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*REST BREAKS AND
THE RIGHT TO URINATE
ON COMPANY TIME*

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Introduction: From “Let Them Eat Cake” to “Let Them Pee in Their Pants”

The sordid economy, which follows [the free laborer] with uneasy eyes, showers him with reproaches at the slightest respite that he appears to give himself, and if he takes a moment of rest, it claims that he has robbed it.

[Simon Nicolas Henri Linguet], *Théorie des loix civiles* (1766)

Our social mores and attitudes have conspired to encourage an infrequent voiding pattern. Employment practices . . . encourage urine retention. . . . There is the totally mistaken idea that being able to hold one's urine creates strength of the bladder and builds character, suggesting a strength denied to lesser men and women.

A. F. Lalli and J. Lapidès, “The Infrequent Voider,” *Radiology* (1969)

Fashionable theories of postindustrialism and post-Fordism have blinded many to the uncomfortable reality of working conditions in the United States that are more evocative of the accounts drawn by Engels and Dickens than of the imagined anodyne workplace of the twenty-first century. This book focuses on the persistence of one such aspect of industrial life—the lack of a universal entitlement to withdraw from the inexorable flow of production in order to rest and void during the workday. Workers in the United States endure not only longer workweeks and shorter vacations than are standard in Western Europe, but also less rest at the workplace.¹ As work becomes more automated, employees become increasingly focused on a single function, deprived of the range of varied tasks that their preindustrial counterparts enjoyed. The result for millions of workers is devastating physical and mental fatigue, uninterrupted even by ten-minute rest breaks.

Many books have chronicled and analyzed the evolution of and struggles

over the length of the working day and week, but ours is the first to examine the rise and decline of rest periods as an integral part of that history.² The result of a collaboration between a labor lawyer–economic historian and a urogynecologist, it draws special attention to the adverse physiological consequences that workers suffer when output and discipline take precedence over their natural need to void.

The right to rest and void at work is not high on the list of social or political causes supported by professional or executive employees, who enjoy personal workplace liberties that millions of factory workers can only daydream about. White-collar employees who have the freedom to make personal telephone calls, leave the premises to run errands, or chat with colleagues almost at will can also excuse themselves whenever nature calls. Indeed, we ourselves had not focused on the restraints on other workers until patients and clients poignantly complained of them. While we were dismayed to discover that workers lacked an acknowledged legal right to void at work, the patients and clients were amazed by outsiders' naive belief that their employers would permit them to perform this basic bodily function when necessary. Their plight crystallized for us in one afternoon when two women with very different kinds of jobs related how they dealt with their bladder's call at work: a factory worker, not allowed a break for six-hour stretches, voided into pads worn inside her uniform (which, incidentally, cost her almost one-tenth of her weekly wages); and a kindergarten teacher in a school without aides had to take all twenty children with her to the bathroom and line them up outside the stall door while she voided.

That such examples are not extraordinary is borne out by many recent reports. In a startling account of harried workers in chicken processing plants—an industry in which it is not unheard-of for firms to enforce rules prohibiting employees from going to the bathroom more than once a week “on company time”³—the *Wall Street Journal* recorded the scene shortly before the end of the workday as a worker in vain sought permission to leave the line:

A foreman with a stopwatch around his neck rushes up. “Come on now,” he bellows. “Pump it up!” Down the chain, a worker named Jose yells and waves wildly, like a drowning man. Bathroom trips are discouraged and require approval. But the foreman can't hear because of the din, and Jose is left grimacing and crossing his legs. Finally, half an hour later, a weary cheer ripples along the line. “The last bird's coming!” someone shouts. Jose sprints toward the bathroom—and right into the path of a cleanup crew hosing off

into floor drains. Jose slips and then flops onto a sodden bank of fat and skin. “Gotta go,” he says, struggling up from the mire. “Gotta go.”⁴

Other firms still take this disciplinary regime with the same deadly seriousness with which early protagonists of the industrial revolution broke down workers' impulses to work according to their preindustrial rhythms, forcing them to internalize the new structures of the economy of time. Consider, for example, so-called house rules attached to collective bargaining agreements that penalize with suspension workers who engage in “theft or attempted theft (property or time),” such as exceeding a break by one minute, thus “disenfranchising their Employer.”⁵

