiency is the most common category among the sources that I have reviewed.<sup>312</sup> This is not surprising given that Ralph Waldo Emerson’s essay

308. *Id.* at 115.

309. *Id.* at 118, 121, 123.

310. *See id.* at 118–27 (identifying and evaluating five objections to a complete welfare state).

311. *See, e.g.,* Betsy McCaughey, *Why Work Requirements are Good for Medicaid*, N.Y. POST (Jan. 16, 2018, 6:49 PM), <https://nypost.com/2018/01/16/why-work-requirements-are-good-for-medicaid/> (last visited Oct. 7, 2019) (discussing themes of reciprocity, self-sufficiency, and incentives) [<https://perma.cc/QG9W-ZJ7R>]; Pete Kelly, *Treating the Dignity Deficit*, ALASKA J. COM. (Mar. 6, 2018, 5:43 PM), <https://www.alaskajournal.com/2018-03-06/guest-commentary-treating-dignity-deficit> (last visited Oct. 7, 2019) (discussing themes of reciprocity, calling, and self-sufficiency) [<https://perma.cc/5BPR-8U3B>].

312. *See, e.g.,* McCaughey, *supra* note 311 (“There’s no reason taxpayers should pick up the tab for able-bodied people who won’t get off the couch.”); Kelly, *supra* note 311 (“But a life of government dependency can be isolating and unfulfilling.”); Richard V. Burkhauser, *Welfare Work Requirements Will Ease Poverty and Improve Our Labor Force*, USA TODAY (July 25, 2018, 4:00 AM), <https://www.usatoday.com/story/opinion/2018/07/25/welfare-work-programs-help-people-escape-poverty-column/806311002/> (last visited Oct. 7, 2019) (“[W]ork is the single most important way to escape poverty . . . .”) [<https://perma.cc/D9XH-4FZ8>]; Kristina Rasmussen, *Work Requirements Reduce Dependency and Protect the Truly Needy*, USA TODAY (Aug. 26, 2018, 7:00 AM), <https://www.usatoday.com/story/opinion/2018/08/26/welfare-reform-immensely-popular-benefit-work-requirements-column/999820002/> (last visited Oct. 7, 2019) (“And that means there’s no better time than now to move the millions of able-bodied adults currently trapped on welfare off the sidelines and into these available jobs.”) [<https://perma.cc/ABA7-6X3Z>].



*Self-Reliance* is still read and admired by people with many different political views.<sup>313</sup>

The recently begun and ongoing debate about imposing work requirements on Medicaid recipients provides much of the context for the discussions below.<sup>314</sup> The Patient Protection and Affordable Care Act, also known as the ACA or Obamacare, was one of the most significant changes in American social policy, and dramatically expanded access to health care.<sup>315</sup> The Medicaid expansion has been controversial from the beginning.<sup>316</sup> The federal government's ability to coerce the states into expanding Medicaid was curtailed by the Supreme Court decision in *National Federation of Independent Business v. Sebelius*.<sup>317</sup> Recently, the Trump Administration permitted states to impose work requirements on some Medicaid recipients.<sup>318</sup> That has sparked a furious public debate.<sup>319</sup> Much of that debate has centered on the correctness of imposing work requirements on the needy and the value of work for the needy themselves.<sup>320</sup> Importantly, the themes

313. See generally Len Gougeon, *Emerson, Self-Reliance, and the Politics of Democracy*, in A POLITICAL COMPANION TO RALPH WALDO EMERSON 185 (Alan M. Levine et al. eds., 2011) (discussing the relevance of Emerson's essay for understanding politics today); George Kateb, *Emerson and Self-Reliance*, in MODERNITY AND POLITICAL THOUGHT (Morton Schoolman ed., 1995) (same).

314. See *infra* notes 315–321.

315. See David Blumenthal et al., *The Affordable Care Act at 5 Years*, 372 NEW ENG. J. MED. 2451, 2451 (2015) (“Its enactment may constitute the most important event of the Obama presidency and could fundamentally affect the future of health care in the United States.”).

316. See Dylan Scott, *The Trump Administration's Plan for Medicaid Work Requirements, Explained: The Move Marks a Dramatic Change to the 50-year-old Program*, VOX (Jan. 12, 2018, 12:45 PM), <https://www.vox.com/policy-and-politics/2018/1/11/16877916/medicaid-work-requirements-trump-guidance> (last visited Oct. 7, 2019) (“Republicans have long criticized the Affordable Care Act for expanding Medicaid eligibility to non-disabled adults without children, a move that has covered more than 15 million Americans in or near poverty.”) [<https://perma.cc/77DC-5KBB>].

317. See *Nat'l Fed. Indep. Bus. v. Sebelius*, 567 U.S. 519, 561 (2012) (holding that the individual mandate in the Affordable Care Act exceeded Congress's power under the commerce clause and the necessary and proper clause).

318. See Scott, *supra* note 316 (“[T]he Trump administration, after months of promises, is now telling states how they can introduce a new requirement . . .”).

319. See Scott, *supra* note 316 (quoting statements from people and organizations that are interested in challenging the Administration's decision).

320. See Dylan Scott, *These are the People Who Would Lose Under Medicaid Work Requirements*, VOX (Dec. 11, 2017, 4:30 PM), <https://www.vox.com/policy->

in that debate, including the nature of the categories outlined above, are similar to themes of the debate surrounding the passage of welfare reform during the Clinton Administration.<sup>321</sup> The next section illustrates the contours of each of the categories of the value of work.

### *C. The Categories Themselves*

#### *1. Reciprocity*

Both academics and popular commentators have expounded upon the idea of reciprocity as a foundation of social justice.<sup>322</sup> The idea is that each person is obligated to contribute to the common enterprise.<sup>323</sup> The corollary is that only those who contribute are entitled to reap rewards and to receive aid and protection when they fall upon misfortune.<sup>324</sup>

Political theorist Russell Muirhead explicitly connects the view that a UBI would be exploitative to its violation of “social reciprocity, or the idea that all who choose to benefit from a system of social cooperation should also, insofar as they are able, ‘do their bit’ to contribute to the creation of those benefits.”<sup>325</sup> Muirhead goes on to note that liberal egalitarian philosophers and theorists have acknowledged the importance of reciprocity, including John Rawls with his view that Malibu surfers must support themselves from sources other than public funds and Amy Gutmann and Dennis Thompson’s view that “working . . . ‘shows that you are

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and-politics/2017/12/11/16763856/voxcare-medicaid-work-requirements (last visited Oct. 7, 2019) (explaining that most of the Medicaid enrollees in Michigan were already working and some who may be forced to work had physical or mental illnesses) [<https://perma.cc/H2E6-CT2N>].

321. See *e.g.*, *supra* notes 315–320 and accompanying text.

322. See STUART WHITE, *THE CIVIC MINIMUM: ON THE RIGHTS AND OBLIGATIONS OF ECONOMIC CITIZENSHIP* 49–51 (William Kymlicka et al. eds., 2003) (explaining the two conceptions of reciprocity).

323. See *id.* at 49 (explaining that one must contribute in order to have a system of economic reciprocity).

324. See *id.* (“The first conception is embodied in the view that justice demands nothing less than a strict equivalence or proportionality, in value terms, between entitlements to the social product and contributions to it . . .”).

325. MUIRHEAD, *supra* note 37, at 17.

carrying your share of the social burden.”<sup>326</sup> Judith Shklar also describes something like reciprocity, what she calls “parallelism” as an important part of the American value of work.<sup>327</sup> Shklar notes that citizens “create the public wealth which each one of them may hope to share” and that “[i]f a citizen was to gain, he had to produce, and the more the better, both for himself and his family and for the republic as a whole.”<sup>328</sup>

After discussing the objections that economists have to work requirements, Steve Sheffrin attributes the prevalence of work requirements in American social welfare benefits as being based on “equity theory.”<sup>329</sup> This theory “predicts that individuals will require effort in exchange for any provision of income, as they attempt to ensure that society matches outputs with inputs.”<sup>330</sup> Sheffrin further notes that Americans have a “distaste for unreciprocated support” and that this distaste explains the move from AFDC, the old system of welfare that did not require work, to TANF, which now has a work requirement.<sup>331</sup> Sheffrin notes that some observers even “saw the movement to requiring work as necessary for true social equality, not merely ameliorating income inequalities.”<sup>332</sup> Sheffrin notes that EITC’s roots in equity theory and the work required to obtain the benefit have helped the EITC to evolve into the largest anti-poverty program in the United States.<sup>333</sup>

Sheffrin insightfully discusses the role of luck and desert in our conception of redistribution and monetary success.<sup>334</sup> Sheffrin notes that many philosophers and political theorists, both on the right and left, including both Ronald Dworkin and F.A. Hayek,

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326. MUIRHEAD, *supra* note 37, at 17–19.

327. JUDITH N. SHKLAR, *AMERICAN CITIZENSHIP: THE QUEST FOR INCLUSION* 67 (1991).

328. *Id.*

329. SHEFFRIN, *supra* note 265, at 135.

330. SHEFFRIN, *supra* note 265, at 135.

331. *See* SHEFFRIN, *supra* note 265, at 135 (stating that state initiatives requiring private-sector employment with the addition of sanctions for noncompliance were viewed as more promising).

332. SHEFFRIN, *supra* note 265, at 136.

333. *See* SHEFFRIN, *supra* note 265, at 223–24 (“One of the main reasons for its success is that the EITC . . . harnesses itself to equity theory.”).

334. SHEFFRIN, *supra* note 265.

have permitted a role for the “recognition and the rewarding of individual effort.”<sup>335</sup> The luck egalitarian strand of political philosophy explores the limits of the role of luck in the distribution of resources.<sup>336</sup> Broadly, luck egalitarians believe that “once we neutralize the effects of luck in terms of endowments or other natural advantages, we can base rewards on desert.”<sup>337</sup> Of course, the challenge is controlling for those variables.<sup>338</sup> Sheffrin further notes that there are other political philosophers and theorists that allow an even broader role for desert.<sup>339</sup> Philosophers have conducted experiments to understand views of the general public on luck and desert.<sup>340</sup> These philosophers interviewed two groups of people: One was asked about luck and desert more broadly and the other was given a concrete scenario involving two individuals and their desert of money they earned.<sup>341</sup> These philosophers found that the first group, who were asked broadly about genetic advantages and earnings, responded that individuals should not earn more based on genetic advantages.<sup>342</sup> The second group was given a concrete scenario involving the desert of two jazz musicians to monetary rewards when both work equally hard but one has a naturally, genetically superior voice.<sup>343</sup> The second group’s respondents thought that the jazz singer genetically endowed with a better voice deserved her monetary rewards and that it was fair for her to receive them.<sup>344</sup>

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335. SHEFFRIN, *supra* note 265, at 199.

