

1 Why a Right to a Job at a Living Wage?

When it shall be said in any country in the world, my poor are happy; neither ignorance nor distress is to be found among them; my jails are empty of prisoners, my streets of beggars; the aged are not in want, the taxes are not oppressive; . . . when these things can be said, then may that country boast of its constitution and its government.

—Thomas Paine, *The Rights of Man*

THERE ARE approximately thirty million people in the United States who are working full-time but earning poverty-level wages. In addition, there are approximately fifteen million people who are either out of work or working part-time but would like to be working full-time. Historically, the first response to poverty has been to advise the poor to work. But if the poor are already working or cannot find a job, what's the next response? Usually, silence. And because of that silence, more and more people join the ranks of the poor.

There is, however, a solution. By amending our Constitution to guarantee every person the right to a job at a living wage, we can end poverty in America. A surprising amount of support exists both for a guaranteed right to a job and a guaranteed right to be paid a living wage. The need for such a national commitment is real and growing, and implementing a constitutional solution to poverty in the United States is possible.

In my twenty-plus years as a lawyer and law professor, I have come to know hundreds of poor people by representing them in legal matters and working with them on issues such as public housing, public education, health care, living wages, and welfare reform. As a teacher, I have discussed poverty and economic justice issues with thousands of others. Since I live in the South, many of the people with whom I discussed these issues are deeply conservative. As a result of these experiences, I have learned something about how people, both the poor and those better off, think and feel about poverty.

Fundamentally, the vast majority of us believe in the American dream—that people who work should be able to support a family and build for the future. We also tend to think that work—the historic path that many Americans have followed to a more affluent life—is the way out of poverty.

While I applaud the sincerity of these beliefs, as a longtime student of poverty issues I know that they simply are not true. However, if we understand poverty as it truly exists in our country, we can end it for every person able to work. To do so, we will have to scrap a number of myths about poverty that stand in the way of positive change.

First, ask yourself two questions:

- Do you think that every person who wants to work should have the opportunity to do so?
- Do you think that every person who works full-time should earn enough to be self-supporting?

For years now I have posed these questions to audiences in places as varied as housing developments, church cafeterias, union halls, and university lecture auditoriums. No matter where I ask them, the responses have always been same:

- Everyone who wants to work should have the opportunity to do so.
- Everyone who works full-time should also be able to support his or her family.

These are things we all believe. But there is a big problem.

Poverty is much more widespread than most people understand. Poverty is not confined to inner-city welfare recipients—it extends to many who work but cannot afford health insurance, to those who work but still have to rely on churches or other charities for food.

Tens of millions are working but still cannot afford health insurance and housing and child care and food and transportation. Many can afford some of those needs, but most cannot afford all of them.

We need a new definition of poverty that reflects reality. People are poor if they cannot take care of themselves and their children without help. That is what real poverty is, and we need to recognize it.

Once we recognize what poverty is and how widespread it is, we need to do something about it. I think most people are willing to do something about poverty, but since they have been told so often that

there is nothing that can be done, they turn away. Yet there is something we can do about ending poverty as we know it.

Sharol is a thirty-one-year-old single parent of two who works full-time as a cashier in Allentown, Pennsylvania. Despite working as many as fifty hours a week for wages considerably higher than minimum wage, she could not make ends meet. She had to go to a church social agency to ask for food and clothing for herself and her children. Sharol is not officially poor, yet she cannot provide for herself and her family. Economic hardship and poverty for Sharol is not the result of laziness. Sharol and millions like her are working and still too poor to make ends meet. As Diana Pearce, a faculty member at the University of Washington's School of Social Work, points out: "This is not about people doing a bad job of budgeting or making bad choices. They simply don't have enough to make it."¹

Sharol is not alone. One in five single mothers who is working still remains below the official poverty line, even after counting all the government benefits she could possibly receive. Without government assistance, one in three remains in poverty. The U.S. Census Bureau reports that at least 75 percent of the poor people in this country, even under the current artificially low federal poverty guidelines, live in families where at least one person worked at some point in the previous year.²

A close look at what it *really* costs to raise a family shows a more disturbing picture. Millions of hard-working people with full-time jobs—who are not *officially* poor—are not earning enough to make ends meet.