To suppress “deliberate flaunting of defiance against the company and a loss of output,” some firms have required workers to fill out time cards listing time spent on restroom breaks. More demeaning still was the regime at a Philips radio factory in England in the 1930s, where the names of assembly-line workers who received permission to go to the toilet were written on a blackboard and crossed off when they returned. At a large U.S. meatpacking plant in the 1930s, management used a stopwatch to time women in the bathroom; those who stayed longer than six minutes were docked six minutes. Similar practices continue today. Like early-twentieth-century telephone operators, who “had to get a supervisor's permission, which was not easily obtained, to go to the bathroom or get a drink of water,” in 1994 female employees of Sprint charged the company with making them “raise [their] hand like a child to ask for permission to go to the bathroom,” discouraging bathroom breaks because they take time away from sales work, timing the breaks, and, despite jobs that require employees to talk all day, also discouraging them from drinking water because “that would make them go to the bathroom more.”⁶

It is hardly surprising that at chicken processing plants—whose crazed pace is reminiscent of the factory in Chaplin's *Modern Times*—workers, who are not given enough time to use the overcrowded bathrooms, are subject to termination if they return to the production line late. But even an employer with sophisticated Japanese-model labor relations may treat its employees no better. At the Subaru-Isuzu automobile plant in Lafayette, Indiana, where bathroom breaks are “strongly discouraged when the line [i]s moving,” a worker whose team leader is too busy to take over her station when she needs to use the bathroom is just “out of luck.” And even unionized G.M. assembly-line workers in 1997 had to wait forty-five minutes to urinate. Despite such modern-day U.S. examples, the *New York Times* seems to be describing some antediluvian practice peculiar to the

third world when it denounces a sweatshop in El Salvador in which the fifty-six-cent-an-hour workers' "bathroom visits were clocked to insure that they earned every penny of this corporate largess," or a Nike shoe factory in Vietnam that allows only one bathroom break per day. Yet in 1995 the second-largest meatpacking company in France, an "exemplary" multibillion-dollar firm using modern management methods and driven by the logic of productivity and international competition, announced that employees would be fined for "faire pipi" outside of three fixed five-minute periods, thus unleashing a strike by workers seeking to establish a "human right" to void as needed. And some factories in the vicinity of the Portuguese city of Oporto allow workers only thirty minutes per month in the toilet.⁷

Such autonomy-restricting regimes, which infantilize workers by forcing them back to their pre-toilet-trained period, must strike the intelligentsia and even many nonprofessional white-collar workers—accustomed to "wandering around . . . away from job without substantial reason" without having to ask a teacher, foreman, sergeant, or jailer for leave—as nightmarishly preposterous. But no government agency intervenes to vindicate U.S. workers' rights to attend to their bodily needs. This failure should be contrasted with the response to an incident in Germany in the 1880s: when the owners of a sewing-machine factory in Bielefeld tried to install a doorkeeper to make sure that none of its six hundred workers either used the latrine without written permission or tarried there too long, government officials quashed the plan on the grounds that "something like that is not even customary in houses of corrections."⁸

Whereas the legislative struggle for shorter hours in the United States and Europe began with victories on behalf of children and women and then proceeded to laws covering men as well, the movement for rest periods in the United States has taken a different and regressive course. Earlier in this century, most states protected women and children from the worst excesses of industrial capitalism by limiting the length of their working day and making meal and rest periods mandatory (despite evidence that more rest would have benefited men too). State-mandated rest periods are less common today than they had been, at least for women, for most of this century—until three decades ago, when Title VII of the Civil Rights Act of 1964 invalidated gender-biased labor-protective laws. As a result, statutory rest periods, until then the exclusive domain of the putatively weaker sex, virtually disappeared except in the few states that extended the right to male workers. Because men had not been the beneficiaries of state rest-period laws, they saw little practical difference in this regard after the landmark federal civil rights law was implemented.

