

FOREWORD

Equality Law Amid Sabotage

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“We have about ended de jure segregation . . . because of the Civil Rights [Act of 1964].”

—Martin Luther King Jr. (July 1964)¹

“[After the passage of the Civil Rights Act of 1964], white people were very badly treated It also hurt a lot of people—people that deserve to . . . get a job were unable to get a job. So, it was . . . a reverse discrimination.”

—President Donald Trump (Jan. 2026)²

INTRODUCTION

In the United States, federal equality law—born of robust social and labor movements which demand a more just political economy—has failed to dismantle racialized economic inequality.³ Equality laws—the civil rights, employment,

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1. Democracy Now, *Part 2: Newly Discovered 1964 MLK Speech on Civil Rights, Segregation & Apartheid South Africa*, at 07:13–07:24 (YouTube, Jan. 17, 2017), https://www.youtube.com/watch?v=HFeh_qLrubY [<https://perma.cc/B2NG-VKW4>].

2. Erica L. Green, *Trump Says Civil Rights Led to White People Being “Very Badly Treated”*, N.Y. TIMES (Jan. 11, 2026), <https://www.nytimes.com/2026/01/11/us/politics/trump-interview-white-people-discrimination.html>.

3. NEIL BHUTTA ET AL., FED. RSRV., DISPARITIES IN WEALTH BY RACE AND ETHNICITY IN THE 2019 SURVEY OF CONSUMER FINANCES (2020), <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finance-20200928.html> [<https://perma.cc/GNU5-K9TX>] (documenting substantial racial wealth gaps, with median white household wealth nearly eight times that of Black households); U.S. BUREAU OF LAB. STAT., LABOR FORCE CHARACTERISTICS BY RACE AND ETHNICITY, 2023, <https://www.bls.gov/opub/reports/race-and->

and labor regimes we have inherited in the twenty-first century—nominally offer formal guarantees of equality at work, in education, and in access to housing and goods.⁴ Yet they remain layered onto an economic order fundamentally structured by racial hierarchy.⁵ This legal failure is not new but traces to the abandonment of Reconstruction efforts to remake the political economy through land and resource redistribution to former slaves.⁶ Amidst the collapse of these post-abolition efforts, systems of racialized labor exploitation were not dismantled, but reconstituted. The early- and mid-twentieth-century labor and civil rights settlements, for all their transformative aspirations, did not fundamentally disrupt this trajectory. Instead, they narrowed earlier demands for economic redistribution and worker power first into laws with de facto racialized exclusion and then into a legal regime that offered a more limited commitment to formal equality of opportunity.⁷ By the mid-1960s, civil rights, employment, and labor laws prohibited overt exclusion from jobs, housing, and education, but they left intact the underlying organization of racialized subordination in economic and political life.⁸

ethnicity/2023/ [https://perma.cc/U7VF-B2F3] (showing persistent disparities in unemployment, wages, and occupational segregation); Raj Chetty et al., *Race and Economic Opportunity in the United States: An Intergenerational Perspective*, 135 Q.J. ECON. 711, 737–60 (2020) (finding significant racial disparities in income mobility and life outcomes).

4. Contemporary federal equality law is not a single codified category, but a cluster of statutory laws passed over more than a century that aim—at least formally—to prevent discrimination and promoting equal access. The laws that I focus on here are those most focused on structuring the economic terms and conditions of work and the distribution of power within labor markets. *See, e.g.*, Equal Pay Act of 1963, Pub. L. No. 88-38, 77 Stat. 56 (codified as amended at 29 U.S.C. § 206(d)); Age Discrimination in Employment Act of 1967, Pub. L. No. 90-202, 81 Stat. 602 (codified as amended at 29 U.S.C. §§ 621–634); Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (codified as amended at 42 U.S.C. §§ 12101–12213); National Labor Relations Act, Pub. L. No. 74-198, 49 Stat. 449 (1935) (codified as amended at 29 U.S.C. §§ 151–169); Fair Labor Standards Act of 1938, Pub. L. No. 75-718, 52 Stat. 1060 (codified as amended at 29 U.S.C. §§ 201–219); Occupational Safety and Health Act of 1970, Pub. L. No. 91-596, 84 Stat. 1590 (codified as amended at 29 U.S.C. §§ 651–678) (together structuring the terms and conditions of work and the distribution of power within labor markets).