This is not news to the millions of people who are working and earning less than living wages. Want proof? Visit the web site of the Family Economic Self-Sufficiency Project at <www.sixstrategies.org>. The site includes calculations by several great organizations showing the actual costs for workers to raise a family in many of the states in this nation. Look for your city and state or a neighboring state. See how much it actually costs a working single mom or dad with two kids, or a family with two kids where both parents are working, to make ends meet each month.

In city after city, state after state, you will find out what working families already know. The official government poverty guidelines do not begin to measure how much it actually costs to live. The reality is that poverty and work go hand in hand.

Americans sense that what these statistics tell us is true. Low-wage work does not suffice.

Even using the inadequate official government poverty guidelines, it takes approximately double the minimum wage for a family of four to meet its basic needs. Two examples demonstrate. First, if you look at the Food Stamp Program, you will see that Congress has decided that tens of millions of working people still need help feeding their families. In 2002, the year I wrote this book, a family of four did not phase out of eligibility for assistance under the Food Stamp Program until the worker earned \$23,530 a year; that's more than \$11 per hour for a single parent.³ Second, the official 2002 poverty guidelines, for all states except Alaska and Hawaii, still count as poor a family of four that earns \$18,100 a year, which is what a full-time worker making \$8.70 an hour would earn.⁴ As you will see, tens of millions of people work and earn less than \$8.70 per hour.

It turns out that work has not been such a good escape route from poverty and dependency. Some workers do escape poverty, but many do not. Although the national economy generates many jobs, their wages and benefits, in good times and in bad, often are not sufficient to lift a family out of poverty.

Americans also know that there are fewer and fewer good jobs than there used to be. While many people have prospered, many are struggling just to make ends meet. Friends and relatives have experienced downsizing of their jobs or termination because the companies they worked for were sold. Everyone has heard horror stories from friends or family about trying to find another job, let alone another good job. This is no secret. Our nation needs more jobs at better pay, but we are unsure how to proceed.

Somewhere along the line we seem to have lowered our expectations for our nation. We have been led to believe that there is no way we can have a guarantee of good jobs paying good wages for our citizens. The "free market," we have been taught, will not allow it.

It is not enough, though, to say that a change would interfere with the free market. First of all, there is no such thing as a free market. Businesses are in Congress and every state legislative session getting laws passed to protect and benefit themselves. It is only when the economic needs of workers or safety issues or the environment come up that opponents of those ideas start talking about the free market. Many who

claim that government has no business interfering with the market really mean that they are satisfied with current government arrangements and opportunities that favor business interests. Those who benefit from the current arrangements do not want change. So, the real question is not whether a constitutional amendment guaranteeing work at a living wage would interfere with the market, but whether the action is in the common interest and whether it would work.

We can, if we choose to do so, shape market forces in such a way as to make good jobs at good pay a priority. If we do so, the market will adapt and incorporate the needs of the common good. It has been done before. It can be done again.

Gainful employment for all who want to work is in the best interest of the entire country. Our common interest is served by people supporting themselves rather than being supported by others. Allowing people to work allows these very same workers to contribute to their own well-being, to their family's well-being, to the community's well-being.

Likewise, it is in our common interest that people who work full-time should not have to remain poor. Workers who are compensated enough to support themselves and their families do not need to rely on financial support from government, churches, family members, or others just to survive. The opportunity to work should be the right of every person.

As a nation, we can respond to the needs of tens of millions of our fellow citizens for jobs that pay living wages.

Work and poverty should not be partners. That partnership is not in our common good.

But wait a minute, some say. If we just allow the economy to work on its own, the economy will solve these problems on its own.

Is it realistic to expect the current market economy to look after the common good totally on its own? No. The market has no inherent interest in the common good. The market is interested in making money. That is its job. Period.

