# Involuntary Servitude and Peonage

The Thirteenth Amendment to the Constitution of the United States prohibits slavery and involuntary servitude within the United States or any place subject to their jurisdiction. The only exception is involuntary servitude as punishment for a crime.

Even though the Amendment was passed in 1865, it did not protect people with developmental disabilities from “involuntary servitude,” or “peonage” as it is sometimes called. “Involuntary servitude” or peonage means that a person is being made to work against his or her will, with little control over his or her working conditions. The work might be paid or unpaid. The basic idea is that a person is being forced to work to pay off a debt, avoid punishment or because he or she has no choice.

In the 1960s, the public learned that thousands of people with developmental disabilities were being forced to work against their will for little or no pay in state institutions. For more than a century, residents of institutions worked as housekeeping, laundry, maintenance and farm laborers to keep the institutions running efficiently. Ironically, this provided some residents with the training they needed to leave the institutions and work in the community, but few were allowed to do so.

The fact was that state-operated facilities could not survive without institutional peonage.

**Institutional Peonage**

In the 1960s, residential facilities were desperately underfinanced. Many staff salaries were at poverty level. One study estimated that 30% of staff positions in institutions were vacant. The cost of replacing unpaid or minimally paid resident labor with paid workers would be overwhelming.

> *The use of residents to perform work necessary to keep the institution running constitutes another problem which arises from under-financing and which is sometimes referred to as "institutional peonage." Although it is highly desirable that residents be productively employed, continued and inappropriate retention of residents in work situations has often been the only way the daily work could get done. Some important services in the ward, infirmary, maintenance, laundry, and kitchen areas would collapse if it were not for continued reliance on resident help. (Krugel, 1969)*

A Minnesota study conducted in 1964 showed that there were 6,350 residents in the state’s institutions at the time. Half of these individuals were assigned jobs in the institutions. At the time, Minnesota law said that a person with a developmental disability could not earn more than $1 a month. The report estimated that replacing institutionalized resident workers with civil service employees would require more than 900 additional positions at a cost of $2.4 million. This example of “involuntary servitude”

eventually changed, in part because of the Arc Minnesota, Dr. David Vail, and Governor Karl Rolvaag all of whom decried the “institutional peonage” revealed in the study. (Minnesota Governor’s Council on Developmental Disabilities, With an Eye to the Past; Granquist, 2008)

A similar study by Pennsylvania's Department of Public Health found that in 1969 approximately 11,900 residents of the state’s institutions were working. If the state could no longer rely on its working residents to keep the institutions running, more than 3,300 new employees would have to be hired. Doing so would increase paid staff by 28% and cost more than $11 million. (Mental Health Law Project, 1973)

The situation eventually came to the attention of the public, legislators and the courts in July 1964 when F. Lewis Bartlett, a psychiatrist, wrote an article in the July 1964 issue of *The Atlantic Monthly.* The article, called "Institutional Peonage: Our Exploitation of Mental Patients," described how some patients were denied training and therapy so that they could perform the work needed to keep the institution running.

> *In other words, state hospitals need "good patients" who are useful, valuable, and expediently indispensable. But these relatively less ill patients, instead of being helped to overcome their illness, as is normally expected on behalf of the patients in any other medical care facility, are doomed by the institutional needs of the state mental hospital to the pathological dependency characteristic of "good patients.”*

As a result, individuals who might have been released or “paroled” to the community were held back.

In 1973, the Mental Health Law Project described some of the types of force used to exploit patient labor:

> *A resident's refusal to work often results in staff antagonism, restrictions on mobility and other privileges. It is not uncommon for the resident to be labeled uncooperative with negative effects on his efforts to be released when he fails to participate in the "voluntary" work program.* (Mental Health Law Project, 1973)

**Changes in Law**

In 1966, Congress amended the Fair Labor Standards Act (FLSA) to extend minimum wage and overtime provisions to include all nonprofessional employees of public and private non-Federal hospitals and public residential institutions. The amendments also required the U.S. Department of Labor to enforce these laws to protect these employees.