5. CEDRIC J. ROBINSON, *BLACK MARXISM: THE MAKING OF THE BLACK RADICAL TRADITION* 2 (3rd ed. 2020).

6. *See, e.g.*, W. E. B. DU BOIS, *BLACK RECONSTRUCTION: AN ESSAY TOWARD A HISTORY OF THE PART WHICH BLACK FOLK PLAYED IN THE ATTEMPT TO RECONSTRUCT DEMOCRACY IN AMERICA 1860–1880*, 580–84, 700–03 (Harcourt, Brace and Co. 1935) (describing the failure to redistribute land and the subsequent reconstitution of racialized labor regimes); ERIC FONER, *RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION 1863–1877*, 524–34, (1st ed. 1988) (detailing the political and economic abandonment of Reconstruction reforms); STEVEN HAHN, *A NATION UNDER OUR FEET: BLACK POLITICAL STRUGGLES IN THE RURAL SOUTH FROM SLAVERY TO THE GREAT MIGRATION* 266, 413 (2003) (tracing the suppression of Black political and economic power in the post-Reconstruction South).

7. *See, e.g.*, IRA KATZNELSON, *WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA* 31–37 (2005); Barton J. Bernstein, *The New Deal: The Conservative Achievements of Liberal Reform*, in *TOWARDS A NEW PAST: DISSENTING ESSAYS IN AMERICAN HISTORY* 263, 264–65 (Barton J. Bernstein ed., 1968).

8. Critical race theorists and law and society scholars have made this argument empirically and theoretically for some time. *See, e.g.*, DERRICK A. BELL, *RACE, RACISM AND AMERICAN LAW* 20–22 (6th ed. 2008) (introducing the persistence of racial hierarchy and the constraints of interest convergence); Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment*, 101 HARV. L. REV. 1331, 1342 (1988) (critiquing the individualistic framework of civil rights law and its failure to address structural conditions); Laura Beth Nielsen, Robert L. Nelson, & Ryon Lancaster, *Individual Justice or Collective Legal Mobilization? Employment Discrimination Litigation in the Post-Civil Rights United States*, 7 J.

The trajectory of the Civil Rights Act of 1964, which President Trump impugns in the above quotation, is instructive here. The Act was the product of decades of organizing, protest, and political struggle.⁹ Among its most significant provisions, Title VII prohibited discrimination in hiring, firing, and promotion in employment, and established an administrative enforcement apparatus designed to give those rights practical effect.¹⁰ Enacted against the backdrop of Jim Crow exclusion—from jobs, unions, and public life—the Act signaled a national commitment to equal opportunity and helped inspire antidiscrimination regimes globally. Yet the promise of equality embedded in the Act has been consistently constrained—both doctrinally and structurally. Earlier labor and employment laws had already entrenched racial inequality by excluding key sectors in which Black workers were concentrated, including agricultural and domestic work.¹¹ The Civil Rights Act expanded formal access while largely leaving untouched the distribution of economic power that structures labor markets, siphoning Black and Brown workers into lower paying, more precarious sectors of work.¹²

As a result, the regime of federal equality law, now operating primarily at the level of individual rights rather than structural transformation, has struggled to address the dynamics of racialized economic inequality. Over the last fifty years, its existing limitations have been compounded by doctrinal narrowing and the institutional weakening of the administrative agencies tasked with enforcing these laws.¹³ Courts, also, have increasingly constrained the reach of civil rights

EMPIRICAL LEGAL STUD. 175, 178, 194–96 (2010) (examining how employment discrimination litigation prioritizes individualized claims over collective redress); ELLEN BERREY, ROBERT L. NELSON & LAURA BETH NIELSEN, *RIGHTS ON TRIAL: HOW WORKPLACE DISCRIMINATION LAW PERPETUATES INEQUALITY* 13–14 (2017) (arguing that employment discrimination law often reinscribes workplace hierarchies while challenging them).