Expecting only the unguided market to steadily create good jobs at good wages is like expecting your car to watch your kids. It cannot happen. The common good is irrelevant to the market. Looking after the common good is the job of civil society and democratic government.

The guiding principle of most free-marketeers is that self-interest of individuals is good and that allowing that self-interest the maximum

amount of freedom to operate will help the common good. Trust the invisible hand of the economy, they say, and all will get better.

Trust the market on its own? On its own, the market will give us recessions and depressions as well as good times. Recall that prior to current government regulation of the free market, our nation suffered the massive crisis of the Great Depression in the 1930s. The financial and unemployment nightmare of the Great Depression retreated only in the face of a massive public job creation program and World War II.

We need to think about what exactly is meant by those who use the term “free market” to oppose assistance for workers and legislation for the common good. We will discover that most people who advocate for a free market actually mean a business climate that is free of any regulation on commerce for the common good.

At the exact same time as these folks are telling people to trust in the free market, their representatives are furiously lobbying Congress and every single state legislature for rules and regulations to assist businesses and to structure the legal, economic, and work environment in such a way as to advantage them. Their advantages disadvantage others.

Blind trust in the market, or neutrality, or a hands-off attitude, is essentially acceptance of the status quo. This status quo involves poverty as we know it—tens of millions of people unemployed or employed at wages so low they are still unable to be self-sufficient. As Bishop Desmond Tutu said, “If you are neutral in situations of injustice, you have chosen the side of the oppressor. If an elephant has its foot on the tail of a mouse and you say that you are neutral, the mouse will not appreciate your neutrality.”⁵

This is not a book that appeals to people contented with the status quo. If you have thought about it and have concluded that the economic system is working fairly and justly for all, providing good jobs at good pay for everyone who is willing to work, this book is not for you.

If, however, you think that since human beings have created the current economic system, which works well for some and not so well for others, and human beings can change it to make it better, then I hope you will read on.

It is in our common interest to fix problems with our current system that unfairly penalize work. It is in fact the responsibility of civil society and democratic government to fix such problems.

This book calls for American citizens and our leadership to transform the current economic and legal rules, which benefit some of us, and to bend them just enough to increase the benefit to the common good.

The ways we have been dealing with poverty up to now are inadequate. Thus, I propose that we eliminate poverty by means of a constitutional amendment that guarantees everyone a right to work for a living wage.

Those who are benefiting the most from our current economic system will certainly cry out in protest. This amendment, they'll say, is unrealistic and violates the natural rules of economics. Some people can be expected to oppose guaranteeing a job for every person who wants to work, arguing that full employment is inflationary and thus bad for America. They would accept millions of people out of work as the price the nation must pay for keeping inflation low. As this book will show, that does not have to be the case. There will also be others who suggest that government has no business interfering with economic life. Yet, as every tax lawyer, business owner, labor official, and legislator already knows, there is no economic activity that is not already immersed in government regulation right now.

Certainly a constitutional amendment guaranteeing work at a living wage will not be a perfect solution. The economy and rules and regulations and social welfare laws are routinely manipulated by the rich and powerful and special interests, but that is not a reason to give up. Though there are economic "predators" who look for opportunities and seize them, that does not relieve the community of seeking structural improvements in our society.

Many thoughtful economists already acknowledge the possibility, and support the idea, of full employment and living wages. And there are many ideas already proposed detailing how we as a nation can make jobs for all and decent wages possible.

While I have been writing this book, the United States has experienced both a booming economy and an economic downturn. Unemployment dropped to new lows and then started back up. The stock market soared, then fell, then rose, then fell again. Unemployment and the stock market will continue to go up and down as the years go forward, but some things will not change.

Despite the unemployment figures or where the stock market is on any given day, millions of our fellow citizens are not able to support

themselves and their families even though they are hard at work. At week's end they are still left with insufficient funds to pay their family bills. Millions more are part-time workers but would like to be working full-time. And millions are not working at all, but they would like to be.

