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## Symposium Keynote Address

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Rebecca Dixon

**JAMIE WILSON:** At this time, I will introduce your keynote speaker: Rebecca Dixon. She is the executive director of the National Employment Law Project (NELP), which is a respected leader in federal workers' rights advocacy and the go-to resource for state and local worker movements providing unmatched policy, legal, and technical assistance. As executive director, Rebecca leads NELP agency work to build and contribute to a strong workers' rights movement that dismantles structural racism, eliminates economic inequality, and builds worker power.

Rebecca previously served as the New York Executive Fellow in the Office of the Governor where she worked on labor and civil rights policy. Rebecca earned a B.A. and M.A. in English from Duke University and a J.D. from Duke University School of Law. We're so pleased to have you here today, Rebecca, and I will hand it over to you.

**REBECCA DIXON:** Thank you so much Jamie. Good afternoon, everyone. I just wanted to go ahead and let you all know that this presentation will be a little heavy on statistics and data but do not try and write that all down. We will make sure that you can get that information.

Let's talk about the pandemic and workers' rights. The pandemic has laid bare the challenges that many workers were already facing before COVID and has exacerbated those challenges and inequalities. In any way that a worker could be marginalized whether that's by race, ethnicity, gender, sexual orientation, ability, immigration status, it has been magnified in this pandemic.

Creating an equitable labor market where workers and their families are thriving regardless of race, gender, or other characteristics is really not the

natural outcome of market forces. Rather, equity is created by the institutions, laws, and practices that govern our economy and labor market. An essential American belief is that individual effort and personal responsibility are all that is needed to succeed, and this means the systemic nature of these labor market challenges has been put aside, which has allowed them to go unaddressed. Arguably, this mismatch between our beliefs and reality is detrimental to economic growth and stability.

To begin, I want to ground us in history and talk about how, without targeted disruption, systems and structures tend to reproduce themselves. And I want to make the case for how we need to be willing to reimagine our institutions and policies with equitable goals around them and not just around access but also around outcomes. The first slide you are seeing is where Black folks were located during 1865. This was the period right around the time when slavery ended. This slide is where Black folks live now, and you can see that they're still deeply concentrated in the South. And then you may wonder why I am showing you all of this.

This slide really ties together the other two slides and shows you that the way things are, they tend to stay that way. If you look at this slide, this is based on the research by Raj Chetty and his colleagues about upward mobility and children and they looked at a lot of data and used U.S. tax record data to be able to assess the possibility of children born in the bottom quintile and their ability to move up the economic ladder—basically what we call the American dream. The darker places are where it is harder to move up the economic ladder. You can still see largely concentrated areas match the first two maps we saw. So, these things continue. They don't just magically change.

We're going to talk about structural racism and opportunity in the United States. Occupational segregation—and I define that as the preservation of glass and concrete ceilings and shunting of women and people of color into low paying occupations—accounts for a large portion of the gender and racial wage gap, which are persistent gaps. The fact that a disproportionate

share of those underpaid and in unsafe jobs are Black and brown is not inevitable, but it is a function of our accumulated state, local, and federal policy choices. Public policies of yesterday still shape the racial landscape of today.

The labor market is highly segregated by race and gender with double penalties for women of color. In fact, taking into account educational attainment, 87 percent—so almost nine out of ten U.S. occupations—can be classified as racially segregated. We are more likely to recognize something like the slide I have in front of you showing housing disparity, where labor market inequality remains largely submerged. This slide you're looking at is a map of government redlining from the 1930s. And redlining was a series of policy choices that had devastating consequences for people of color and the racial wealth gap that we see today. In the 1930s, the government sponsored homeowners' loans and drew lines on maps like the one you're seeing. The map you're seeing is the redlining map for Atlanta. And they color coded these maps and graded them. They grade from hazardous, to declining, to desirable, to best. Of course, red was the worst grade and it denoted hazardous. It was a place where it was hazardous to underwrite mortgages. These maps have had meaningful and lasting effects on neighborhood trajectories, codifying racial disparities and leading to subsequent disinvestment in these neighborhoods. The Federal Reserve study of these maps found that they reduced home ownership rates, house values, and rents, and increased racial segregation in later decades.