9. See generally ALDON D. MORRIS, *THE ORIGINS OF THE CIVIL RIGHTS MOVEMENT: BLACK COMMUNITIES ORGANIZING FOR CHANGE* (1984) (discussing the decades-long struggle to pass the Civil Rights Act).

10. See Civil Rights of 1964, Pub. L. No. 88-352, Title VII, §§ 701–716, 78 Stat. 241, 253–66 (codified as amended at 42 U.S.C. §§ 2000e-17 (2000e-17 (2018))).

11. See, e.g., KATZNELSON, *supra* note 7, at 38–43 (describing how New Deal labor and social welfare statutes excluded agricultural and domestic workers, who were disproportionately Black workers); Marc Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 TEX. L. REV. 1335, 1336–37 (1987) (discussing the statutory exclusion of agricultural workers from wage and hour protections); Peggie R. Smith, *Regulating Paid Household Work: Class, Gender, Race, and Agendas of Reform*, 48 AM. U. L. REV. 851, 915–16 (1999) (analyzing the exclusion of domestic workers from labor protections and its racialized effects).

12. See, e.g., Samuel R. Bagenstos, *The Structural Turn and the Limits of Antidiscrimination Law*, 94 CALIF. L. REV. 1, 8–10 (2006) (arguing that doctrinal frameworks constrain the ability of civil rights law to address structural inequality); Ellora Derenoncourt & Claire Montialoux, *Minimum Wages and Racial Inequality*, 136 Q.J. ECON. 169, 172–75 (2021) (describing historical racial disparities in wages and occupational distribution).

13. As Robert Belton observes, the Supreme Court issued relatively few dissents in early Title VII cases, but its decision in *Washington v. Davis* marked a doctrinal shift by rejecting disparate impact under the Equal Protection Clause, laying groundwork for later constraints on disparate impact theory. Robert Belton, *Title VII at Forty: A Brief Look at the Birth, Death, and Resurrection of the Disparate Impact Theory of Discrimination*, 22 HOFSTRA LAB. & EMP. L.J. 431, 463–64 (2005); see also, Reva B. Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111, 1113, 1136 (1997) (arguing that equal protection doctrine has evolved in

and labor protections—tightening standards for liability, narrowing available remedies, and raising procedural barriers to enforcement.¹⁴ And in parallel, the administrative agencies charged with enforcing these laws have been politically constrained and subject to sustained pressure to narrow the scope of enforcement, with reform efforts often resisted at the legislative and executive levels.¹⁵ In 2025 and 2026, executive actions have intensified this trajectory. In the first and second years of President Donald Trump’s second term, the already-limited tools of equality law have been subjected to something more severe: not neglect, but systematic sabotage.¹⁶ The administration has both sharply curtailed enforcement of equality laws and hollowed out racial equality as a substantive federal ideal.

It was in the midst of this unfolding crisis that *The Georgetown Law Journal* convened its 2025 symposium, *The Labor Movement and Civil Rights in the Modern Era*. The Symposium functioned both as a site of diagnosis and as a forum for imagining legal and political responses to an administrative state and executive branch increasingly hostile to the project of equality. Drawing on these contributions, this Foreword situates the current moment within a longer history of executive resistance to equality law, while arguing that contemporary developments represent a qualitatively distinct form of attack. Where earlier efforts to constrain the effectiveness of equality law often operated through procedural limits, courts played a central role by narrowing remedies and restricting enforcement. In the current paradigm, the administration has expanded this effort by weakening both the enforcement and substance of labor and civil rights protections, while also dismantling the agencies that facilitate their realization. Courts, including

ways that limit its capacity to address structural inequality); Michael Selmi, *Why Are Employment Discrimination Cases So Hard to Win?*, 61 LA. L. REV. 555, 572–73 (2001) (documenting the narrowing of employment discrimination doctrine and its limited success for plaintiffs); LAUREN B. EDELMAN, *WORKING LAW: COURTS, CORPORATIONS, AND SYMBOLIC CIVIL RIGHTS* 11 (2016) (arguing that workplace compliance practices often translate legal mandates into symbolic forms that courts then ratify, limiting the law’s capacity to address structural inequality).