The color war underlying the Civil Rights Act was not limited to race: heated debate also took place between blue- and white-collar women workers over whether to repeal gender-based protective legislation or extend its provisions to men. Arguments surrounding the repeal of gender-protective laws under the aegis of Title VII focused less on the practical health and safety issues of rest periods than on theoretical aspects of sex discrimination inherent in limiting such protection to women only. Although the struggle over passage of the Equal Rights Amendment featured a reprise of the pre-New Deal argument between social or trade-union feminists and “hard-core” proponents of equal rights for women, Title VII effectively closed the debate on this issue. It may seem that those who were “willing to risk hard-won legislation for an abstract commitment to equality” ultimately prevailed, but in any case the invalidation of women-only protective laws was an inevitable result of Title VII.⁹

This gender equality *über alles* approach, however, ignored one of the indispensable prerequisites of a labor market: the collective standardization of the length of the working day, which is an essential element of the commodity labor power. If the “free play” of supply and demand is permitted to shape the duration and structure of working hours—that is, if firms are not prevented from taking advantage of especially vulnerable workers, who are tempted to undermine wage rates by working extraordinarily long hours—then the market-based wage-formation process may undermine the standard of living of the unprotected sectors of the working class.¹⁰

The inability of the women’s movement and labor movement, in the wake of Title VII’s invalidation of single-sex statutory rest periods, to find common ground meant that very few states enacted universal rest-period laws; those that exist have been enforced ineffectively if at all. U.S. unions have filled this legislative vacuum by securing rest periods for some workers; however, a large proportion of workers remain without them. The harsh economic environment has begun to affect rest breaks even for some white-collar workers who have long enjoyed their daily coffee break: in 1996, for example, a large Iowa insurance firm, caught in a race to the bottom with firms whose employees spend “a full 40 hours grinding away at their tasks,” totally eliminated nonstatutory breaks, which management deemed “excessive.”¹¹

Rest periods in general have a threefold purpose. By overcoming fatigue, they instrumentally promote greater productivity. Breaks also provide workers with a needed reprieve from musculoskeletal overuse and bladder distension. Finally, rest periods may be regarded by workers as enclaves of freedom within a sphere of alienation and subordination. Some em-

ployers, recognizing the association between rest and productivity, have accepted or even unilaterally implemented rest periods. Despite abundant evidence in favor of such a positive effect, however, other employers have resisted the introduction of rest periods either because they refuse to believe that more work can be accomplished in less time or because they perceive struggles over time and its best use as going to the core of entrepreneurial power, which they in principle refuse to cede to labor. In some settings, moreover, there may be no simple one-to-one association between rest and output: workers' fatigue may be so great that intermittent rest may result in higher hourly productivity but lower overall output.

Governmental regulation of working hours, too, has a multipurpose basis. This was succinctly stated by the legislature of Puerto Rico in 1948, when it amended its gender-neutral hours statute, which included a one-hour meal period: "Laboratory experiments confirm the fact that if work is prolonged immoderately, fatigue sets in, and this produces in the body a chemical process of actual intoxication which, in addition to the physical and spiritual damage that it does to the laborers, substantially lessens the productivity of his work." Thus first of all, physiological fatigue undermines efficiency and harms the interests of employers, who may be too short-sighted or too pressured by competitors to perceive that long and uninterrupted hours of work are not necessarily the most profitable mode of operating a firm. In particular, the Puerto Rico legislature recognized, long hours were irreconcilable with the increasing intensification of labor that had become the basis of modern capital-intensive industry: "Upon the mechanization of work and the rationalization of industrial organization, production has considerably increased, but the effort of the laborer, now compelled to render his services with machines and under techniques that require . . . unflagging attention, has also increased." But the second reason was just as important: regardless of the impact on productivity, the worker should not be deprived of "the time necessary for relaxation and for the cultivation of his mind and of his social and civic relations."¹²

Rest-period legislation, in other words, may be most likely to be enacted where capital, having accepted that human beings are subject to different physical laws than machines, agrees with labor that rest "protects employees against an unhealthful and ultimately unproductive . . . uninterrupted performance of labor."¹³

By midcentury, the most authoritative handbook for manufacturing management taught that "physical fatigue has been so far eliminated from typical factory jobs . . . that . . . rest periods would not be very important were it not for the nervous or mental fatigue which remains com-

mon.” Whatever reality content attached to such claims then, four decades later the vast increase in the incidence of repetitive motion injuries has prompted ergonomists to warn that periodic rests during the workday are necessary to counteract the onset of carpal tunnel syndrome and other trauma from repetitive cycles.¹⁴