This next slide shows tax expenditures and how those are spent. A tax expenditure is like a tax credit or a tax deduction. This benefit is submerged in the tax code. It may be refundable or just reduce tax liability. You can see the top fifth of income earners are the top beneficiaries of the tax code and these tax expenditures—how that connects to housing is the home mortgage interest deduction is one of the biggest tax codes expenditures that we have. We see that the government created this policy that made it harder for Black folks to own homes, in addition to that we see a tax benefit

that's going to folks that own homes that is not going to renters. So, you can see how this is additive and carries over to today.

This slide shows the racial wealth gap. Usually, the way the racial wealth gap is presented when in a slide or chart is to show the differences between the average wealth of white families and the average wealth of Black families. This slide, though, actually shows that white households have \$830,000 more in wealth than the average Black household. You can see how the thread comes through from policy choices we made long ago and we're still feeling impact of it, and you can see from this that the gap is actually widening. It's not closing.

What about the labor market then and now? I want to start with a story about this labor market. So, my grandmother was born in 1918 in Mississippi, and she lived to be almost 90 years old. She was a feisty woman. She was slight and small, but she told you what she thought. And she told me about a story of when she was a girl that they were farming on halves, or sharecropping, and when it was time to settle up everything after the harvest was in, she saw that they were being cheated. She was really great at math, and called out the error. Because she pointed that out and her family didn't back down, they were actually evicted from that land, and they had to go find another place to live and engage in another sharecropping relationship. And the connection to today is that workers of color are still more likely to face retaliation. In this pandemic where we've seen workers for Amazon and other companies actually stand up and protest and walk out because of health and safety conditions, those workers also face retaliation. In the same way that we now see 9 out of 10 jobs are racially segregated, we're also seeing back then those were the jobs that Black folks were allowed to have.

So, labor market stratification enabled the exclusion of workers in the South and the West in the New Deal programs. What does this mean? It meant nearly half of all Black men, Mexican-American men, Native American men and women, plus significant numbers of Asian American

workers were excluded from social security, unemployment insurance, the right to organize - bedrock fundamental rights in the labor market. This exclusion fell most heavily on Black women; around 90 percent of them were left out and their occupations were concentrated in agriculture and domestic work which were occupations that were excluded.

An especially relevant example right now is unemployment insurance (UI). I'm sure you've all seen and heard where millions of folks have had to access UI because their jobs were temporarily or permanently closed because of the pandemic. UI is one of the New Deal Programs and it is really the first line of defense against wage loss, homelessness, and poverty. It's really all there is. In the last recession, what workers relied on most of all was UI and SNAP, also known as food stamps. These are the two programs unemployed workers used the most. We've seen stimulus checks being issued but the UI check is something workers get every week so it's a much more reliable form of benefit and these benefits keep unemployed workers connected to the labor market as it supports their job search. In addition to what it does to help workers, it also stimulates local economies and reduces downward pressure on wages. Even though workers of color are facing the worst impact of the pandemic, like Latinx and Black workers who have the highest unemployment rates, these workers are also the ones who have the lowest receipt of UI traditionally. In the case of Black workers, geography plays an important part in this disparity because a majority of them live in southern states that have inadequate benefits and restricted eligibility.

Looking at unemployment benefits by state, you can see over on the one end where the columns are lowest you have Mississippi, where the maximum weekly benefit is \$235 per week. And then on the other end you have Massachusetts, where their maximum weekly benefit is a little bit over \$1,200. And we wouldn't expect Mississippi and Massachusetts to pay the same benefit amount because these amounts should actually be based on the average wage in the state, but they should cover a higher percentage or

replace a higher percentage of that average weekly wage. What's happened is over time states have not adjusted the amounts upward, so these benefits have been losing value over time.

One thing I would leave you with around UI is that the system is not broken. It's actually working the way it was designed to work. It was designed, like so many of our programs, to serve the ideal worker of its time and in the 1930s that ideal was an able-bodied white male working full time. That is pretty much still the ideal worker of our time, someone working a full-time job with steady hours and middle class wages who can probably work from home during this pandemic. Left out workers include those with unsteady, unpredictable work hours, those with gig jobs or temporary jobs. What we would like is for UI to provide a uniform baseline of benefits that apply to all workers regardless of race, gender, or geography. And this would mean more federal standards around this program and less discretion for the states.