14. See Crenshaw, *supra* note 8, at 1342–43, 1343 n.52.

15. See, e.g., Spencer Rich, *Reagan Panel, Citing ‘New Racism,’ Urges Easing of EEOC Rules*, WASH. POST (Jan. 29, 1981), <https://www.washingtonpost.com/archive/politics/1981/01/30/reagan-panel-citing-new-racism-urges-easing-of-eeoc-rules/dfd79721-7bbc-4ef0-91a3-ee5425904abe/>; William Bradford Reynolds, Assistant Att’y Gen., U.S. DOJ, Remarks on Equal Employment Opportunity Policy (transcript on file with author) (Oct. 20, 1981); Civil Rights Act of 1990, S. 2104, 101st Cong. (1990), vetoed by President George H.W. Bush (Oct. 22, 1990) (rejecting legislation designed to strengthen disparate impact and evidentiary standards in employment discrimination cases); George H.W. Bush, Veto Message on the Civil Rights Act of 1990 (Oct. 22, 1990) (arguing that the bill would improperly incentivize “quotas” in employment); Civil Rights Act of 1991, Pub. L. No. 102-166, § 3, 105 Stat. 1071, 1071 (noting that recent Supreme Court decisions had “weakened the scope and effectiveness” of federal civil rights protections); Charlotte Garden, *The Deregulatory First Amendment*, 68 DUKE L.J. 479, 500–08 (2018) (arguing that First Amendment doctrine has increasingly been deployed to constrain the regulatory authority of labor and employment agencies).

16. David Noll has coined the phrase “administrative sabotage.” David Noll, *Administrative Sabotage*, 120 MICH. L. REV. 753, 758 (2021). He argues that administrative sabotage refers to the deliberate degradation of administrative capacity by executive actors that seeks to frustrate statutory mandates without formal repeal of the underlying law. *Id.* at 762. Per Noll’s analysis, executive actions that dramatically erode the capacity of administrative agencies or otherwise paralyze them are distinct from mere under-enforcement or ideological disagreement. *Id.* at 760–61, 775.

the Supreme Court, also continue to contribute to retrenchment by upholding, extending, and sometimes independently advancing these limitations. In making sense of this moment and projecting more propitious futures, Symposium participants and the authors in this Issue turned toward alternative sites of legal mobilization, including state-level governance and radical worker organizing.

I. DIAGNOSING THE MOMENT: STRUCTURAL LIMITS AND ADMINISTRATIVE SABOTAGE

In theory, U.S. labor and civil rights laws aim to mitigate political and economic inequalities produced over more than a century of racialized (and gendered) subordination. Labor and employment laws address structural imbalances between workers and employers and lay out basic floors for fairness at work, while civil rights laws focus on equality of opportunity and access. In practice, however, both regimes have long struggled to address the dynamics they were designed to confront. Rather than standing apart from inequality, these legal frameworks are embedded within the institutional and economic structures that generate it.¹⁷

Once again, employment discrimination law is a useful example. Though once used to dismantle racial discrimination at scale with large employers, Title VII has been, since the Reagan administration, more oriented toward individualized claims of disparate treatment, requiring plaintiffs to prove invidious intent, not merely discriminatory outcomes or effects.¹⁸ In contemporary workplaces—where bias is often diffuse and embedded in organizational practices—this requirement is notoriously difficult to satisfy. Disparate impact doctrine, which once offered a more promising avenue for addressing systemic inequality, has been narrowed through judicial decisions and doctrinal contraction.¹⁹ As a result, the law often translates structural patterns of exclusion into individualized disputes, obscuring the broader social and economic forces that produce inequality.