The Department of Labor, however, did not “undertake reasonable enforcement activities” for resident workers. At first, the Department decided that Congress did not intend the law to apply to resident-workers since there were no specific references to them in the legislative history. Later, the department decided the Amendments did

apply, but it would not enforce them because of a number of “unresolved problems.” (Treatment Advocacy Center, 2009)

## Court Challenges

In 1971, institutional peonage became one of the issues raised in lawsuits challenging the institutional system in the United States.

The challenges focused on the rights of resident-workers in institutional facilities and the lack of protections given workers under the FLSA in violation of the 13th Amendment. Because institutions needed the unpaid work of residents to survive, eliminating the practice would seriously threaten the system’s survival.

*Wyatt v. Stickney* was a landmark case that had far reaching implications for institutions across the nation. The suit focused on institutions in Alabama and was filed in October 1970. It took 33 years to work its way through the courts before litigation ended in 2003. *Wyatt v. Stickney* set minimum standards of care, established resident rights, fostered the downsizing of state institutions and eventually led to the development of new community services. In 2003, Federal Judge Myron Thompson wrote that:

> *The enormity of what this case has accomplished cannot be overstated. The principles of humane treatment of people with mental illness and mental retardation embodied in this litigation have become part of the fabric of law in this country and, indeed, international law.* (Legacy of Wyatt, undated, p. 3, 13)

An April 12, 1972 order issued by Judge Frank Johnson, identified 35 standards for adequate treatment. He also outlawed unpaid work on the principle that work was "dehumanizing" unless it was voluntary, therapeutic and compensated at FLSA wage rates. Judge Johnson did permit residents to make their own beds. He also required all three of Alabama's mental institutions to pay residents who volunteered to work to maintain the institution. (Mental Health Law Project, 1973; Legacy of Wyatt, undated)

A number of other suits focused specifically on the 1966 Amendments to the FLSA. Those cases required that state officials pay resident workers minimum wage and pay back wages owed dating from the time the FLSA Amendments were enacted. It also required that the Department of Labor enforce the Amendments for all residents working in state institutions. The National Association for Mental Health and the American Association on Mental Deficiency (now AAIDD) were actively involved in these cases.

In 1972, Paul Friedman, a founder of the Mental Health Law Project (now the Bazelon Center), and two other attorneys filed a lawsuit regarding the application of FLSA amendments to resident workers. In *Souder v. Brennan*, the U.S. District Court for the District of Columbia held that the Amendments **did** apply and determined that work done resulted in an economic benefit for the institution. “Consequential economic benefit generally means that the work would have to be done by employees of the

employer who do not have disabilities, if the resident worker with a disability did not do it."

The court was clear in stating that the institution's position that the work programs had therapeutic value was irrelevant. This objection "would be to make therapy the sole justification for thousands of positions as dishwashers, kitchen helpers, messengers and the like." The court described resident workers based on what they do – "dishwashers" and "messengers" -- rather than by their relationship to the institution. Like ordinary employees, they productively wash dishes and carry messages. (Zatz, 2008, p. 898)

The *Souder v. Brennan* victory was short-lived. In 1976, the U.S. Supreme Court held in *National League of Cities v. Usery* that extending minimum wage protections to employees of states was unconstitutional. The Department of Labor, therefore, returned to its original position of not enforcing the FLSA amendments about resident labor in state institutions. (Friedman, 1977) Despite the U.S. Supreme Court ruling, many states eliminated unpaid or low-paid work programs. For instance, Pennsylvania passed the "Institutional Peonage Abolishment Act" in 1973.

*Souder* was not the only suit filed during this period. Other cases argued that institutional peonage violated the Thirteenth Amendment. Unable to pay the wage rates demanded, state officials found it easier to eliminate resident labor than to take on the legal risks of continuing or resuming the practice. (Treatment Advocacy Center, 2009)

The impact of these legal actions has been profound. Eliminating resident labor seriously undercut the ability of states to run their institutions economically. Some institutions developed sheltered workshop programs to replace non-paying patient jobs (Schwartz, 1976). Many simply eliminated work programs all together. As a result, residents in these institutions were offered no work opportunities, therapeutic or otherwise.