336. *See* SHEFFRIN, *supra* note 265, at 199 (“According to [luck egalitarianism], once we neutralize the effects of luck . . . we can base rewards on desert.”).

337. SHEFFRIN, *supra* note 265, at 199.

338. *Cf.* SHEFFRIN, *supra* note 265, at 199 (describing a number of scenarios of conduct that warrant desert even though luck was involved).

339. *See* SHEFFRIN, *supra* note 265, at 199 (referencing philosophers that include desert as an element of justice along with other components).

340. *See* SHEFFRIN, *supra* note 265, at 200–01 (reviewing a series of online experiments exploring folk justice ideas on desert).

341. *See* SHEFFRIN, *supra* note 265, at 200–01 (explaining the conditions of the experiment).

342. *See* SHEFFRIN, *supra* note 265, at 200–01 (“In the abstract condition, respondents did not believe that those with genetic advantages deserved more money.”).

343. *See* SHEFFRIN, *supra* note 265, at 201 (illustrating that folk conceptions of justice vary depending on how a situation is present).

344. *See* SHEFFRIN, *supra* note 265, at 201 (supporting the idea that folk

Philosopher Stephen Nathanson focuses on the negative aspects of reciprocity, most closely related to desert, characterizing an “objection to the comprehensive welfare state” as follows: “If people are able to work but do not do so, then they do not deserve resources.”<sup>345</sup> He writes that some hold the view that “if some people work and others do not, then those who work will be subsidizing the idle life of those who do not work. This scarcely seems just.”<sup>346</sup> Nathanson continues by noting: “This objection suggests a second problem that has not been sufficiently discussed by writers on economic justice. Most writers on this subject focus on the problem of determining what is a just distribution of benefits and rewards. Fewer consider the question of a just distribution of burdens.”<sup>347</sup>

The cornerstone of reciprocity is that one gets back based on what one gives, and that no one should be a free rider.<sup>348</sup> This view is well expressed by one commentator: “There’s no reason taxpayers should pick up the tab for able-bodied people who won’t get off the couch.”<sup>349</sup> This commentator continues by expressing support for even the poor but able-bodied to receive Medicaid, saying, “If you earn too little to afford insurance, you can get Medicaid—if you don’t sit home and do nothing.”<sup>350</sup> This expresses a strong sense that the individual is obligated to try to work and contribute and will receive support if they do.<sup>351</sup> Individuals are not left in the lurch, but neither are they free to refrain from effort.<sup>352</sup> Individuals have an obligation to others, taxpayers, to

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conceptions of justice are context dependent).

345. NATHANSON, *supra* note 306, at 123.

346. NATHANSON, *supra* note 306, at 124.

347. NATHANSON, *supra* note 306, at 124.

348. *See generally* McCaughey, *supra* note 311 (discussing themes of reciprocity, self-sufficiency, and incentives). Of course, those who are seriously physically or intellectually disabled or seriously physically or mentally ill should not be denied benefits because of an inability to reciprocate.

349. McCaughey, *supra* note 311.

350. McCaughey, *supra* note 311.

351. *See* McCaughey, *supra* note 311 (describing how a community engagement requirement to Medicaid will require adults seeking Medicaid to look for a job, go to school, or seek drug treatment, among other things).

352. *See* McCaughey, *supra* note 311 (stating that the community engagement requirement makes adults seeking Medicaid “do something” to receive the benefit).

make a contribution, even if small, and if they fulfill it, they will get the support they need.<sup>353</sup>

Stuart White, in his important work, *The Civic Minimum: On the Rights and Obligations of Economic Citizenship*, defends “justice as fair reciprocity” as a fundamental philosophy of economic citizenship.<sup>354</sup> White breaks the conception of reciprocity down into strict-proportionality and fair-dues.<sup>355</sup> White defines the strict-proportionality conception as requiring that “[i]f Alf contributes to the value of  $x$  and Betty to the value of  $y$ , then they are entitled to benefits of exactly  $x$  and  $y$  respectively (strict equivalence) or at least to benefits in the ratio  $x : y$  (strict value proportionality).”<sup>356</sup> The fair-dues conception is White’s own, which he contrasts to the more predominant strict-proportionality conception.<sup>357</sup> White defines his fair dues conception as requiring that:

[W]here the institutions governing economic life are otherwise sufficiently just, e.g. in terms of the availability of opportunities for productive participation and the rewards attached to these opportunities, those who claim the generous share of the social product available to them under these institutions have an obligation to make a decent productive contribution, suitably proportioned and fitting to ability and circumstances, to the community in return.<sup>358</sup>

White illustrates the fundamental challenge of reciprocity as preventing free-riding.<sup>359</sup> He gives the example of one thousand fishers who live in an island community.<sup>360</sup> The fishers’ fishing

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353. See McCaughey, *supra* note 311 (illustrating how increased Medicaid coverage increases privately insureds’ premiums).

354. See WHITE, *supra* note 322, at 17 (“In Part I [of this book], I outline and defend the conception of justice as fair reciprocity.”).

355. See WHITE, *supra* note 322, at 51 (“[I]t will help to distinguish two broad conceptions of reciprocity . . . the strict-proportionality, and the fair-dues, conceptions of reciprocity.”).

356. WHITE, *supra* note 322, at 51.

357. See WHITE, *supra* note 322, at 51–67 (stating that the fair-dues conceptions of reciprocity offers a plausible way of integrating claims of reciprocity with the demands of justice).

358. WHITE, *supra* note 322, at 59.

359. See WHITE, *supra* note 322, at 61 (stating that free-riders choose to offload a definite share of costs onto others which expresses a lack of respect for these others).

360. See WHITE, *supra* note 322, at 61–62. (clarifying the concept of

boats regularly break on rocks on the shore during foggy conditions.<sup>361</sup> To alleviate this problem, a request for funds to build a lighthouse is made.<sup>362</sup> Nine hundred of the one thousand fishers contribute.<sup>363</sup> The one hundred who do not contribute still benefit from the lighthouse.<sup>364</sup> White then notes that:

It is widely thought that such free-riding, under conditions of the stipulated kind, is morally objectionable. By refusing to make a contribution to the cost of the benefits that he willingly enjoys, the free-rider chooses to offload a definite share of these costs onto others. This seems to express a lack of respect for these others. Certainly, citizens who have democratic mutual regard for each other would, as an expression of their regard for other citizens as their equals, want to share these costs and not offload them on to others.<sup>365</sup>

## 2. *Calling or Vocation*

The argument for work as a calling or vocation is framed either in terms of the inherent dignity of all work or the pursuit of a dream.<sup>366</sup> Russell Muirhead argues for the role of work as a calling or vocation in the formation of public policy.<sup>367</sup> Muirhead understands work as an important moral ideal that should guide public policy.<sup>368</sup> He argues that:

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free-riding).

361. See WHITE, *supra* note 322, at 61. (illustrating conditions that may give rise to free-riding).

362. See WHITE, *supra* note 322, at 61 (illustrating that free-riding may result from the need of a public good).

363. See WHITE, *supra* note 322, at 61 (demonstrating that not all respond to requests for public contributions).

364. See WHITE, *supra* note 322, at 61 (demonstrating that some may benefit from public goods without contributing).

365. WHITE, *supra* note 322, at 61.

366. See MURRAY, *supra* note 11, at 69 (“A central satisfaction of life comes from the sense of doing something one values and doing it well.”).

367. See MUIRHEAD, *supra* note 37, at 21–29 (arguing that understanding work as a calling or vocation better supports the common position that work supports human dignity).

368. See MUIRHEAD, *supra* note 37, at 29 (“Regulative ideals like justice as fit influence legislation from below, when legislators represent and advance the sort of ethical notions that their constituents endorse.”).

The ideal of fitting work also acknowledges the special kind of relationship work involves. . . . Work is instrumental . . . . [I]t is also formative. . . . The aspiration to work that fits us, as both individuals and as human beings, is one I locate in the public culture of American life, in the way many evaluate work. . . . The regulative ideal of fit reflects the aspirations people bring to the world of work, as it also elucidates the common opinion that work somehow supports human dignity.<sup>369</sup>

Political theorist Judith Shklar also identifies some of the vocational aspects of work when she begins her detailed discussion of the role that work plays in American citizenship with a statement of the role of work in the social life of American citizens, “It is in the marketplace, in production and commerce, in the world of work in all its forms . . . that the American citizen finds his social place, his standing, the approbation of his fellows, and possibly some of his self-respect.”<sup>370</sup> However, a calling or vocation may even arise from less fulfilling work.<sup>371</sup> In fact, some would even argue that simply being a provider for one’s family is itself a calling or vocation.<sup>372</sup>

In his argument against a UBI, commentator Oren Cass, writing in the conservative *National Review*, touches on the inherent dignity of work and the meaningful nature of, and social praise that is and ought to be accorded to, even the most menial jobs.<sup>373</sup> Cass writes that:

Yet more important than the stigma [of welfare] is the inverse praise: Those who work to provide for themselves and their families know they are playing a critical and worthwhile role, which imbues the work with meaning no matter how unfulfilling the particular task may be. As the term

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369. MUIRHEAD, *supra* note 37, at 28–29.

370. SHKLAR, *supra* note 327, at 63.

371. See Oren Cass, *Why a Universal Basic Income Is a Terrible Idea*, NAT’L REV. (June 15, 2016, 8:00 AM), <https://www.nationalreview.com/2016/06/universal-basic-income-ubi-terrible-idea/> (last visited Oct. 31, 2019) (arguing that there is dignity in work even if it is unfulfilling) [<https://perma.cc/MK4E-293W>].