In the current moment, the structural limitations of federal equality laws intersect with a second dynamic: the systematic sabotage of the laws and institutions responsible for enforcing these already-limited protections. Over many decades, legal scholars have documented how conservative legal and political actors have sought to weaken work law not primarily through formal repeal, but by hollowing out enforcement capacity. This has taken the form of underfunding administrative

17. Siegel, *supra* note 13, at 1113–16, 1136–45 (describing how legal doctrine evolves to preserve underlying status hierarchies); Edelman, *supra* note 13, at 12–18 (showing how legal frameworks are shaped by and reinforce organizational practices that reproduce inequality).

18. See *supra* note 11. This tendency persists in recent doctrine. In *Bivens v. Zep, Inc.*, the Sixth Circuit applied a heightened standard to employer liability for third-party harassment, departing from the negligence standard used in other circuits and thereby further elevating intent as the touchstone of Title VII liability. 147 F.4th 635, 644–45 (6th Cir. 2025). The Supreme Court denied certiorari, leaving the resulting circuit split unresolved. *Bivens*, 2026 WL 1052175, No. 25-932 (2026).

19. See Nicole J. DeSario, *Reconceptualizing Meritocracy: The Decline of Disparate Impact Discrimination Law*, 38 HARV. C.R.-C.L. L. REV. 479, 493–501 (2003); Michael J. Songer, Note, *Decline of Title VII Disparate Impact: The Role of the 1991 Civil Rights Act and the Ideologies of Federal Judges*, 11 MICH. J. RACE & L. 247, 251–52, 265 (2005).

agencies and exercising procedural constraint.²⁰ These efforts can also operate through less visible mechanisms: heightened internal clearance requirements that delay or deter enforcement; the narrowing or rescission of interpretive guidance; and the reallocation of agency resources away from systemic investigations.²¹

As Symposium scholars and advocates made clear, the systemic sabotage of federal equality law has intensified during Trump's second term. Executive and administrative actions have deliberately undermined the Congressionally defined objectives of equality law. In more extreme and unprecedented cases, the executive has effectively shut down an agency. During most of 2025, for example, the National Labor Relations Board (NLRB) was effectively unable to carry out its core statutory functions, as a prolonged lack of quorum and a government shut-down halted case adjudication, union elections, and unfair labor practice enforcement.²² In early 2026, only two of the NLRB's twenty-six regional offices were fully staffed, with field operations operating at roughly a quarter below necessary capacity following the loss of more than one hundred employees.²³ At the same time, as Abbey Stemler and Jamie Derin Prenkert detail in this Issue, President Trump's Equal Employment Opportunity Commission (EEOC) has curtailed systemic investigations and abandoned disparate impact claims altogether. The EEOC has also stopped ongoing sexual orientation and gender identity litigation.²⁴ Administrative retrenchment has also operated at the level of knowledge itself. As Shirley Lin argues

20. See SEAN FARHANG, *THE LITIGATION STATE: PUBLIC REGULATION AND PRIVATE LAWSUITS IN THE U.S.* 25–59 (2010) (tracing the political development of enforcement regimes and efforts to shape their scope and operation); STEVEN M. TELES, *THE RISE OF THE CONSERVATIVE LEGAL MOVEMENT: THE BATTLE FOR CONTROL OF THE LAW* 58–89 (2008) (documenting the long-term institutional strategy of conservative legal actors to reshape public law); Noll, *supra* note 16, at 760–66, 775–80 (describing how executive actors undermine statutory programs through budgetary decisions, agency leadership choices, and strategic non-enforcement); Jody Freeman & Sharon Jacobs, *Structural Deregulation*, 135 HARV. L. REV. 585, 587–94 (2021); Gillian E. Metzger, *Foreword: 1930s Redux: The Administrative State Under Siege*, 131 HARV. L. REV. 1, 17–24 (2017); see also Cynthia L. Estlund, *The Ossification of American Labor Law*, 102 COLUM. L. REV. 1527, 1530–34 (2002) (arguing that labor law's weakening arose in part because of its insulation from democratic reform).