Who is most burdened by occupational segregation? The burdens are intensified by the pandemic and recession, and they are hitting women of color the hardest. Women make up 64% of the 40 lowest paying jobs and women are more likely to hold a low paying job than men. Black women are vulnerable to disruptions in income, and we've also seen in this pandemic that they're dropping out of the labor force at higher rates than any other population. They've been exposed to massive job loss, and we saw unemployment for Black women peak last May at 16.5%.

Well, we're in a pandemic, so what about health and safety? Women and workers of color have been crowded into industries with poor working conditions and little job security.. Black workers and Latinx workers have historically worked in jobs that have the highest injury rates and suffer the highest fatality rates. This was well before COVID, indeed harkening back to the first half of the 20th century, when dirty and dangerous jobs were actually known as "Negro work." What's more, these conditions continue to present day with COVID-related sickness and death in the workforce,

particularly in food and meat processing, supermarkets, warehouses, and nursing homes. This has fallen most heavily on Black, Latinx, and immigrant workers who are deemed as essential but are being treated as disposable.

Labor market inequities affect more than earnings. They affect job access and advancement opportunities. A recent meta-analysis of hiring discrimination field experiments found that hiring discrimination against Black workers has not decreased in the past twenty-five years. Twenty-five years! Using matched pair testing, the researchers found, on average, white job applicants receive 36% more call backs. These results were durable when accounting for education, gender, occupational grouping, study method or local labor market conditions. And we're all hearing and seeing a lot about gig work and we're hearing about how flexible that is. Well, this is another place where Black and Latinx workers are overrepresented, and these jobs are underpaid and insecure. Currently, gig workers are often wrongly classified as independent contractors rather than employees, even though they aren't in business for themselves—so if you're in business for yourself, you're an independent contractor. If you're working under the direction of someone else, you're not. But the distinction means if you're an independent contractor, you are excluded from nearly all workplace protections and benefits. You don't have access to unemployment insurance, workers' compensation, employer sponsored health insurance, paid sick leave, all these things we've seen that have been vital in this pandemic. They are overrepresented in temp and staffing jobs. Temp and staffing jobs tend to increase as the economy improves so when we're coming out of a downturn, employers want to play it safe by hiring for temporary jobs to see how things go. So, these are jobs that are going to be growing in the recovery.

If we're talking about the racial wealth gap and we're saying we have the to close that, if we are going to say we're going to take 40% of your wages off the top just because of your status as a temporary employee, that's

problematic and you might say well, why do they have this status? And it's because of their position in the labor market, they don't have the power to get a better job so they're taking what is available to them. The opportunity to participate in our economy and succeed based on ability and effort is at the foundation of our nation. In the coming decades, eliminating racial disparities in the labor market is going to be critical to producing faster growth and maintain our global competitiveness. As the population becomes more diverse, the need to disrupt these inequities is only going to be more urgent. Diversity is rapidly increasing among the younger population, as this chart shows that for the first time recently in 2019, more than half of the nation's population under the age of 16 identified as a racial or ethnic minority and among these groups, Latinx workers and Black workers comprise 40% of the population compared to 1980 when 80% of the population was white. You can see from this slide that there's a definite trend of where this is going, and it is problematic if more and more of our population is in this situation where their opportunities are constrained.

In turning to solutions, what can we do to recover differently and better? Policies and programmatic choices are out there. To create a just and inclusive economy means we have to design policies that consider opportunities and outcomes, so we are not just removing a barrier for someone, but we are actually structuring the opportunity where they can take advantage of it. For example, if we said today that college will be free, there are already lots of workers and families and people who will be able to take immediate advantage of that. But that policy is more structured for the ideal worker that we talked about, rather than folks who have challenges. If someone is balancing work and family, if someone has to work a job in order to go to college, this is not going to be as easy for them to take advantage of and we can structure it differently so we're making it possible.

We want to create quality jobs with decent wages and policies that support people who are out of work. Furthermore, it's not enough to create

the policy, but it has to be implemented and enforced by our institutions. Retaliation is possible because our laws are not being enforced. We have to actually make sure the laws on the books are effective. We talked about job discrimination against Black workers. We have to actually tackle discrimination and other barriers for there to be equal opportunities and outcomes.

The American dream is calibrated to individuals, but our policy and practice must reach below the surface of the individual and actually reach the systems that maintain these inequities and is even allowing them to worsen. To be sure, the opportunity for individuals to have training and education are valued, but here we have to also think about what the policies are that provide the structure even while providing education and training. You can make a policy and just by how you apply it based on where people are located in the labor market, you can either include them or exclude them. You don't ever have to say race. So, opportunity and outcome gaps have been widening for those at the margins who are often excluded from policies outright, or there are policies made that don't meet their unique needs so they're de facto excluded.