372. See *id.* (arguing that dignity in work comes from providing for oneself and family).

373. See *id.* (rejecting the idea that meaningful work must come from employment that is itself fulfilling).



“breadwinner” suggests, the abstractions of a market economy do not obscure the way essentials are earned.<sup>374</sup>

Often, the emphasis on calling or vocation appears in a twin emphasis on the value of work for the self-worth of the individual combined with the individual’s standing in society.<sup>375</sup> For example, one commentator says, “Far from a punishment, work requirements are a signal to non-disabled working-age adult welfare recipients that their service in the workforce is of value to society, their family and their self-worth.”<sup>376</sup>

Sometimes the dignity of work is the basis of an argument for work as a calling or vocation. When Peter Kelly, the president of the Alaska Senate, introduced a bill to impose a Medicaid work requirement, he titled the opinion piece that he published to defend the proposal, “Treating the Dignity Deficit.”<sup>377</sup> He argued that the inherent dignity of work was still relevant and important American public policy.<sup>378</sup> He disagreed with the “[d]etractors [who] say the idea that work has inherent dignity is old-fashioned and has no place in modern public policy debate.”<sup>379</sup> He argued instead that “American public discourse has always held certain

374. *Id.*

375. See Burkhauser, *supra* note 312 (advocating work requirements for individuals receiving welfare benefits). It should be noted that, of course, some work is dangerous, some work is disgusting, and some work is humiliating. See MICHAEL WALZER, SPHERES OF JUSTICE 165 (1983)

But *hard* has another sense—as in “hard winter” and “hard heart”—where it means harsh, unpleasant, cruel, difficult to endure . . . Here the word describes jobs that are like prison sentences, work that people don’t look for and wouldn’t choose if they had even minimally attractive alternatives. This kind of work is a negative good, and it commonly carries other negative goods in its train: poverty, insecurity, ill health, physical danger, dishonor and degradation.

An example of dangerous work is coal mining; of disgusting work is cleaning toilets; of humiliating work is serving as a bathroom attendant. However, as even Walzer acknowledges, “[I]t is socially necessary work; it needs to be done, and that means someone must be found to do it.” *Id.* Given that someone must do this work, the commentators in this section argue for its value both to the individual and to society. See *infra* notes 401–408 and accompanying text.

376. Burkhauser, *supra* note 312.

377. Kelly, *supra* note 311 (“[T]wo weeks ago I introduced SB 193 which would require Medicaid recipients to engage with their community through employment, volunteerism or subsistence activities.”).

378. See Kelly, *supra* note 311 (describing the benefits of work).

379. Kelly, *supra* note 311.

truths to be self-evident. The value and dignity of work as one of these truths is foundational to our nation's success."<sup>380</sup>

Opinion pieces written after the passage of welfare reform during the Clinton Administration extolled the value of work and the importance of programs designed to transition individuals from welfare to work.<sup>381</sup> As one commentator put it:

But there is value in work far beyond what is left of the paycheck after all those deductions. Our work helps define how we see ourselves and how we see the world. It gives our lives a rhythm, satisfaction, a sense that to some degree we are in control . . . . And in time, [the former welfare recipients] will discover that earning money feels different from merely receiving money.<sup>382</sup>

The commentator then quotes a local official: "When you have a job and you can see that you're making a difference, it affects your self-esteem."<sup>383</sup>

### 3. *Self-Sufficiency*

Self-sufficiency finds its roots in the American ideal of the "self-made man."<sup>384</sup> Judith Shklar identifies self-sufficiency as an essential element of work in American society, with "self-employment" persisting as an "enduring . . . dream" that represents "the very epitome of social independence."<sup>385</sup> Shklar notes that Benjamin Franklin "divorced the worth of work from its

380. Kelly, *supra* note 311.

381. See *Good for the Soul and the Pocketbook*, L.A. TIMES (Aug. 31, 1997, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1997-aug-31-me-27726-story.html> (last visited Oct. 20, 2019) (describing the various ways value is derived from work and stating that "earning money feels different from merely receiving money") [<https://perma.cc/799L-RYUX>].

382. *Id.*

383. *Id.* (quoting Supervisor Frank Schillo).

384. See Nicole Huberfeld & Jessica L. Roberts, *Health Care and the Myth of Self-Reliance*, 57 B.C. L. REV. 1, 23 (2016) ("The narrative of the self-made man, pulled up by his bootstraps, is a familiar trope, often expressed as 'individualism,' meaning that the individual makes his or her own fortune, good or bad.").

385. See SHKLAR, *supra* note 327, at 63–65 (describing how independent American citizens, meaning those who earn, will be considered "recognized and active citizen[s]").

religious context and gave it a new civic meaning.”<sup>386</sup> For Franklin, “Work . . . alone could make one independent . . . [I]t was a source of pride to be ‘self-made,’ that is, the product of one’s own labors.”<sup>387</sup> Another aspect of self-sufficiency is a rejection of dependency.<sup>388</sup> Stephen Nathanson articulates this objection well when he says that:

[One] objection to the comprehensive welfare state is that it encourages people to become more dependent on others and less able to care for themselves. If people receive resources from the state, so the objection goes, they will lose their self-reliance and other valuable traits of character. This objection, while often raised about programs to help the poor, can be generalized as an objection to a welfare state that provides resources to everyone.<sup>389</sup>

In recent debates about work requirements and Medicaid, the emphasis on self-sufficiency manifests itself in several ways. Some commentators directly use the term “self-sufficiency” and argue that requiring work will encourage people to be more self-sufficient because they will be providing more for themselves.<sup>390</sup> Others lament that lack of a work requirement fosters dependency on the government.<sup>391</sup> In the recent debate regarding imposing work requirements on Medicaid recipients, one commentator forcefully argued that self-sufficiency and the benefits of working for an individual forced to work supported the imposition of work requirements.<sup>392</sup> This commentator notes that an “extensive body of research shows that having a job boosts mental and physical well-being.”<sup>393</sup> The commentator then argues that this research

386. SHKLAR, *supra* note 327, at 71.

387. SHKLAR, *supra* note 327, at 71.

388. See Huberfeld & Roberts, *supra* note 384, at 5 (noting that dependency “conflicts with the ideals of freedom and self-sufficiency”).

389. NATHANSON, *supra* note 306, at 118.

390. See Kelly, *supra* note 311 (suggesting that work requirements will reduce dependency and increase self-sufficiency).

391. See Sally Pipes, *Medicaid Work Requirements are Common Sense*, WASH. EXAMINER (Aug. 2, 2018, 9:30 AM), <https://www.washingtonexaminer.com/opinion/medicaid-work-requirements-are-common-sense> (last visited Oct. 20, 2019) (“Medicaid is breeding mass dependency.”) [<https://perma.cc/PM7D-JXSR>].

392. See *id.* (listing benefits the author links to self-sufficiency).

393. *Id.*

supports work requirements which “could help Medicaid enrollees get off government assistance and become productive, happy, and self-sufficient members of society.”<sup>394</sup> The commentator decries the “mass dependency” created by the lack of work requirements in Medicaid.<sup>395</sup> The commentator is careful to note that the definition of work—as it relates to a work requirement—is expansive, including “working, volunteering, attending school, or job training” and that “[p]hysically able enrollees ought to work in exchange for their benefits.”<sup>396</sup> She pans progressive attacks on the eighty-hour-per-month work requirement with its broad definition.<sup>397</sup> These arguments are also a part of the reciprocity value and the limitations that most acknowledge on the work requirement, that it must not require too many hours and must define work broadly.<sup>398</sup> As this Article argues below, these limitations could serve as the basis for a revised UBI.<sup>399</sup>

Another commentator praises the states that “are planning to impose work-related conditions on Medicaid” as leaders in “a national movement to dignify work, not dependence.”<sup>400</sup> This phrase captures both sides of the coin—the inherent dignity of work and supporting oneself and the shame of dependence.<sup>401</sup>

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394. *Id.*

395. *See id.* (“Medicaid is breeding mass dependency. The program is meant to serve as a backstop for the truly disadvantaged. It’s not supposed to be a replacement for a job.”).

396. *Id.*

397. *See id.*

The Trump administration wants to require Medicaid recipients to work in exchange for their benefits. That means working, volunteering, attending school, or job training for [eighty] hours a month. Yet this reasonable reform has provoked howls of outrage from progressives, who say the requirements would deprive low-income people of healthcare.

398. *See* MUIRHEAD, *supra* note 37, at 19 (noting that the universal basic income “might be revised in such a way as to account for the importance of reciprocity and diminish its exploitative aspect”).

399. *See infra* notes 416–421 and accompanying text.

400. McCaughey, *supra* note 311.

401. *See* McCaughey, *supra* note 311 (suggesting that the work requirement will dignify work and that dependence is something that should not be dignified). Of course, those that are seriously physically or intellectually disabled or seriously physically or mentally ill still have human dignity and should not be ashamed of their condition.

Yet another commentator argues that while helping the poor in bad economic times is necessary, welfare programs “don’t do enough to encourage work and eventual self-sufficiency in good times.”<sup>402</sup> Proponents of this view of self-sufficiency point to the benefits of welfare reform during the Clinton Era.<sup>403</sup> Welfare reform led to an “increase in single mothers’ employment, a lesser reliance on welfare programs and a reduction in poverty.”<sup>404</sup> Proponents of this approach view work requirements as “an investment in welfare recipients and their families” that “support transitions into the workforce by allowing recipients to prepare for work to retain their benefits and provid[e] work supports when needed.”<sup>405</sup>

In his piece critiquing the UBI in *National Review*, Oren Cass argues that, “even if [a UBI] could work, it should be rejected on principle. A UBI would redefine the relationship between individuals, families, communities, and the state by giving government the role of provider. It would make work optional and render self-reliance moot.”<sup>406</sup>

Another commentator argues that “claiming that work requirements will harm more than help is not only factually inaccurate, it’s patronizing to the individuals who aren’t getting the opportunity to create a better future as a result.”<sup>407</sup>

Other proponents explicitly connect self-sufficiency and dependency.<sup>408</sup> Peter Kelly, the president of the Alaska Senate, defending his proposal for a Medicaid work requirement after conceding the administrative costs to implementing a work requirement, contended that he is “willing to spend some money if that’s what it takes to help Alaskans move away from the debilitating effects of dependency and forward towards

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402. Burkhauser, *supra* note 312.

403. See Burkhauser, *supra* note 312 (praising the welfare reform in the 1990s that required work).

404. Burkhauser, *supra* note 312.

405. See Burkhauser, *supra* note 312 (“Far from a punishment, work requirements are a signal to non-disabled working-age adult welfare recipients that their service in the workforce is of value to society, their family and their self-worth.”).