The third purpose of rest periods may be particularly suspect to employers. Weighing the emancipatory potential of rest against its productivity-enhancing impact, some firms may be less than enthusiastic about creating free niches in the workplace, on work time, for employees to communicate about their collectively experienced domination. Remarkably, although the turn-of-the-century Taylorist revolution in the organization of the labor process and the contemporaneous emphasis on the intensification of labor in connection with a shorter working day in theory confirmed the benefits to capitalists of interwork rest periods, this controversy lives on in the United States. Especially in sectors and firms in which management has access to a virtually inexhaustible supply of fresh recruits and has not been forced by the market, the state, or the labor movement to internalize the costs of premature wear and tear on individual workers' labor power, using successive contingents of physically debilitated workers with high turnover rates may serve as a viable “human resources” strategy.

For example, some employers find acceptable the exhaustion resulting from allowing only a five-minute break during a five-and-a-half-hour work segment that causes workers to “appear to be sleepwalking” and makes them most prone to injuries, so long as it does not happen “habitually.” Millions of assembly-line workers manage to make it through each of their thousands of workdays only by living “from break to break.” Nevertheless in the United States a broad swath of “work-oriented” private employers that abhor rest apparently have not taken to heart the lesson of advanced Taylorism: “to see in a break, in analogy to the relations with a machine, only a loss of labor time and production, is a view that was long ago made obsolete by the science of the laws of the working human being.”¹⁵

This sketch of rest-break policies in the United States is not intended to suggest that monolithically powerful firms are always in a position to impose whatever terms and conditions of employment they wish on their hapless and defenseless employees. Even in the absence of unions, workers are constantly engaged in everyday struggles of accommodation of and resistance to unilaterally dictated disciplinary rules, which may or may not have been dictated in response to their predecessors' struggles. Female clerical workers at a Canadian factory who tried to lengthen their breaks capture the essence of these disputes over autonomous control of

respites from work: “We would start off taking five minutes, then stretching it, and stretching it some more, till administration came in and told us to obey the rules. Then we would go back to five minutes, but the process would start all over again.”¹⁶

Our book focuses on the history of, struggles over, and societal regulation of rest breaks. Because one of the primary reasons that workers require more frequent breaks than they are commonly allowed is to answer “the call of nature,” we will also specifically address the question of urination in the workplace.

Difficulties related to bathroom use at work are, unfortunately, not a relic of the past. In 1996, we surveyed 790 female teachers in public schools. While 80 percent felt the need to urinate at times other than during officially sanctioned breaks, less than half of them were actually able to go to the bathroom. The remaining women had various mechanisms for dealing with this problem: most were able to “hold it,” despite discomfort; however, 4 percent voided into a pad, and fully 11 percent of elementary school teachers brought all the children with them to the bathroom when they were unable to hold it any longer. In addition, half the teachers made a conscious effort to drink very little at work to avoid urinating while on the job. Aside from the need to urinate, some teachers also found bathroom access during their menses to be a problem. Two-fifths noted that they could not change menstrual pads as often as they needed to and one in twenty women stayed home from work on their heaviest flow day or days specifically because of the problem of bathroom access at work.

It is worth noting that the average total daily duration of breaks was 71 minutes. This is more than the usual 60 minutes proposed by most unions, yet most women perceived the lack of adequate bathroom opportunities to be a problem. It seems that beyond the need for rest during the working day, women need an additional number of short bathroom breaks. Almost all of the women we surveyed believed that women should be allowed to void as often as they needed to while working; if told to choose a specific ideal minimum time interval for bathroom breaks allowed to a woman, 80 percent chose either hourly or every two hours.

A second, smaller group of women we surveyed had undergone a job retraining program and were employed in occupations that were traditionally more male-oriented. These women typically had greater freedom to urinate when they needed to, as they tended to work without direct supervision. However, they had their own set of unique problems related to bathroom access at work. Many refused to use the bathrooms provided because of their unsanitary nature. Typical comments from these women

echo this one: “I work on construction sites. I can go to the bathroom anytime I need to but the facilities are usually port-a-potties. Sometimes these have no toilet paper, are very much a mess, smelling, and unsanitary. So I try to avoid using them by drinking less.”