Our American political history supports the sort of change I propose. Three times during the twentieth century a guaranteed right to employment was seriously considered in the United States. Providing opportunities for work when the private sector has faltered has been done on all levels of government. Public job creation has an extensive history on the national, state, and local levels. Public incentives for private employment have also been enacted at all levels of government.

Public opinion polls have consistently shown support for government providing good jobs to those who need them. A 2001 poll showed that more than eight in ten Americans support creating temporary government work programs for the unemployed in needed areas such as school and road construction. This cuts across all party affiliations, with 82 percent of Republicans, 90 percent of Democrats, and 83 percent of Independents supporting such a measure. A 2002 poll found nearly nine out of ten voters (86 percent) believe the federal government has a responsibility to do away with poverty. The same poll showed 77 percent of voters favored increasing the minimum wage from \$5.15 to \$8 an hour. An even higher percentage, 79 percent, favor raising the minimum wage to keep up with inflation.⁶

There is also a hundred-year tradition of significant religious support for both the right to work and the right to earn a living wage. If the public supports the idea, our churches support the idea, and the idea is just and in the common good, there is reason to explore how it can be done.

Our nation has continued to search for ways to improve the constitutional rights of its citizens, particularly in regard to voting rights, freedom, and liberty. But the brightness of rights with regard to personal liberty and political participation dim for those who have no work or are working but still unable to support themselves and their families.

Therefore, it is time to recognize the need for creating the opportunity for all persons to support themselves and address that need with a constitutional amendment.

The amendment I propose is simple: Every person shall have the right to work and to receive a living wage for their work.

The amendment contains two principles: (1) The right to work, and (2) the right of people who work to receive a living wage for their work.

These principles must remain linked together. Without the other, each is considerably weakened. A right to a job without a right to decent pay is as weak as the right to decent pay but no right to a job. Placing this promise into our Constitution would direct us as a nation to create ways to live up to our shared dream—that every person who wants to work can do so and every person who works full-time will earn enough to be self-sufficient.

Amending the Constitution would be hard work, but it could and should be done. The Constitution itself contains the process for amendments. Amending the Constitution is meant to be a hard, time-consuming, and politically demanding task. Could such an amendment be enacted by the needed two-thirds majority in Congress and three-fourths of the state legislatures? Not today. But in the future? It can be done if we are serious about making the American dream come true.

If this amendment was enacted, how would it actually operate? Fortunately, we know some of the answers to some of the questions.

First, the process of implementing this amendment would operate in the same way as other constitutional obligations; that is to say, with considerable care, deference, and judgment. Because the initial steps are the responsibility of the legislative bodies, Congress would be expected to craft appropriate laws consistent with the Constitution. The executive branch would be called upon to carry out the laws. The judiciary would carry out its traditional role of evaluating actions in purpose and practice to ensure they are consistent with the Constitution.

Second, the process engaged in by the judiciary would remain the same as for other constitutional rights. Even though judicial interpretation and enforcement of a constitutional right to work for a living wage would itself be unprecedented, legal scholars point out that enforcing social rights requires the same degree of judicial action as enforcing civil rights.

Third, for Congress, the possible ways of enacting laws in support of this right are literally limitless. To support jobs creation and retention, Congress could introduce new tax incentives and wage subsidies for private employers and employees. Congress could modify existing labor laws in areas such as raising and indexing minimum wages. Wages themselves could be supplemented by tax credits for low-wage workers

and expanded for larger families. For those who are not employed in the private sector, a state or local public or WPA-type employment corps could, for example, help clean and teach and police our nation's communities.

The right to work must be a right of opportunity. "Every person shall have the right to work" simply means that there must be an opportunity for work for those who seek it. No one will be forced to work, and the voluntarily unemployed would not benefit from the amendment. This proposed amendment is not the sloganeering right to employment of those working against unions, but a real right to the opportunity to work. As a part of the U.S. Constitution, it would be a legally enforceable right for all citizens.