406. Cass, *supra* note 371.

407. Rasmussen, *supra* note 312.

408. See Kelly, *supra* note 311 (juxtaposing self-sufficiency and dependency).

self-sufficiency. We've spent billions on dependency—I'm willing to spend a small fraction of that to encourage Alaskans on a path toward independence."<sup>409</sup>

During the period right after the passage of welfare reform during the Clinton Administration, one commentator approvingly quoted a local official who touted providing for one's family as an important aspect of the work requirement of welfare reform.<sup>410</sup> The official said, "If you're able to provide for your family—as a man or woman, single parent or whatever—that in itself is fulfilling. You have that independence. You have a decision to make about what you do with the money from your job. Work is just good for the soul."<sup>411</sup>

Other supporters of welfare reform during the 1990s argued that it was needed to break the dependency created by the old system of welfare.<sup>412</sup> One commentator argued that the old welfare system had:

[E]volved into a system that keeps women and children mired in poverty for years, sometimes for generations. The average length of welfare dependency is [thirteen] years . . . and more than [seventy-five] percent of families on welfare will receive aide for more than [sixty] months . . . . [T]he "beneficiaries" of this system pay the greatest cost. We do not offer them a helping hand out of poverty but a meager handout that keeps them trapped in poverty.<sup>413</sup>

In 1997, the Democratic governor of Maryland touted his state's success with welfare reform: "[O]ur combined efforts to move people from a life of dependency to a life of self-sufficiency, from a life of welfare to a life of work, are succeeding beyond anyone's expectations."<sup>414</sup> He summarized the fundamental purpose of the

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409. Kelly, *supra* note 311.

410. See *Good for the Soul and the Pocketbook*, *supra* note 381 (quoting supervisor Frank Schillo, who collaborated with others to put together a welfare reform plan for Ventura County).

411. *Good for the Soul and the Pocketbook*, *supra* note 381.

412. See *infra* notes 414–416 and accompanying text.

413. Bill Campbell, *The Orange Grove: Welfare: From Dependence to Independence*, ORANGE COUNTY REG., Apr. 29, 1997, at B6.

414. Parris N. Glendening, *Moving People from Dependency to Self-Sufficiency*, WASH. INFORMER, Jan. 29, 1997, at 12.

program as “reaching out with a helping hand, and even more important, reaching out with the tools for self-sufficiency.”<sup>415</sup>

#### 4. Incentives

One of the most succinct explanations of the incentives argument has been articulated by a philosopher who is a supporter of the comprehensive welfare state, Stephen Nathanson.<sup>416</sup> Nathanson described the possible lack of incentives to work as a substantial objection and admitted that he still supported a comprehensive welfare state even though he could not disprove its general claim that a comprehensive welfare state would diminish “overall well-being.”<sup>417</sup> Nathanson writes:

[O]ne of the most powerful objections to the comprehensive welfare state is that it neglects a key point discussed earlier: The importance of providing incentives to work. According to this objection, if a decent level of well-being is guaranteed to all, this will undermine people’s motivation to work. People who work will gain less . . . and those who do not work will not suffer the deprivations of poverty. In the end, the economy will cease to produce sufficient resources, and all will be worse off.<sup>418</sup>

Political theorist Russell Muirhead notes that the incentive problem with a universal basic income should concern individuals across the entire political spectrum.<sup>419</sup> Muirhead notes that the economic consequences created by the disincentive to work would be disastrous from the standpoint of both conservative and liberal theorists.<sup>420</sup> Muirhead notes that UBI may be justifiable in some

415. *Id.*

416. *See generally* NATHANSON, *supra* note 306.

417. *See* NATHANSON, *supra* note 306, at 121 (noting that “this objection has a good deal of plausibility and certainly needs to be taken seriously”).

418. NATHANSON, *supra* note 306, at 121.

419. *See* MUIRHEAD, *supra* note 37, at 18 (“What matters most for conservatives is that everyone benefits in some way from growth, however much growth aggravates inequality. For egalitarian liberals, inequality is justifiable only when it maximally benefits those on the bottom.”).

420. *See* MUIRHEAD, *supra* note 37, at 18 (“Aside from the parasitic aspects of a guaranteed income, just liberal democracies require a measure of abundance, which in turn requires work. In the most general sense, economic growth and the corollary promise that all can be better off simultaneously make inequality palatable in fact and justifiable in theory.”).

form as long as it is “revised in such a way as to account for the importance of reciprocity and diminish its exploitative aspect.”<sup>421</sup>

One of the concerns of those that favor a work requirement is that it creates incentives for people to work.<sup>422</sup> The argument that work requirements incentivize work and benefit both the economy and the individual through increased employment are made directly by some commentators.<sup>423</sup> For example, one commentator emphasized that “many (though not all) rigorous studies find[] significant reductions in work as a result of receiving Medicaid, food stamps and housing assistance.”<sup>424</sup> Burkhauser emphasized the historical connection between welfare reform in the 1990s, which imposed a work requirement on cash welfare, and “an increase in single mothers’ employment, a lesser reliance on welfare programs, and a reduction in poverty.”<sup>425</sup>

Another commentator points to recent work requirements for food-stamp recipients in Maine and Kansas.<sup>426</sup> Rasmussen notes that these work requirements led to “increased economic activity and higher tax revenues for the states.”<sup>427</sup> Rasmussen also argues that work requirements led to employment in a wide variety of jobs “in over [six hundred] industries” and that the jobs were not all in “low-skill industries,” but rather included manufacturing and nursing.<sup>428</sup>

Another economic concern that some express to support a work requirement is that such a requirement prevents people from

421. MUIRHEAD, *supra* note 37, at 19.

422. See NATHANSON, *supra* note 306, at 121–23 (addressing possible lack of work incentives as one of the most powerful objections to the comprehensive welfare state).

423. See Burkhauser, *supra* note 312 (listing dignity and an increase in income as benefits to the individual and mentioning his belief that the economy needs more workers).

424. Burkhauser, *supra* note 312 (citations omitted).

425. Burkhauser, *supra* note 312.

426. See Rasmussen, *supra* note 312 (“The experience in Kansas and Maine also showed that work requirements were leaving individuals better off than they were when trapped on welfare, proving that the key to escaping government dependency isn’t another government check, but a job.”).

427. Rasmussen, *supra* note 312.

428. See Rasmussen, *supra* note 312 (“[W]hen work requirements were implemented in Kansas, able-bodied adults leaving welfare found work in over [six hundred] industries. And these weren’t low-skill industries, these were jobs that ranged from the manufacturing sector to nursing.”).



shifting costs to others.<sup>429</sup> This second strand shows up in the literature with a concern that free services are not really free and someone ends up paying for them.<sup>430</sup> For example, one commentator argues:

Medicaid is sending health premiums through the roof. How? It shortchanges hospitals and doctors, and they make up for it by shifting costs onto privately insured patients . . . . Every family that buys insurance or is covered through an employer gets socked with hundreds—in some cases thousands—of dollars in extra yearly premiums.<sup>431</sup>

Some opinion pieces focus almost exclusively on incentives.<sup>432</sup> In a piece last summer discussing a strong jobs report, the *Wall Street Journal* editorial page stated that “[m]illions of Americans receiving government assistance also don’t work at all.”<sup>433</sup> The editors argued that part of the reason for this was “government incentives not to work,” such as “some of the highest marginal tax rates hit Americans who work more hours but lose government benefits as their incomes rise . . . a person can lose up to 36 cents in food stamp benefits for every marginal dollar earned from labor.”<sup>434</sup> This same piece also argued that states have waived food stamps’ “work requirement on paper.”<sup>435</sup>

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429. See McCaughey, *supra* note 311 (“Medicaid is sending health premiums through the roof. How? It shortchanges hospitals and doctors, and they make up for it by shifting costs onto privately insured patients . . .”).

430. See McCaughey, *supra* note 311 (describing Medicaid as a program that shortchanges doctors and hospitals and shifts the costs to privately insured patients, which causes their premiums to increase).

431. McCaughey, *supra* note 311.

432. See The Editorial Board, *Making America Work Again*, WALL ST. J., Aug. 4, 2018, at A12 (describing government incentives not to work, including high marginal tax rates for Americans who lose government benefits as incomes rise and waiving food stamp work requirements).

433. *Id.*

434. *Id.*

435. See *id.* (emphasizing further the prevalence of government incentives not to work).

## V. Redesigning a UBI or Finding an Alternative

### A. Shortcomings of a UBI

The different dimensions of the value of work pose a serious challenge for advocates of a universal basic income.<sup>436</sup> The easiest value for proponents to address is ensuring that incentives are properly aligned.<sup>437</sup> However, I argue that proponents of a universal basic income cannot adequately address the three values outside of incentives: reciprocity, calling, and self-sufficiency. Lack of reciprocity is a definitional aspect of a universal basic income.<sup>438</sup> It is universal and thus requires no contribution.<sup>439</sup> A UBI also has the challenge that it can undermine the calling or vocational aspect of work by providing money without requiring work.<sup>440</sup>

Proponents would argue that the freedom of a UBI will allow individuals to pursue dreams and to start new businesses and careers which can lead to a true calling.<sup>441</sup> However, fundamentally, a UBI is free money that could allow one to live without a job.<sup>442</sup> A part of the conception of calling is that work

436. See George Zarkadakis, *The Case Against Universal Basic Income*, HUFFPOST (Feb. 27, 2017), [https://www.huffpost.com/entry/the-case-against-universal-basicincome\\_](https://www.huffpost.com/entry/the-case-against-universal-basicincome_) (last visited Sept. 22, 2019) (discussing the ethical problems with a universal basic income including how a universal basic income could cause people to feel less valued and productive) [<https://perma.cc/S6PC-LJ2Q>].

437. See Charles Eisenstein, *The Case for a Universal Basic Income*, CHARLES EISENSTEIN, <https://charleseisenstein.org/video/the-case-for-a-universal-basic-income/> (last visited Sept. 22, 2019) (arguing that a universal basic income would not cause people to quit working and providing to society, rather it would give people to freedom to pursue their goals) [<https://perma.cc/LNN2-C7ZA>].

438. See MUIRHEAD, *supra* note 37, at 16–20 (explaining how UBI violates a system of social reciprocity).

439. See MUIRHEAD, *supra* note 37, at 17 (emphasizing the universal nature of a UBI, which has no contribution requirement and therefore no reciprocity).

440. See Cass, *supra* note 371 (arguing that a universal basic income would undermine the vocational meaning of work and would instead become an optional activity that one engaged in by choice).

441. See Scott Santens, *Why We Should All Have a Basic Income*, WORLD ECON. F. (Jan. 15, 2017), <https://www.weforum.org/agenda/2017/01/why-we-should-all-have-a-basic-income/> (last visited Sept. 12, 2019) (arguing that a universal basic income would allow individuals to pursue more meaningful work) [<https://perma.cc/ZAU2-Z2RU>].