21. Noll, *supra* note 16, at 780–85.

22. Margaret Poydock & Celine McNicholas, *Under the Government Shutdown, NLRB Cases Are on Hold*, ECON. POL'Y INST. (Oct. 24, 2025, at 09:18 ET), <https://www.epi.org/blog/under-the-government-shutdown-nlr-b-cases-are-on-hold-and-the-future-of-the-agency-remains-uncertain/> (noting that the NLRB “ceased almost all case handling,” including union elections and unfair labor practice investigations); Adam L. Santucci, Micah T. Saul & Robert J. McAvoy, *The National Labor Relations Board 2025 Year-End Review*, MCNEES WALLACE & NURICK LLC (Jan. 27, 2026), <https://www.mcneeslaw.com/nlr-b-2025-year-end-review> [<https://perma.cc/46Z7-QXS4>] (explaining that the Board's lack of a quorum for much of 2025 “effectively froze” its ability to issue decisions); Robert C. Nagle & Mark G. Eskenazi, *The ‘Lost Year’ at the NLRB: How a Lack of Quorum Stalled Change in 2025*, FOX ROTHCHILD (Dec. 3, 2025), <https://www.foxrothschild.com/publications/the-lost-year-at-the-nlr-b-how-a-lack-of-quorum-stalled-change-in-2025> (describing the agency as “effectively crippled” by the absence of a quorum).

23. Robert Iafolla, *Labor Board Regions Struggle with Understaffing as Cases Pile Up*, BLOOMBERG L. (Feb. 10, 2026, at 05:31 ET), <https://news.bloomberglaw.com/daily-labor-report/labor-board-regions-struggle-with-understaffing-as-cases-pile-up>.

24. Abbey Stemler & Jamie Darin Prenkert, *The EEOC's Identity Crisis: Considering the Commission's Future in the Absence of Independence*, 114 GEO. L.J. 1445, 1460–65 (2026) (arguing that political interference and the erosion of institutional norms have curtailed the EEOC's capacity to pursue systemic enforcement).

in *Race Conscious Data*, included in this Issue, equality law depends on race-conscious data and doctrines such as disparate impact to render structural inequality visible and actionable. The erosion of these tools does not simply limit liability: it undermines the law's capacity to *perceive* inequality at all, producing what Lin describes as “race-silencing.”²⁵

The convergence of these dynamics—the long-recognized structural limitations of equality law and the more recent project of sabotage—produces a particularly acute form of legal failure. Even where the law nominally recognizes systemic harms, its doctrinal frameworks channel those harms into individualized disputes that obscure their structural origins. Those claims are then routed through administrative systems that are under-resourced, politically constrained, increasingly unwilling to pursue structural remedies, and, more recently, functionally inoperative or hostile to the very purposes of equality law.

The result is a regime of formal rights without institutional enforcement, and of legal recognition without structural transformation.

II. LEGAL MOBILIZATION AND ALTERNATIVE POLITICAL ECONOMY INTERVENTIONS

Faced with the dual constraints of administrative sabotage and the structural limits of equality law, Symposium participants, including the authors in this Issue, identified alternative sites of legal mobilization that extend beyond the traditional federal enforcement model. These include state-level legislative innovation, common law strategies, and grassroots organizing, methods of intervention that César Rosado-Marzán, Abbey Stemler & Jamie Darin Prenkert, Jared Trujillo, Shirley Lin, Julian Hill, and Shawn Ali each theorize and develop. In this sense, the Authors argue that the retreat of federal enforcement could force movement actors towards creative legal redress across varying jurisdictions, institutions, and forms of collective action.