People who work would be entitled under this amendment to receive a living wage for their work. A living wage means compensation sufficient for workers to meet the needs and demands of everyday life, lived in a manner consistent with human dignity. What precise amount of money this is will vary over time and with national standards and expectations, but it is intended to cover the commonly accepted living expenses for workers and their dependents. Since it is a living wage, and because it is expected that many workers will be supporting families, the lives of those dependent on the worker must also be considered. What living wage certainly does not mean is the statutory minimum wage, which is far below the wages needed for most workers and their dependents to live in dignity. A living wage would also become a legally enforceable right.

The Constitution enshrines the highest goals of this nation, which has always valued working to earn enough to secure a dignified living. A constitutional amendment guaranteeing every person the right to work and to earn a living wage simply yet forcefully elevates accepted American principles to protected rights.

What does this mean in a practical sense? The key to ending poverty is linking the right to a job with the right to a living wage. As you will see, the details of how that will be done can be constructed, debated, changed, and reconstructed in many, many different ways. I am offering one vision of how those rights might be implemented. There are probably many other ways, some no doubt superior to the one I sketch out here. I offer this plan not to end the dialogue but to start it. But, no

matter what the details are, the key is keeping the link between the right to a job with the right to a living wage.

Amending the Constitution to guarantee every person the right to a job at a living wage is no small task. But when this amendment is passed, it will be up to Congress to enact laws to make the right to a job at a living wage a reality. While implementing change will not happen overnight, it should certainly not take more than four or five years to phase in the elements that are necessary.

The first step is for Congress to determine what level of income constitutes a living wage. I suggest that we scrap the current federal minimum wage and create a new federal minimum living wage. This minimum living wage has to be high enough for one working person to support herself and her family in dignity. Thus it must not be tied to the existing inadequate federal poverty guidelines, but to what it actually costs to be self-sufficient in the United States. The federal poverty guidelines should be raised by 100 percent to reflect what it really costs a working family to make ends meet. The federal minimum living wage has to be set to that newly revised poverty level, and it should change annually. In 2002 dollars, I suggest that the hourly wage should be at least \$8.50 if health insurance is provided and \$10.50 an hour if health insurance is not provided. Working people with dependents whose wages fall below the revised poverty thresholds should receive a wage supplement in each and every paycheck, to lift them out of poverty and to ensure that their work provides them and their families with enough to live on.

The second step is to create the system that guarantees every person who wants to work the opportunity to do so. The specifics of that are also up to Congress. What I propose is a mixed system that primarily relies on private employment but creates a permanent flexible safety net of public employment opportunities for people when there are insufficient private jobs available. Private employment can be increased, enhanced, and assisted by tax deductions and credits. Public employment can be created by federal block grants to states or counties that will be free, with federal oversight, to make their own choices of how to provide living-wage jobs for every person who wants one.

If Congress fails to act, or acts in a manner inconsistent with the constitutional right to a job at a living wage, then it will be up to the courts to act. The courts routinely fulfill their traditional role of

evaluating constitutional issues, and they will have to do so in this area as well.

What about other practical issues such as cost? Honestly, it will cost billions. But our current broken system is already costing us billions. Later in the book I will share some of the ideas already circulating about how to create enough jobs for everyone as well as ideas about raising wages and some of the estimated costs.

While this new right undoubtedly has financial implications, our nation is already paying a high price for our current system, which tolerates unemployment and poverty-level wages.

Who pays for the living costs of low-wage workers now? If low-wage workers need food and rental assistance and medical treatment, the reality is that the living costs for low-wage workers are already being supplemented by all levels of government as well as family members, friends, and churches.

The same holds true for the unemployed. Who is supporting the unemployed now? In a very real sense, we are: the same families and friends and churches and all levels of government.

But a constitutional amendment could begin to effect positive change. Everyone could then have a chance to work at a job that paid a living wage. I believe the widespread effects of a constitutional amendment would bring new hopefulness and encouragement to our society.