442. See Fleischer & Hemel, *supra* note 83, at 7 (explaining that UBI differs from other welfare programs because it generally does not have prerequisites).

itself has inherent dignity and value and thus, anything that undermines the Protestant ethic and allows one to live without working is detrimental to this ethic.<sup>443</sup> As for self-sufficiency, a UBI would provide money, fundamentally undermining the notion that each person should strive for self-sufficiency without reliance on others.<sup>444</sup> Therefore, the last section of this Article looks at ways that proponents of a UBI could achieve their goals, either through redefining the values of work, advocating for different policies, or some combination of these two approaches.

### *B. Possible Routes to a UBI or Something Similar*

There are several possible routes to attaining a UBI or some other policy, such as a broadly defined participation income. One route would be to fully redefine both work and the value of work.<sup>445</sup> Although it is possible to make some progress in redefining work, even in conservative terms, it is difficult to eliminate any of the four conceptions of the value of work that this Article proposes.<sup>446</sup> All of these conceptions of the value of work are deeply rooted in American political and social thought and practice.<sup>447</sup>

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443. See *supra* notes 283–287 and accompanying text (describing how reform efforts in the 19th century flourished, in part, to ideals connected to the command to labor in the Old Testament).

444. See KATHRYN J. EDIN & H. LUKE SHAEFER, \$2.00 A DAY: LIVING ON ALMOST NOTHING IN AMERICA 10–11, 15 (2015) (describing the context in which Ronald Reagan ran for President in 1976 with welfare reform as a major policy proposal).

This program [AFDC] offered cash to those who could prove their economic need and demanded little in return. It had no time limits and no mandate that recipients get a job or prove that they were unable to work. As its caseload grew over the years, AFDC came to be viewed by many as program that rewarded indolence . . . Perhaps the real question is not why welfare died, but why a program at such odds with American values had lasted as long as it did . . . Yet Americans were primed to buy the story that AFDC, a system that went so against the grain of the self-sufficiency they believed in, was the main culprit in causing the spread of single motherhood.

*Id.*

445. See Eisenstein, *supra* note 437 (challenging the cultural assumptions about the value of work).

446. See Eisenstein, *supra* note 437 (attempting to redefine work).

447. See *supra* notes 244–252 and accompanying text (describing a report from the House of Representatives that categorizes the welfare system in America as dysfunctional and contradictory to American values of work, family, personal

Therefore, the remainder of this Article focuses on modifying UBI proposals to fit a redefined idea of work itself, rather than to redefine the underlying values of work and radically reconceptualize the need for any individual to work, or more broadly, make some kind of productive contribution to society. In the first and third sections below, I briefly discuss prospects for redefining the value of work to a significant, or a limited, degree. I am deeply skeptical of a significant redefinition; however, I think there is some possibility of a limited redefinition.

### 1. Redefining Values of Work

Given the broad variety of principles that underlie the value of work and support for work requirements, it will be hard to redefine the value of work. It may be possible to redefine reciprocity, calling, or vocation.<sup>448</sup> For reciprocity, one could conceive broadly of each individual's contribution to society, such as their contributions as a family member, friend, and neighbor.<sup>449</sup> For calling or vocation, being a good or kind person certainly has a role to play in that area.<sup>450</sup> However, it would be difficult to redefine these terms as such.

Two of the values of work that are intrinsically tied to a productive contribution are incentives and self-sufficiency.<sup>451</sup> For these values, redefinition seems impossible. Incentives are

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responsibility, and self-sufficiency).

448. See MUIRHEAD, *supra* note 37, at 19 (explaining that a universal basic income may be possible if we can redefine reciprocity).

449. See Paulo A. Niederle & Guilherme F.W. Radomsky, *Social Actors, Markets and Reciprocity: Convergences Between the New Economic Sociology and the "Paradigm of the Gift,"* SCIELO 4 (2008), [http://socialsciences.scielo.org/pdf/s\\_tsoc/v4nse/scs\\_a03.pdf](http://socialsciences.scielo.org/pdf/s_tsoc/v4nse/scs_a03.pdf) (describing how markets and reciprocity values are not limited to economic principles, they can be social or moral values) [<https://perma.cc/EP8M-LSJV>].

450. See Elizabeth Hopper, *Can Helping Others Help You Find Meaning in Life?*, GREATER GOOD MAG. (Feb. 16, 2016), [https://greatergood.berkeley.edu/article/item/can\\_helping\\_others\\_help\\_you\\_find\\_meaning\\_in\\_life](https://greatergood.berkeley.edu/article/item/can_helping_others_help_you_find_meaning_in_life) (last visited Sept. 22, 2019) (documenting research that suggests being kind can help individual's lives feel more meaningful) [<https://perma.cc/QSK6-3VG8>].

451. See NATHANSON, *supra* note 306, at 118–21 (discussing the self-sufficiency and incentive value of work).

explicitly economic and focus on encouraging individuals to make a contribution to society, especially one that will grow the Gross Domestic Product and increase the size of the economic pie.<sup>452</sup> The value to society of simply being a good person (or any kind of person) is hard to quantify from the standpoint of economics.<sup>453</sup> Similarly, self-sufficiency is focused on the individual's ability to support themselves with minimal assistance from others.<sup>454</sup> This has a strong economic component.<sup>455</sup> Aside from hunter-gatherers and farmers, who find or produce their own food, and who may build their own shelters and make their own clothes, engagement in the economy and marketplace is necessary for self-sufficiency.<sup>456</sup> The types of hunter-gatherers and farmers who are (mostly) economically disengaged are almost non-existent in developed countries such as the United States.<sup>457</sup> Because these two values are impossible to redefine, the next section focuses on modifying proposals for a UBI to accommodate current values of work.

## 2. *Modifying Proposals for a UBI*

The most likely route to achieving the goals established by proponents of a universal basic income is a significant expansion of existing programs. The most likely candidate for expansion is the EITC, or the institution of a program that requires recipients

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452. See NATHANSON, *supra* note 306, at 121 (describing the view that individuals should contribute to society in a way that contributes to the GDP, and then criticizing this view).

453. See Kieron Kirkland, *What's the Best Way to Measure Social Value So That It's Relevant to Everyone?*, THE GUARDIAN (Sept. 17, 2012, 1:30 PM), <https://www.theguardian.com/voluntary-sector-network/2012/sep/17/best-measure-social-value> (last visited Sept. 15, 2019) (describing social value as inherently subjective and taking the position that nobody has articulated a successful way to measure social value) [<https://perma.cc/44KL-NBEE>].

454. See SHKLAR, *supra* note 327, at 71 (explaining how it is a source of pride for an individual to support themselves).

455. See NATHANSON, *supra* note 306, at 118 (describing the negative effects of a welfare state on the economy).

456. See Glendening, *supra* note 414, at 12 (equating engagement in the work force as the tools for self-sufficiency).

457. See *Hunter-Gatherer Culture*, NAT'L GEOGRAPHIC, <https://www.nationalgeographic.org/encyclopedia/hunter-gatherer-culture/> (last visited Sept. 22, 2019) (explaining that the population of hunter-gatherers has dramatically declined in the last 500 years) [<https://perma.cc/Y78F-KQU6>].

to do something to receive something in return, such as the participation income advocated by British economist Anthony Atkinson.<sup>458</sup> These proposals would only require a redefinition of work, not a redefinition of the values underlying work.<sup>459</sup> Even recent conservative policy proposals, such as requiring Medicaid recipients to work, use broader definitions of work than paid employment.<sup>460</sup> Those who advocate for a basic income or something similar could take advantage of this trend toward a broader definition of work and use it to broaden what is considered a productive contribution that would entitle the contributor to income assistance.

The easiest program to expand and build upon would be the EITC. Many different individuals, from both sides of the political spectrum, have proposed expansions of the EITC.<sup>461</sup> Among these are former Speaker Paul Ryan, Senator and former presidential candidate Kamala Harris, Gene Sperling, Director of the National Economic Council under Presidents Clinton and Obama, Facebook co-founder Chris Hughes, Senator Sherrod Brown, and Representative Ro Khanna.<sup>462</sup> An academic variation, the participation income, was proposed by eminent British economist Anthony Atkinson.<sup>463</sup>

One particularly appealing aspect of expanding the EITC is that in addition to being a popular program across the political spectrum, it also is a program that is appreciated by the poor because they view it as respecting their dignity.<sup>464</sup> They see it as

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458. See ANTHONY ATKINSON, *INEQUALITY: WHAT CAN BE DONE?* (2015) (proposing a participation income, granting all individuals a right to a secure income, but requiring individuals to satisfy a participation requirement to receive the income).

459. See *supra* Part IV.C (defining the values underlying work).

460. See *supra* notes 180–181 (explaining a recent push in conservative states to condition Medicaid benefits on fulfilling a work requirement).

461. See *infra* note 473 (detailing a Republican plan to expand the EITC); *infra* notes 475–478 (detailing differing Democratic plans to expand the EITC).

462. See *infra* notes 473–491 (describing the different plans to expand the Earned Income Tax Credit).

463. See ATKINSON, *supra* note 458, at 219–20 (describing the participation income as guaranteeing an income contingent on meeting a participation requirement).

464. See EDIN & SHAEFER, *supra* note 444, at 172–73 (explaining how the EITC is viewed as earned because individuals have to work for it).

“earned.”<sup>465</sup> They receive their benefits as a part of a tax refund, which includes other monies, such as over-withheld wages.<sup>466</sup> Furthermore, they receive it through filing a return in the tax system, a system that everyone participates in.<sup>467</sup> They do not have to go to a special welfare office; instead, they go to a tax return preparer, just like other Americans.<sup>468</sup>

The current EITC has several aspects that make it less like a universal basic income: First, it is parsimonious with respect to benefits for childless adults;<sup>469</sup> second, it does not cover childless adults who are under age twenty-five;<sup>470</sup> third, the maximum benefit for any recipient, with or without children, is not anywhere near the usual amount used as a benchmark in UBI discussions (\$10,000 or \$12,000 (\$1000 per month) per year);<sup>471</sup> and fourth, the benefit is not significant for those with the lowest amounts of income and phases out in such a way that it is a targeted anti-poverty program and not a universal benefit.<sup>472</sup> Most of the proposals mentioned above address some or all of these aspects.

Paul Ryan’s proposal is notable because he introduced it while chairman of the House Budget Committee, and it seriously addressed two of the three categories of issues: increasing the

465. See EDIN & SHAEFER, *supra* note 444, at 172 (explaining how individuals see the EITC as earned because they have to work to garner the benefits).

466. See EDIN & SHAEFER, *supra* note 444, at 17 (describing how individuals receive EITC benefits).

467. See EDIN & SHAEFER, *supra* note 444, at 172 (describing how individuals who participate in EITC receive benefits similar to other Americans, thus respecting their dignity).