Indeed, as former General Counsel of the NLRB Jennifer Abruzzo discussed at the Symposium, states such as California and New York have already begun to fill gaps left by federal retrenchment, developing new mechanisms for labor rights enforcement and worker protection.²⁶ Worker organizations, including the National Domestic Workers Alliance, have advanced state-level “bills of rights” that attempt to extend protections to historically excluded workers while reshaping normative understandings of labor, care, and dignity. And as César Rosado-Marzán argues in this Issue, these efforts do more than expand equality law's coverage. In this moment of sabotage, they do cultural work, helping us to reimagine a normative vision of work—one grounded in dignity, equality, and collective

25. Shirley Lin, *Race-Conscious Data: The New Political Taxonomy*, 114 GEO. L.J. 1301, 1307–11, 1319–23 (2026).

26. Assemb. B. 288, 2025–2026 Reg. Sess. (Cal. 2025); S. 8034A, 2025–2026 Leg. Reg. Sess. (N.Y. 2025) (codified at N.Y. Lab. Law § 715 (McKinney Supp. 2025)) (both laws authorize state intervention in private-sector labor disputes and worker organizing activity in circumstances where federal labor law, including enforcement by the National Labor Relations Board, is unavailable or ineffective; they have been challenged).

participation—that stands in tension with the positions and actions of the Trump administration.²⁷

For other contributors to the Symposium, these strategies—while necessary—remain insufficient. They operate within the same institutional framework that has long produced and sustained racialized and gendered inequality. This limitation is particularly visible at the margins of employment law. As Jared M. Trujillo demonstrates in *Moonlighting in the Margins*, even in “normal” times, at-will workers are often disciplined not for job performance, but for lawful off-duty conduct that violates entrenched norms of respectability and social propriety.²⁸ In such cases, employment law does not merely fail to protect workers: it facilitates the translation of social stigma into economic sanction.²⁹ What appears as private employer discretion is, in practice, a mechanism through which broader social hierarchies are reproduced in the labor market.

Work on worker cooperatives and related forms of democratic enterprise offers one pathway beyond this framework. In Elizabeth Anderson’s theoretical framework, conventional firms operate as “private governments,” in which workers are subject to extensive authority without meaningful mechanisms of participation or accountability.³⁰ Cooperative models seek to reorganize that structure. By redistributing decisionmaking power within the firm, they create the conditions under which workers can participate in shaping the terms of their labor. Hiring practices, wage structures, promotion pathways, and workplace policies are no longer determined unilaterally, but are instead subject to collective governance. In this sense, cooperatives operate not simply as alternative business forms, but as interventions into the production of inequality itself.

However, as Julian Hill highlights in this Issue, such alternatives do not emerge on neutral terrain. Existing legal regimes—including corporate, labor, and financial law—systematically privilege conventional capitalist firm structures, rendering cooperative development more difficult, costly, and precarious, particularly for Black workers seeking economic self-determination.³¹ These constraints underscore a central insight: inequality is not only produced within markets, but is also embedded in the legal architecture that organizes them.

Taken together, these interventions and critiques suggest that the future of equality law may depend less on expanding antidiscrimination doctrine than on transforming the institutional contexts in which inequality is produced. Trujillo’s

27. César F. Rosado-Marzán, *From the Margins to the Citadel: Domestic Workers and a New Moral Economy of the Labor Market*, 114 GEO. L.J. 1407, 1412–14, 1418–22 (2026) (arguing that labor law reforms can reconstruct a normative vision of work grounded in dignity, equality, and collective participation and challenging hierarchical labor market structures).

28. Jared M. Trujillo, *Moonlighting in the Margins: Protecting the Rights of Workers Engaged in Lawful Off-Duty Online Sex Work*, 114 GEO. L.J. 1363, 1374–79 (2026).

29. *Id.* at 18–22.

30. ELIZABETH ANDERSON, *PRIVATE GOVERNMENT: HOW EMPLOYERS RULE OUR LIVES (AND WHY WE DON’T TALK ABOUT IT)* 3–7, 37–45 (2017).