I want to leave you with some helpful information as you're in law school, but you may enter a policy making space. I want you to understand what we can consider if we want to center equity in our policy design. There are a few things to consider that are listed here on this slide. The first is that representation matters. When we have folks who are running our country who are 80 year old white men, there is a certain kind of policy that that's going to get you. Policy making should include people who represent what our country looks like, and it should include folks who are directly impacted or have a history of being directly impacted so that they can bring their passion, wisdom, and insights to the solutions.

Second, we really should think about historical and present day inequities when we make policy. What does the data tell us about who's advantaged and disadvantaged by a policy or recommendation? We should be looking

at that. Likewise, we should consider the intended and unintended impact of policy making. Which workers will benefit from these recommendations? Who might be burdened? What are the unintended consequences of putting this into practice?

And lastly, power and participation. By engaging workers in our communities, we can actually craft more effective policies while we honor another American value—that of self-determination. Thank you.

**JAMIE WILSON:** Thank you, Rebecca. That was a very excellent presentation, and we are again so thankful to have you here with us today. We do have some questions and, again, if you have questions, you can put them in the chat now. First, have there been any connections with instances of age discrimination in COVID-19? I know age discrimination isn't always talked about as much. So, is that something that you have come across in your work?

**REBECCA DIXON:** So, age discrimination?

**JAMIE WILSON:** Yes.

**REBECCA DIXON:** It's definitely something I've come across in my work. Last year, I was participating in a live radio event for AARP. There was a lot of concern from older workers particularly around COVID and vulnerability to COVID and being concerned about whether they have to disclose their health condition to be able to turn down a job. And it's most likely accelerated because of the health issues and the vulnerability for older workers. I would say that, like a lot of our laws, the law for protecting older workers is lacking and so it's very hard to prove your case in terms of discrimination against older workers.

**JAMIE WILSON:** Thank you. Some very good points. Another person is wondering if you can maybe speak a little bit as to some of the collateral consequences of these individuals who are experiencing this unemployment during these economic downturns during COVID. Specifically, we're thinking about people who may be on parole or who may have work visas that will require them to stay working.

**REBECCA DIXON:** I think that globally we know that these folks, like parolees, they're in a more vulnerable position in the labor market and they have to take what they can get so they will be more likely to take jobs that are dangerous. The way we structure our labor market by making people vulnerable brings down labor standards for everybody. I haven't come across anything in particular on parole or on visas so far, but I think the overarching pattern applies to them as well. They're probably scrambling to find a job and are probably more likely to end up with something that's not very good in terms of quality or safety.

**JAMIE WILSON:** Thank you for answering that question. Someone else brought up making college free and how that doesn't necessarily benefit people of color. Do you have any policy change recommendations or anything you can identify that you think would more beneficially impact those people of color?

**REBECCA DIXON:** I think it's implied in what I've been saying but why don't I just say it directly. We're talking about centering people of color and focusing on Black folks because they're the worst off. If we design a policy that actually reaches folks who are the worst off, we're putting them in the center and designing the policy so that everybody can benefit. Anything we do to make college free or more accessible is going to benefit everybody. It's not exclusionary. I want to put that out there.

In the case of workforce training, one of the things we've seen in our work is that when you create a program that is offering people funds or a scholarship to get training, you need to think about well, what are their needs? We did some specific work in the state of Mississippi and what we found is that if we're trying to create a health care career ladder—so certified nursing assistant, home care staff—if we want them to move up the ladder to higher repair jobs, what do we need to put in a program like that? The first thing is making it free or mostly free. Well, that's great but then if I have childcare needs, I can't take advantage of this program even if it's free. If I have transportation issues because Mississippi is a very rural state—so wherever the training could be is a long distance from where you live—then even if it's free, I can't take advantage of it. So, it's like thinking comprehensively about this. Not just, “we gave you this.” But also, following through with what people need. And so, in that case, you would need to create wrap-around services in the program. You'd need to have transportation vouchers, childcare support, and things of that nature to make it so you can actually reach those folks.

**JAMIE WILSON:** Thank you. That was a very good explanation. Can you describe how NERP is expanding benefits to undocumented folks?