468. See EDIN & SHAEFER, *supra* note 444, at 172 (describing how individuals who participate in EITC receive benefits similar to other Americans, thus respecting their dignity).

469. See *EITC Parameters*, TAX POL’Y CTR., <https://www.taxpolicycenter.org/statistics/eitc-parameters> (last updated Aug. 5, 2019) (last visited Sept. 10, 2019) (showing differing tax credits for adults with children versus a childless adult) [<https://perma.cc/JB8U-EXTU>].

470. See *Do I Qualify for EITC?*, IRS, <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/do-i-qualify-for-earned-income-tax-credit-eitc> (last visited Sept. 10, 2019) (explaining that if you do not have a qualifying child you must be at least twenty-five years old to claim EITC) [<https://perma.cc/PG3H-6RKJ>].

471. See *EITC Parameters*, *supra* note 469 (showing the maximum EITC credit as less than \$10,000).

472. See Rev. Proc. 2018-57, 2018-49 I.R.B. 827, 831–32 (showing the earned income and phase-out amounts).

maximum benefit for childless adults and lowering the eligibility age for childless adults.<sup>473</sup> It sped up the phase-in, benefiting the lowest income earners; but also sped up the phase-out, making the benefit more targeted to the poorest members of society, but less universal.<sup>474</sup>

One proposal that addresses many of the issues noted above is that of Representative Khanna and Senator Brown.<sup>475</sup> Khanna and Brown's proposal addresses significantly increasing the maximum benefit for childless adults from the current \$510 to \$3000, lowering the age of eligibility for childless adults to twenty-one, and significantly increasing the maximum benefit for taxpayers with three or more children from the current \$6318 to \$12,131.<sup>476</sup> It also raises the maximum qualifying income for childless workers from the current \$15,010 to \$37,113 and for workers with three or more children from the current \$48,340 to \$75,940.<sup>477</sup>

Kamala Harris's proposal is similar to Khanna and Brown's proposal.<sup>478</sup> In many ways, however, hers is more universal and

473. See *Rep. Ryan Unveils Antipoverty Plan at AEI Event*, COMMITTEE FOR RESPONSIBLE FED. BUDGET (July 28, 2014), <https://www.crfb.org/blogs/rep-ryan-unveils-antipoverty-plan-aei-event> (last visited Sept. 10, 2019) (detailing how the plan almost doubles the maximum credit to \$1,005 for childless workers and lowers the eligibility age from 25 to 21) [<https://perma.cc/SN8U-UR4X>].

474. See *id.* (detailing the phase-in and phase-out periods in Ryan's proposal).

475. See Press Release, Ro Khanna, Congressman, House of Representatives, Sen. Sherrod Brown and Rep. Ro Khanna Introduce Landmark Legislation to Raise the Wages of Working Families (Sept. 13, 2017), <https://khanna.house.gov/media/press-releases/release-sen-sherrod-brown-and-rep-ro-khanna-introduce-landmark-legislation> (last visited Sept. 10, 2019) [hereinafter RO KHANNA] (detailing a plan to expand the EITC to benefit working families and childless workers) [<https://perma.cc/RRC2-E2BW>].

476. See *id.* (detailing particulars of the plan, such as the maximum benefit, age of eligibility, and minimum qualifying income).

477. See *id.* (detailing particulars of the plan, such as the maximum qualifying income).

478. See Press Release, Kamala D. Harris, Senator, Harris Proposes Bold Relief for Families Amid Rising Costs of Living (Oct. 18, 2018), <https://www.harris.senate.gov/news/press-releases/harris-proposes-bold-relief-for-families-amid-rising-costs-of-living> (last visited Sept. 10, 2019) [hereinafter HARRIS] (detailing proposed legislation which would provide up to \$6,000 per year for eligible families in tax credits) [<https://perma.cc/VX4A-YMWK>]; Dylan Matthews, *Kamala Harris' New Basic Income-Style Bill is so Frustratingly Close to Being Great*, VOX (Oct. 19, 2018, 12 PM), <https://www.vox.com/future-perfect/2018/10/19/17995374/kamala-harris-lift-act-basic-income-cash-eitc> (last visited Sept. 10, 2019) (explaining the provisions of the proposed LIFT Act and



more generous than their proposal.<sup>479</sup> It has a faster phase-in (a single individual only needs to earn \$3000 to get the full benefit, a married individual, \$6000).<sup>480</sup> Also, as an add-on to the EITC, the maximum benefit would exceed Khanna and Brown’s for single individuals without children and for married individuals with or without children.<sup>481</sup> However, unmarried individuals with children would see a slightly smaller benefit from Harris’s proposal than Khanna and Brown’s proposal.<sup>482</sup> Furthermore, Harris’s proposal does not fully phase out until single individuals earn \$50,000 or married couples earn \$100,000.<sup>483</sup>

Gene Sperling recently proposed “EITC for all,” an expansion of the EITC aimed at childless workers, who currently receive a much smaller EITC than workers with dependent children.<sup>484</sup> Sperling emphasized providing “a 30 percent boost for the first \$10,000 of income.”<sup>485</sup> Sperling would also lower the eligibility age to twenty-one and allow receipt of up to \$1000 of benefits for those making up to \$50,000.<sup>486</sup> In many ways, this mirrors the childless adult policies of the Khanna and Brown proposal.<sup>487</sup>

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then criticizing it for excluding children and the poorest individuals) [<https://perma.cc/NC4M-6HL3>].

479. Compare HARRIS, *supra* note 478, with RO KHANNA, *supra* note 475 (showing how Harris’s plan is more universal and generous due to the faster phase-in period, slower phase-out period, and larger maximum benefit).

480. HARRIS, *supra* note 478.

481. Compare RO KHANNA, *supra* note 475 (showing a maximum benefit of \$3,000 for single, childless individuals), with HARRIS, *supra* note 478 (showing a maximum benefit of \$3,000 for single, childless individuals and a maximum benefit of \$6,000 for married couples).

482. Compare RO KHANNA, *supra* note 475 (showing a maximum benefit of \$6528), with HARRIS, *supra* note 478 (showing a maximum benefit of \$6,000).

483. Matthews, *supra* note 478.

484. See Gene Sperling, *A Tax Proposal That Could Lift Millions Out of Poverty*, THE ATLANTIC, <https://www.theatlantic.com/business/archive/2017/10/eitc-for-all/542898/> (last visited Sept. 22, 2019) (describing his plan to expand the EITC) [<https://perma.cc/CGY4-ZYZ4>].

485. *Id.*

486. See *id.* (explaining the part of the author’s plan that would lower the eligibility age and expand benefits).

487. Compare *id.* (proposing a plan that would provide childless adults with “a 30 percent boost for the first \$10,000 of income”), with RO KHANNA, *supra* note 475 (explaining that Khanna and Brown’s proposal would “increase[] the credit for childless workers almost sixfold”).

Facebook founder Chris Hughes proposed a guaranteed income of \$500 per month for every adult who lives in a household with an income of less than \$50,000.<sup>488</sup> Hughes’s plan is less universal than Harris’s plan in some ways (having a lower income limit) but more universal in other ways (providing a full benefit from the first dollar of earned income as well as benefits to those who provide child or elder care or are enrolled in school).<sup>489</sup> It has the benefit of being more generous, as it is distributed to each adult.<sup>490</sup> It is also distributed monthly rather than annually, providing more regular and reliable support.<sup>491</sup> Hughes would use data on the tax return, such as the claiming of dependents, to make the credit more widely available.<sup>492</sup> However, those with no income at all, are highly unlikely to file tax returns.<sup>493</sup> Thus, this would need to be advertised to them.<sup>494</sup> Hughes’s more expansive definition is salutary and mirrors the participation income of and

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488. See CHRIS HUGHES, *FAIR SHOT: RETHINKING INEQUALITY AND HOW WE EARN* 166 (2018) (outlining Hughes’s proposed requirements in order to “receive a guaranteed income of \$500 a month”).

489. Compare *id.* (proposing a guaranteed income for “[e]very American who lives in a household that makes less than \$50,000 and who works in the formal economy, does caregiving at home, or who is enrolled in school”), with HARRIS, *supra* note 478 (proposing an income limit of \$100,000 per household or \$50,000 for a single filer), and Matthews, *supra* note 478 (explaining that Harris’s proposal requires that “recipients must be working and earning at least \$3000 (or \$6000 for couples) a year to get the full benefit”).

490. Compare HUGHES, *supra* note 488, at 166 (proposing a guaranteed income for each individual), with HARRIS, *supra* note 478 (proposing a guaranteed income for each family).

491. Compare HUGHES, *supra* note 488, at 168 (“The guaranteed income would be provided monthly instead of annually to create a heartbeat of stability in the background, a reliable source of income no matter what may happen in a particular month.”), with HARRIS, *supra* note 478 (“The tax cut can be accessed each month or at the end of the year.”).

492. See HUGHES, *supra* note 488, at 169 (advocating for the “expan[sion] of the definition of ‘work’ to ensure that those who are left out of formal employment but who still work—people who are meaningfully involved in childcare and eldercare or enrolled in a university—also receive the benefit”).

493. See Rebecca K. McDowell, *Can Someone Who Hasn’t Worked Get a Tax Refund?*, ZACKS, <https://finance.zacks.com/can-someone-hasnt-worked-tax-refund-6729.html> (last updated Nov. 18, 2018) (last visited Sept. 15, 2019) (“If you have no income, you’re unlikely to get a refund, as you probably don’t file taxes and refundable tax credits generally are only available to people who earn income.”) [<https://perma.cc/QU7S-LFU5>].

494. See *id.* (stating that most people with no income do not file tax returns).

the definition of work used by proponents of Medicaid work requirements.<sup>495</sup>

Academics have come up with proposals that offer broader and more generous coverage than those of politicians.<sup>496</sup> In particular, Anthony Atkinson proposed a participation income in his recent work *Inequality: What Can Be Done?*<sup>497</sup> Atkinson argues that the citizenship criteria used by many UBI proponents is “both too extensive and too restrictive to serve as the criterion for paying a basic income.”<sup>498</sup> According to Atkinson, a citizenship criterion “is too extensive in that it includes all citizens irrespective of their location.”<sup>499</sup> On the other hand, Atkinson argues that citizenship is too restrictive of a category because it excludes non-citizen permanent residents who work and pay taxes.<sup>500</sup> Atkinson defines participation broadly and in terms similar to those who advocate for work requirements for Medicaid recipients.<sup>501</sup>

“Participation” would be defined broadly as making a social contribution, which for those of working age could be fulfilled by full- or part-time waged employment or self-employment, by education, training, or an active job search, by home care for infant children or frail elderly people, or by regular voluntary work in a recognised association. There would be provisions for those unable to participate on the grounds of illness or disability. The notion of contribution would be broadened, taking account of the range of activities in which a person is engaged.<sup>502</sup>

Benjamin M. Leff, in an article that is being published in this same issue, proposes eliminating the phase-out, paying the UBI an

495. See Rachidi, *supra* note 183 (“Research suggests that work-inducing public policies can have health benefits for adults . . .”).