31. Julian M. Hill, *As the South Goes: Movement Lawyering for Black-led Worker Cooperatives in Atlanta*, 114 GEO. L.J. 1489, 1501–15, (2026).

account makes clear the stakes of this shift: where law continues to treat certain forms of labor as morally suspect, workers remain vulnerable to exclusion regardless of formal legality. These enduring dynamics demonstrate the limits of a legal regime that intervenes only after inequality has been produced, instead of reshaping the conditions that generate it.

CONCLUSION: RESTRUCTURING THE CONDITIONS OF INEQUALITY THROUGH LAW

As contributors to this issue and participants in *The Georgetown Law Journal's* Symposium on labor and civil rights make clear, the treatment of workers at the margins of labor and employment law reveals a deeper truth about equality law in the United States: formal guarantees of nondiscrimination and the limited reach of employment floors remain insufficient to address the structural conditions that produce racialized economic inequality. Workers continue to be disciplined, excluded, or rendered precarious not only through overt discrimination but through the operation of legal regimes that leave intact hierarchies of power within the workplace and in the broader economy.

This limitation is not simply a product of recent administrative retrenchment, though the present moment has rendered its consequences more visible. As this Foreword has argued, the Trump administration's systematic dismantling of civil rights and labor enforcement has not only weakened institutional capacity but has also begun to reorient equality law itself—toward a narrower, and at times inverted, conception of equality. In doing so, it exposes a central feature of equality law: its dependence on administrative institutions whose commitments are contingent and politically vulnerable. But the deeper lesson is not only that enforcement can be undermined. It is that equality regimes built atop unchanged economic structures remain inherently fragile. The recent sabotage of equality laws, thus, does not represent a break from equality law's trajectory so much as an intensification of its underlying limits.

Sabotage operates not only at the level of enforcement, but also at the level of knowledge, producing a legal regime in which systemic disparities persist even as they become more difficult to name. As Shirley Lin argues, equality law depends on race-conscious data and doctrines such as disparate impact to render structural inequality visible and actionable. The erosion of these tools—through doctrinal narrowing and administrative abandonment—undermines the law's capacity to perceive inequality at all. And even where harms are visible, legal regimes often refuse to recognize them as actionable. As Shawn Ali points out, workers who report conduct that is socially harmful but not formally unlawful frequently fall outside the scope of both statutory and common law protection, exposing how legal frameworks define not only what inequality can be remedied, but what counts as harm in the first place.³²

The contributions to this Symposium Issue suggest that addressing these compounded failures requires more than restoring enforcement or expanding doctrine

32. Shawn Ali, *Filling in the Gap: Using the Common Law Tort of Wrongful Discharge in Violation of Public Policy to Strengthen Protections for Health and Safety Whistleblowers*, 114 GEO. L.J. 1533, 1535–36, 1541–44 (2026).

to its pre-Trump era. It requires—and has long required—rethinking the relationship between law and political economy. César F. Rosado-Marzán convincingly writes in his analysis of domestic worker organizing that some of the most significant advances in labor rights have emerged not from within traditional legal frameworks, but from workers historically excluded from them. These workers have developed alternative forms of organizing, legal advocacy, and normative claims that challenge the boundaries of who counts as a worker and what forms of labor merit safety, security, and dignity. Their efforts make visible a recurring dynamic: Legal transformation often follows the emergence of new forms of collective power, rather than preceding them.

The insights within these pages point toward a common conclusion: the contemporary crisis of equality law is extraordinary. It is one of under-enforcement, doctrinal limitation, and administrative incapacity—and also of institutional design. So long as legal protections are layered onto economic structures that concentrate power and reproduce hierarchy, they will remain partial and unstable. The Trump administration's interventions make this dynamic visible by accelerating it—revealing how quickly formal guarantees can be hollowed out when institutional commitments shift. This, advocates and scholars at the Symposium made clear, is not simply a question of law but, in the long term, one of organizing and collective political struggle.