**REBECCA DIXON:** It's an issue that really, really upsets us, as you can imagine, and I think in the most immediate term, what we've been doing is work[ing] with the state and local groups that are pulling together alternate sources of funding for undocumented folks. There have been good examples in California where they're pooled funds and distributed them to people who don't qualify for UI. I think in the long term we must have a goal. What's the time horizon? Five years. Ten years. And then we need to build the power to make that happen. Right now, we don't have the power to make that happen. We don't have the right mix of folks in Congress. We don't have the support. So, part of this work is also not just what can we fix

right now and what can we handle that is urgent, but how do we make long-term plans to map goals that we can't get to right now and how do we build power in the community so that we can actually change this, and we have the votes in Congress to change it.

**JAMIE WILSON:** Thank you. So, in Washington specifically, our state takes the position that it does not have the authority to enforce health and safety protections for domestic workers. Could you tell us your thoughts about this position and if NELP has heard any similar issues like that from other states?

**REBECCA DIXON:** At the outset of this presentation, we talked about domestic workers and agriculture workers being excluded from these foundational New Deal pieces. There have been places where they were included, but for domestic workers in particular, we had laws that excluded these folks by bringing racism and sexism together. And so, they were thinking these jobs are actually not jobs, they're helping people inside their homes, and we shouldn't put all these rules and structures around folks getting help in their home. This sexism devalued that labor and has led to this framework where a government agency would say we don't have the authority to do anything because it's in someone's private home.

I haven't seen any other states say that. I think what has been pretty shocking to folks, to laypeople, is how few rights you have around health and safety. So, as it currently stands, the previous Administration's OSHA was kind of missing in action. They did not issue an enforceable standard for health and safety that a worker could rely on. And you don't have a private right of action as a worker. You have whatever the administrative framework is and it's OSHA for most folks and it's your state if your state has a better one. If you file a complaint with OSHA and they investigate, but then you get fired for filing the complaint, your course of action is then to file another complaint with OSHA. OSHA was not investigating the

complaints either. So, it's shocking how little protection any of us have around health and safety, but in particular, I think, around domestic workers, it's a vestige of what we set out in the 1930s and how we haven't modernized it to meet today's needs.

**JAMIE WILSON:** Thank you for that and thank you to those who have asked questions as well. So, I will wrap up here with a final question. What specifically do you recommend for students, it could be law students, but it doesn't have to be, who want to get involved? Volunteer positions can be really competitive sometimes. So, what type of recommendations would you have for people who really want to get involved in this area of law?

**REBECCA DIXON:** I think if you really want to get involved in this area of law, one of the things you can do is to e-mail me and ask to have coffee to pick my brain and see where I can make a connection for you. Make as many of those connections as you can because the personal connections still do matter. I don't know that I would say it's fair, but that's just how it is. I would say to definitely cast your net wide in terms of opportunities because they are so competitive. Get involved with things in line with your passion, like volunteering around a campaign that's helping with worker rights so that you can learn. That way, when you go to this internship or job, you have a perspective that you can bring that's informed by the folks who are fighting for their own rights. I think that unemployment insurance is an area where there hasn't traditionally been a lot of interest from students and so maybe there's more of an opportunity there for that reason. But it is one where there need to be a lot of changes.

And I would just say when I was in law school and I was told follow your passion and the money will work out, I was like "yeah, yeah, yeah." But it's true. It really is true. My first job out of law school I went back to Mississippi, which is the state I'm from, and I did post-Katrina recovery policy work. After three years, I got recruited by NELP to come lead work

around unemployment insurance. That was eleven years ago and now I'm here and responsible for running the place. So, you have to figure out how you're going to pay your loans. That's a real concern, however more and more organizations are offering loan repayment assistance programs, which we have at NELP, that make it more possible to take jobs that don't pay quite as much as the private sector. So, I would say, yes, absolutely follow your passion. Make connections with folks. People really love to tell you what they think. They really like to talk. So, I would encourage you to ask someone for a quick coffee to get their advice and learn how they got where they are. The worst thing they can say is that they don't have time. So be willing to put yourself out there.

**JAMIE WILSON:** Thank you so much for that. That was such an excellent keynote address. That will be the conclusion of our keynote address. Rebecca, thank you so much for being with us.

**REBECCA DIXON:** Thanks for the opportunity and good luck with your futures.

**JAMIE WILSON:** Thank you.