496. See, e.g., ATKINSON, *supra* note 458, at 221 (advocating for a guaranteed income structure that would cover most individuals).

497. See ATKINSON, *supra* note 458, at 219 (advocating for a benefit conditioned on “making a social contribution”).

498. ATKINSON, *supra* note 458, at 220.

499. ATKINSON, *supra* note 458, at 220.

500. Cf. ATKINSON, *supra* note 458, at 220 (discussing the European Union requirements that would have made it difficult for the United Kingdom (UK) to neglect to provide the benefit to noncitizens working in the UK).

501. See Chang & Golshan, *supra* note 177 (explaining that proponents of a Medicaid work requirement “aren’t saying everyone should work to get government help.”).

502. ATKINSON, *supra* note 458, at 219.

individual basis, delivering it in cash monthly, and making it bigger.<sup>503</sup> Leff argues that the elimination of the phase-out will eliminate any disincentive effect that it may have.<sup>504</sup> Leff further argues that the individual delivery will eliminate some of the issues related to family status that create compliance challenges for taxpayers and administrative challenges for the IRS.<sup>505</sup> Leff argues that monthly delivery will become practical with the end of the phase-out and the awarding of individual benefits.<sup>506</sup>

None of these proposals would provide as complete of a safety net as a UBI. However, the accelerated phase-in and the expansion of the definition of work make a participation income more similar to a UBI.<sup>507</sup> Anne Alstott has criticized the EITC as not providing a vehicle to leave poverty because it is most available to the continuously employed, which is not the condition of most low-wage workers.<sup>508</sup> The EITC does not adequately protect the many low-wage workers that have “frequent spells of job disruption due to unemployment, disability, and family needs.”<sup>509</sup> Participation income proposals would need to account for Alstott’s criticisms.<sup>510</sup> Most likely, this would need to be done by improving other existing programs, such as unemployment insurance and Social Security

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503. See Benjamin M. Leff, *EITC for All: A Universal Basic Income Compromise Proposal*, 26 WASH. & LEE J. CIV. RTS. & SOC. JUST. 85, 124–45 (2019) (providing four proposals which would create “an expanded EITC that functions more like a UBI”).

504. See *id.* at 125 (“[R]emoving the phase-out eradicates the poverty trap by eliminating the work disincentives created by phasing out the benefit.”).

505. See *id.* at 128–32 (describing how individual payouts would ameliorate some issues in the current EITC structure).

506. See *id.* at 132 (asserting that, with individual payouts and the elimination of the phase-out system, “the barriers to a monthly direct payment are reduced such that the proposal is no longer outlandish”).

507. See *id.* at 144 (“[A]n expanded reformed EITC could provide a universal safety net that could capture many of the benefits of a UBI without the need to invent a bold new system seemingly out of nothing.”).

508. See Anne L. Alstott, *Why the EITC Doesn't Make Work Pay*, 73 LAW & CONTEMP. PROBS. 285, 287–89 (2010) (highlighting the importance of “assuring a decent standard of living to those willing to work, even if (like many low-income workers) they do not succeed in working full-time, year round”).

509. *Id.* at 288.

510. See *id.* at 288 (“It is a shortcoming of wage subsidies in general . . . that gaps in the social safety net leave low-income workers vulnerable to involuntary work disruption.”).

Disability Insurance.<sup>511</sup> However, even on its own, by expanding the definition of work, a participation income makes income support more accessible to the unemployed and disabled because some of the options for obtaining a participation income, such as attending a job training program, attending school, or volunteering for a non-profit, may be more accessible to these individuals.<sup>512</sup> Thus, the best schemes would need to be along the lines of Anthony Atkinson's proposal.<sup>513</sup> Some of this data could be incorporated in a tax return by requiring individuals to receive certificates of participation for non-profit service.<sup>514</sup> Given easy access to electronic records, non-profits and job training centers could easily enter data and provide it to the IRS in a method similar to the way that employers verify employment through Form I-9 and provide data to the IRS through Form W-2.<sup>515</sup> Although some employers may have an incentive to help volunteers through inflating hours of participation, real-time electronic recordkeeping could be required and implemented and penalties for falsification imposed on non-profit agencies and volunteers or trainees.<sup>516</sup>

These proposals all have more universal characteristics to them. All of them would be improvements to the current EITC.<sup>517</sup> The proposals from Representative Khanna and Senator Brown and from Senator Harris show that a major expansion is definitely a matter of public discussion.<sup>518</sup> If the expansion could be moved in the direction of Hughes's and Atkinson's proposals, that would further expand the reach of the EITC to provide an even greater

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511. *See id.* at 308–12 (explaining that many individuals are not covered by unemployment insurance and Social Security Disability Insurance).

512. *See* ATKINSON, *supra* note 458, at 219 (advocating for a broad definition of “participation” and “provisions for those unable to participate on the grounds of illness or disability”).

513. *See* ATKINSON, *supra* note 458, at 219 (addressing the need for a participation income system that “tak[es] account of the range of activities in which a person is engaged”).

514. *Cf.* ATKINSON, *supra* note 458, at 220–21 (offering solutions to potential administrative difficulties in operating a participation income in the UK).

515. U.S.C.I.S., Form I-9 (2019); I.R.S., Form W-2 (2019).

516. *See* ATKINSON, *supra* note 458, at 219 (recommending that “regular voluntary work” fulfill the participation requirement).

517. *See* Leff, *supra* note 503, at 144 (explaining the benefits of restructuring the EITC to make it more universal).

518. *See generally* RO KHANNA, *supra* note 475; HARRIS, *supra* note 478.

safety net.<sup>519</sup> Furthermore, such proposals would provide benefits to a much greater range of life choices and, other than the categories of the truly voluntarily unemployed (Rawls’s “Malibu surfers”) and some particularly unfortunate individuals, would provide a safety net to a great number of people.<sup>520</sup>

Stuart White, recognizing the competing communitarian and libertarian conceptions of the rights and responsibilities of citizens, and with an eye toward a practical implication of his philosophy of “justice as fair reciprocity,” argues for a two-tier system of social welfare with one tier having a participation income and a second tier having a time-limited basic income.<sup>521</sup> A time-limited basic income would be a basic income that a citizen could request access to for a limited amount of time during their lifetime.<sup>522</sup> A time-limited basic income still has the problems of a full basic income or partial basic income in that it does not account for the full scope of the meaning of work.<sup>523</sup> It is not reciprocal, even if it is time-limited. It may be viewed as a free vacation paid for by the state.<sup>524</sup> This would undoubtedly be the source of resentment by some, even if such a vacation was available to all.<sup>525</sup> Some people could never take such a vacation, given their life circumstances and responsibilities to others.<sup>526</sup>

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519. See *supra* notes 488–502 and accompanying text (explaining Hughes’ and Atkinson’s proposals).

520. See ATKINSON, *supra* note 458, at 221 (citing John Rawls, *The Priority of Right and Ideas of the Good*, 17 PHIL. & PUB. AFF. 251, 257 n.7 (1988)) (explaining that “relatively few people would be excluded” from participation income).

521. See WHITE, *supra* note 322, at 174–75, 202–04 (“Rather than setting welfare contractualism and UBI in opposition to each other, a policy-maker guided by the distributive aims of fair reciprocity, and by legitimate paternalistic considerations, should think about how constructively to combine them.”).

522. See WHITE, *supra* note 322, at 173–74 (“Citizens will not be able to claim [the income] indefinitely, but will only be able to claim it for a maximum number of years over the course of their whole working lives (e.g. up to a maximum of three years in total).”).

523. But see WHITE, *supra* note 322, at 174 (arguing that a time-limited income addresses reciprocity concerns).

524. See WHITE, *supra* note 322, at 174–75 (“[C]itizens would be free to claim this grant whenever they want.”).

525. See MUIRHEAD, *supra* note 37, at 17 (“The perception that a guaranteed income would be exploitative . . .”).

526. See WHITE, *supra* note 322, at 174 (“[B]ecause this basic income is time-limited it does not allow citizens who wish to maintain a decent standard of living to withdraw from productive participation in their community over the long

In his participation income, White includes care for the elderly and disabled as productive activities.<sup>527</sup> However, for child care, in order to address gender issues, White argues for the subsidizing of child care and for parental-leave accounts that are non-transferable between parents so as to encourage both men and women to provide care for infants and toddlers.<sup>528</sup> One problem with White's conception is that care for the elderly and disabled also tends to fall predominantly to women.<sup>529</sup> That aside, White's conception lines up well with the participation incomes already discussed.<sup>530</sup> It is a little narrower; I would argue too narrow. However, most importantly, it is rooted in White's philosophy of "justice as fair reciprocity" and thus it provides further philosophical backing for the idea that if one views reciprocity as an important component of the value of work, it is difficult to support cash grants to those that do not make a productive contribution.<sup>531</sup> However, the definition of a productive contribution must be broad enough to account for the many contributions that further the welfare of society (employment, caregiving, volunteering, etc.) even though only paid employment directly monetarily benefits the employee and involves a transfer of cash in the relationship.<sup>532</sup> A broadening of this definition beyond what White provides would allow for a single tier of support and would not necessitate the existence of a time-limited basic

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term.”).

527. See WHITE, *supra* note 322, at 203 (“Acknowledging the contributive status of care work . . . may help alleviate problems of work-family life balance that presently afflict many households . . .”).

528. See WHITE, *supra* note 322, at 203 (“If the funds are non-transferable to partners or to other uses, and are simply forgone if not used, then men, as well as women, will have an incentive to take parental leave.”).

529. See Nidhi Sharma, Subho Chakrabarti & Sandeep Grover, *Gender Differences in Caregiving Among Family—Caregivers of People with Mental Illnesses*, WORLD J. PSYCHIATRY, Mar. 22, 2016 (stating that “the majority of family-caregiving is . . . carried out by women”).