America has always valued and even demanded work. But valuing work and demanding work are not enough. Currently, the only right to employment that exists is the right to look for an employer and, once found, to engage in enormously unequal bargaining with that employer over the availability of benefits and terms of employment. But unless a real opportunity to work exists, commitments to work and opportunity ring hollow. If we truly value work and demand that people work, we must give people the opportunity to do so, or else we are not serious.

Is this kind of change really possible? History shows us that truly significant social progress is possible.

Take Social Security, for example. My students have a hard time believing that when their grandparents were born there was no Social Security for seniors. Pensions for older people are now an accepted part of our way of life. Yet it was not always so.

In 1795, Thomas Paine published a pamphlet, *Agrarian Justice*, that called for the creation of an old-age pension system funded by a tax on inherited wealth. In 1889, social insurance for older people was adopted in Germany at the urging of Chancellor Otto von Bismarck. In 1909, the U.S. Congress introduced the first pension proposal for people over age sixty-five. In 1912, Theodore Roosevelt, while running for president on the Progressive Party platform, campaigned for old-age social insurance. In the early 1930s, Huey Long proposed a pension for every person over age sixty as part of his program of “Share the Wealth.” The Social Security Act was signed into law by President Franklin D. Roosevelt on August 14, 1935.⁷ Thus, over time, pensions for seniors grew from a radical idea into a realistic proposal and became law.

The same will happen with the right to a job at a living wage. Is it five years off, twenty-five years off, or more? As you read this book you will see that the idea is much further along the path toward a realistic political proposal than many believe.

If the U.S. House of Representatives can repeatedly pass a proposed constitutional amendment to ban flag-burning, isn’t an amendment ensuring the right to a job at a living wage possible? Is the trouble of a constitutional amendment worth it? Are we willing to go through an uncertain process of legislative, executive, and judicial implementation to get millions of people out of poverty? I think millions of us will answer yes.

The time for this idea has come. The right to a job at a living wage has remained a popular concept among the general public for decades. We can—and should—call up the spirit of the New Deal, which combined economic self-interest of the nation with the moral demands of full citizenship, to advocate for the right to a job at a living wage.

Local living-wage campaigns are among the most exciting social justice activities taking place across our country. These campaigns, which combine efforts by community organizations, organized labor, and religious and social justice workers, are an important step toward helping us forge national coalitions so that the issues of living wages and the right to a job can become inextricably linked. Local living-wage campaigns deserve the support of everyone concerned about work and poverty. I have invested years of work in this effort, both as a lawyer and as a writer.

A right to a living wage and a right to a job together are much more powerful than either standing alone. While each alone provides valuable and important props for families, together they create a solid foundation for treating work with the respect it deserves and making work pay the wages that can support families.

This book holds up to the light of reality two principles deeply embedded in American thought and shows that we are not living up to our principles in our current approaches. While I propose a process for our nation to strengthen our commitment to end poverty as we know it and to allow every working person to support themselves and their families, I do not attempt to offer an economic treatise or the definitive analysis of specific programs that the country might use to fulfill the promise of the constitutional amendment. Others can do that. Although I have been talking and writing about the idea of this constitutional amendment for years, others have been discussing these ideas as well. In 1791, Thomas Paine proposed another idea that people who needed work be given a job and room and board with no questions asked. In 1893, the respected labor economist John Commons specifically advocated for a government-backed right to employment for every person. More recently, Adolph Reed Jr., Philip Harvey, David Gil, the Labor Party, the National Jobs for All Coalition, Gertrude Schaffner Goldberg, Sheila Collins, and Rep. Jesse L. Jackson Jr. have all been advocating the idea of a right to a job at a decent wage as well.

This idea was most clearly articulated more than sixty years ago, in words that still ring true today:

Our nation so richly endowed with natural resources and with a capable and industrial population, should be able to devise ways and means of insuring to all our able-bodied working men and women a fair day's pay for a fair day's work.⁸

Those were the words of Franklin Delano Roosevelt in 1937. Despite the progress made since then, we as a nation still have a long way to go.

I think most Americans would like to make this happen.

I now share with you the evidence that we can make this happen.