This *tour d'urinal* raises the obvious question, which is one of the most frequently asked of state and federal labor agencies: Are workers in the United States legally entitled to breaks? Most workers who bother to ask lawyers or government enforcement agents—that is, those who wonder because they receive none—are incredulous to hear (if they hear anything sensible at all) a resounding “No” to their question: “Isn’t there a law that says I have to get a break every four hours?”¹⁷ Indeed, even some labor union officials and labor lawyers erroneously assume that the right must exist, since federal law expressly states that short rest periods “must be counted as hours worked.” But the obligation to compensate workers for such rest applies only to employers that voluntarily grant pauses. In a country that, unlike many in Europe, lacks any nationwide cap on maximum hours or any protection against management’s “reserved . . . right to require employees to work overtime,” it is not surprising that no federal law confers a general entitlement to breaks—not the national wage and hour statute (the Fair Labor Standards Act) and not the Occupational Safety and Health Act (OSHAAct).¹⁸

Today, as in the past, only workers—such as transportation employees—whose fatigue might cause them to injure or kill nonworkers such as passengers are covered by mandatory federal rest regulations. Flight dispatchers, pilots, flight attendants, and truck drivers are prominent examples.¹⁹ Similarly, the states mandate rest periods for such employees as motor vehicle drivers or boat pilots. The District of Columbia is thoughtful enough to mandate an eight-hour day and “adequate rest periods” for horses in the carriage trade, and a number of states mandate a one-minute rest period for boxers between rounds. The handful of states that offer such protection to workers, however, may seem like a curiosity—out of step in a society headed toward labor deregulation. In fact, they are progressive throwbacks to a bygone era, now derided as paternalistic, when most states protected women (along with children) from the extreme demands of explosively expanding capitalism by limiting their workday and by mandating meal and rest periods and even seats. Indeed, historical amnesia has clouded that era so thoroughly that workers in states where protective laws have been eliminated are unaware that such statutory benefits ever existed.²⁰

A urogynecologist’s practice is filled with women suffering from blad-

der problems, many of which could be alleviated or prevented by more humane work-break policies. It is, of course, not only the bladder specialist who builds a practice based in part on the vicissitudes of employment. The orthopedist, chiropractor, or rheumatologist treats multitudes of patients with repetitive stress injuries such as carpal tunnel syndrome; the neurologist or ophthalmologist cares for patients with headaches or changes in vision; the gastroenterologist aids patients with severe constipation—the list goes on and on, all health problems related at least in part, if not wholly, to lack of opportunities to void, rest fatigued muscles, drink adequate fluids, and defecate.

It is evolutionarily unfortunate that we have become so skilled at denying the very basic physiologic function of voiding, since this skill is essential in the chain of events that enables firms to filch bathroom time from workers. Employers often consider the time a worker spends urinating as “stolen” time, but the person actually suffering such a theft is the worker herself, who is often denied her physiologic right to empty her bladder. This right is no less important than a worker’s right to have protection against hearing loss or from cancer-causing chemicals, but it is a right largely neglected. It is our hope that the evolution of workers’ rights will extend to the urinary tract as well, and that the process of voiding will be freed from societal control.

The rest of the book is structured as follows. The next two chapters form a two-part exploration of one question: Why do workers need rest periods? Chapter 2 focuses on the origins of managerial promotion of rest periods for both sexes during World War I in connection with empirical studies of fatigue as well as the rise and proliferation of various versions of scientific management in the United States and Europe, carrying the account into the present with a discussion of the impact of ergonomics on rest periods. Chapter 3 continues the inquiry into workers’ need for rest periods by studying the harmful physical effects of prohibiting employees from voiding when necessary. The following four chapters offer a history of rest periods. Chapter 4 begins with an overview of the enactment of special rest-period statutes for women workers at the end of the nineteenth century, tracing their evolution up to the enactment of Title VII in the 1960s. Chapter 5 analyzes the debates from the 1920s to the 1970s over the effect of gender-specific labor-protective laws on equality between the sexes. Title VII’s destructive impact on the then-existing statutory rest periods for women and the administrative, judicial, and legislative struggles on the federal and state levels over their extension to men are the subject of Chapter 6, together with an overview of current rest-

and meal-period law in all the states. Chapter 7 then examines, based on surveys of firms and collective bargaining agreements, the extent to which workers in the United States actually receive rest periods. After Chapter 8 surveys the history and current status of national rest-period laws in other countries, the book concludes in Chapter 9 by developing a legal theory supporting a right to rest and void at work.