530. See *supra* notes 488–502 and accompanying text (explaining Hughes's and Atkinson's proposals).

531. See WHITE, *supra* note 322, at 174 (“[F]rom the standpoint of fair reciprocity, time-limited basic income looks like an especially good bet.”).

532. See WHITE, *supra* note 322, at 203 (discussing the importance of allowing caregiving to satisfy a participation requirement); ATKINSON, *supra* note 458, at 219 (advocating for a broad definition of “participation”).

income.<sup>533</sup> Although this time-limited basic income is intended by White to mollify libertarians, I argue that any basic income would be politically impossible given the four aspects of the value of work.<sup>534</sup>

### 3. Some Combination of #1 and #2

Arguably the outcome that would have the most lasting impact would be a slow movement toward a basic income or a broadly defined participation income through changing people's sense of the value of work.<sup>535</sup> A similar change, which I argue is not too difficult to reach, that has to occur for a broadly defined participation income, is to change the definition of work.<sup>536</sup> There should be a shift from a narrow definition of paid employment to a broader definition that includes caregiving, education, job training, and volunteering.<sup>537</sup> For example, in terms of reciprocity, one could conceive broadly of each individual's contribution to society, such as by contributions as a family member, friend, and neighbor.<sup>538</sup> However, it will be very hard to redefine calling or vocation, self-sufficiency, and incentives.<sup>539</sup> The last one is explicitly economic and really does relate to paid employment, or at least encouraging some form of contribution.<sup>540</sup> Simply being a

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533. See generally ATKINSON, *supra* note 458; HUGHES, *supra* note 488.

534. See *infra* Part IV (discussing the categories of the value of work).

535. See Leff, *supra* note 503, at 144 (acknowledging the perceived radicalism of a UBI system); cf. MUIRHEAD, *supra* note 37, at 19–21 (discussing the implications of a UBI in respect to the value of work).

536. See HUGHES, *supra* note 488, at 169 (“We need to expand the definition of ‘work’ to ensure that those who are left out of formal employment but who still work . . . also receive the benefit.”).

537. See HUGHES, *supra* note 488, at 169 (“[I]f you made money last year, claimed a dependent on your tax return under 6 or over 70, or are enrolled in an accredited college, you would be eligible to benefit from guaranteed income.”); see also ATKINSON, *supra* note 458, at 219 (suggesting that participation “could be fulfilled by full- or part-time waged employment or self-employment, by education, training, or an active job search, by home care for infant children or frail elderly people, or by regular voluntary work in a recognised association”).

538. ATKINSON, *supra* note 458, at 219 (“‘Participation’ would be defined broadly as making a social contribution . . .”).

539. See *supra* notes 366–435 and accompanying text (discussing vocation, self-sufficiency, and incentives).

540. See MUIRHEAD, *supra* note 37, at 18 (“[J]ust liberal democracies require



good person is hard to quantify from the standpoint of economics.<sup>541</sup> A similar problem is encountered with self-sufficiency.<sup>542</sup> Calling or vocation may be redefined, although it is easier to redefine it for caregiving or volunteering, then it is simply to redefine it as being a good family member, friend, and neighbor.<sup>543</sup> Thus, there is some hope for some level of redefinition that would support a basic income.<sup>544</sup> However, most of this redefinition more easily supports a broadly defined participation income.<sup>545</sup>

#### 4. A Composite Proposal

This subsection sketches the outlines of a proposal for a participation income as a compromise that can satisfy all or most aspects of the value of work and still capture many of the benefits claimed by proponents of a UBI. This subsection first lays out the proposal; second, shows how it addresses the different aspects of the value of work; and third, shows how it captures many of the benefits of a universal basic income.

The proposal is that there should be a significant expansion of the maximum size of the EITC, from the current maximum credit of \$6318 to a credit of up to \$15,000, for taxpayers with three children.<sup>546</sup> It would also raise the maximum qualifying income up to \$75,000 for a single person or \$100,000 for a married couple or

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a measure of abundance, which in turn requires work.”).

541. See MUIRHEAD, *supra* note 37, at 18–19 (discussing the notion that work is “a kind of social obligation”).

542. See Pipes, *supra* note 391 (“An extensive body of research shows that having a job boosts mental and physical well-being.”).

543. See MUIRHEAD, *supra* note 37, at 28–29 (“Devoting the bulk of our waking hours to a particular activity over many years has an effect on who we are . . . .”); see also ATKINSON, *supra* note 458, at 219 (suggesting that participation should encompass traditional employment, education, caregiving, and volunteer work).

544. See ATKINSON, *supra* note 458, at 219 (advocating for the recognition of societal contribution outside traditional employment); HUGHES, *supra* note 488 (acknowledging that individuals who do not hold traditional jobs may “still work”).

545. See ATKINSON, *supra* note 458, at 219–20 (proposing a guaranteed basic income that is contingent upon “making a social contribution”).

546. All credits under this proposal would be fully refundable. *But see* RO KHANNA, *supra* note 475 and accompanying text.

a head of household.<sup>547</sup> Similar to Kamala Harris's plan, the phase-in would be more rapid, reaching the maximum amount fairly quickly, maybe at \$15,000 (a dollar for dollar credit) for taxpayers with three children.<sup>548</sup> The phase-out would not begin until \$30,000 for a single person and \$50,000 for a married couple or a head of household.<sup>549</sup> In this sense, it is a more generous version, with a more gradual phase-out, of the plans proposed by Harris and by Brown and Khanna, described above.<sup>550</sup>

More significantly, the proposal would expand eligibility for the benefit to those that did not engage in remunerative employment. Any individual that claimed a dependent, whether a child or adult (e.g., an elderly individual or a disabled individual) would be entitled to an additional credit beyond the current child credit.<sup>551</sup>

Furthermore, any adult who is enrolled in a full-time program of higher education or vocational training would receive a substantial credit; this would be validated in the same way that the patchwork of current credits is validated.<sup>552</sup> In fact, this is one area where this credit could easily replace the patchwork of current credits. A lesser credit would be available for those engaged in part-time education, especially since this group may include individuals who have children or other dependents. Lastly, any person who could provide a certification from a nonprofit organization of a substantial number of volunteer hours (with a

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547. *But see* RO KHANNA, *supra* note 475 and accompanying text.

548. *See* HARRIS, *supra* note 478 and accompanying text.

549. *Cf. supra* note 481 and accompanying text (describing Kamala Harris's plan as fully phasing out at \$50,000 for single individuals and \$100,000 for married individuals).

550. *See supra* notes 469–481 and accompanying text.

551. *See supra* note 488 and accompanying text.

552. *See* 26 U.S.C. § 25A (2018) (American Opportunity and Lifetime Learning Credits). To avoid payments to individuals who were in college full-time and dependent on wealthy parents, there would be a limitation for receipt of benefits for unmarried full-time students under thirty years of age whose parents had an income over \$100,000 and who were not emancipated. These students would only receive the limited additional amount that their parents would receive if they claimed the student as a dependent. The parents would not receive this amount even if they did not claim them as a dependent.

gradual phase-in) would attach the certification to the form and would receive a credit as well.<sup>553</sup>

All of these credits would be additive, but there would be a maximum amount available. There would be an immediate phase-in, such that those who had little or no income but satisfied other requirements could receive all of the non-income-based credits that they were entitled to. There would be a phase-out, starting at \$50,000, where the maximum amount of credit available would gradually decrease. The cap could not be exceeded even with the addition of non-income-based benefits.

This proposal relies upon an expanded definition of work. Work is not simply remunerative labor but includes many productive contributions to society, whether they are paid or not. However, as noted above, this is not so far-fetched, either from the historical definitions of work in common usage or from notions in policy debate, such as the requirements that Medicaid recipients work, which definitions of work include school and training, search for employment, and volunteer work.<sup>554</sup>

This proposal would address many of the concerns related to the different aspects of the value of work.<sup>555</sup> It would satisfy reciprocity because the credits would only be provided to those that made some productive contribution, even if that contribution was not otherwise rewarded by compensation. It would satisfy the idea of a calling or vocation because care work and voluntary work can be a calling and because study and training are preparatory to a calling. It would satisfy the third aspect, that of self-sufficiency, at least partly because it would most significantly reward remunerative work. However, there is also a sense that many of the other forms of work that it would reward can contribute at least partly to self-sufficiency as they prepare one to be self-sufficient, such as the skills acquired through training or study or the discipline achieved through sustained volunteer work. Finally, the credit incentivizes various behaviors that benefit society, including remunerative employment, caring for others, volunteer work, and

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553. See *supra* notes 508–510 and accompanying text.

554. See *supra* Part IV.A (defining work); see also notes 177–183 and accompanying text.

555. See *supra* Part IV.C (discussing the categories of the value of work).

study and training to improve skills that will allow one to make an even greater contribution in the future.

This proposal would have benefits similar to the benefits claimed by proponents of a universal basic income.<sup>556</sup> It reduces poverty by providing a larger benefit than the current EITC with a faster phase-in. It explicitly rewards voluntary and care work, thus covering more people and strengthening the sense of community. Admittedly, it would not permit as wide a range of choices about one's life direction as a UBI. It would not reward or support people pursuing creative pursuits that were unconnected to earning income and did not involve formal study, training, or volunteer work. It would not promote libertarian independence and ideas of real freedom. However, by rewarding study and training, care work, and volunteer work, it would validate a much broader range of options than the EITC. Furthermore, because it is connected to notions of the value of work, it is, I would argue, more politically attainable and more consistent with broadly shared American values.

### *VI. Conclusion*

This Article has focused on the most significant political barrier to the adoption of a universal basic income, the lack of a work requirement.<sup>557</sup> This Article has argued that the multifaceted aspects of the value of work would prevent the adoption of a universal basic income in the United States in the short- or medium-term. However, it is possible to achieve many of the benefits of a universal basic income, especially the amelioration of poverty and the protection against financial misfortune, by significantly expanding the EITC in many different directions, age, marital status, childlessness, income (with a faster phase-in and a slower phase-out), and most significantly (although with the most difficulty) the definition of what constitutes work or a contribution

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556. See *supra* Part II.D (considering the benefits of a UBI).

557. See Leff, *supra* note 503, at 93 (“For many, the most radical definitional component of a UBI is that, unlike most other social welfare transfer programs, it does not distinguish between recipients based on their ability or willingness to work.”) (citations omitted).

to society to include caregiving for children and the elderly and education and job training.<sup>558</sup>

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558. See Leff, *supra* note 503, at 144 (advocating for the expansion of the EITC to make it more “UBI-like”) (citations omitted); HUGHES, *supra* note 488, at 169 (arguing that childcare, eldercare, and attending college should constitute work).