The Depoliticization of Disability:

Professions and Politics in the 1986 Entrenchment of the Subminimum Wage*

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Abstract

In the United States, the payment of subminimum wages to disabled workers has been legal since 1938 and was entrenched by 1986 legislation eliminating the previously mandated wage floor of 50% of the minimum wage. This paper analyzes historical records from the 1960s, 1970s, and 1980s to explain the 1986 removal of the wage floor. I argue that the deinstitutionalization movement served as an exogenous shock to the system of professions addressing disability, and that in the wake of this shock, the managers of segregated workshops for disabled manual laborers rose to control employment policy due to their high level of organization and ties to the state and private industry, their coordinated attack on social movement organizations opposing the subminimum wage, and the overall weakness of the labor movement during the Reagan years. These professionals drew upon social, material, and cultural resources to frame the subminimum wage as an apolitical matter subject to their technical expertise and mobilize Congress in favor of its entrenchment. This research investigates state practices of ceding decision-making power to experts, illuminating pathways behind the institutionalization of new regimes.

KEYWORDS: Disability, labor, deinstitutionalization, minimum wage, comparative/historical sociology

In the United States, it is legal at the federal level to pay subminimum wages to disabled workers. This legislation dates back to 1938 as section 14(c) of the Fair Labor Standards Act (FLSA), but 1966 amendments set the floor on disabled worker's wages at 50% of the national minimum wage. This floor on wages was removed in 1986 and its absence persists today. At present, wages paid to disabled workers are to be "commensurate" to "individual productivity" as assessed by employers (United States Department of Labor Wage and Hour Division 2008). In 2007, wages paid under section 14(c) averaged $1.36 per hour after declining relative to the minimum wage for decades (Beckwith 2016).[1] Workers might be relegated to subminimum wages based on developmental disabilities, cerebral palsy, substance addiction, mental illnesses, blindness, or disabilities "related to age or injury" (US DOL WHD 2008). Since one in five Americans reports a disability (Brault 2012), a huge population is potentially subject to this legislation, although fewer than 20% of disabled people are employed and only a small minority of these workers are paid under section 14(c) (Bureau of Labor Statistics 2018). A handful of states and localities have banned the subminimum wage (Bickley 2019) and over 80 organizations including disability rights groups, labor unions, and bipartisan government agencies formally oppose the law (National Federation of the Blind 2016; National Council on Disability 2018; United States Civil Rights Commission 2020). Yet in 2018, approximately two thousand organizations nationwide paid over 320,000 disabled workers subminimum wages under section 14(c) (National Council on Disability 2018).

[1] There is some controversy over these figures, as the state collects and releases extremely limited data on the subminimum wage (United States Civil Rights Commission 2020, pp. 59-61). Beckwith's (2016) estimate of $1.36 is drawn from a National Core Indicators report, a collaborative data collection effort of public disability agencies which represents agencies in 46 out of 50 states. An independent survey conducted in 2018 among people with disabilities found that among those in the sample paid subminimum wages, these wages averaged $3.34 per hour (United States Civil Rights Commission 2020), so it is possible that a slight uptick has occurred in the decade following the 2007 data release.

Some analysts suggest that subminimum wage programs raise human rights concerns. Though advocates of the subminimum wage argue that it increases disabled people's access to employment, these claims are contradicted by rising employment rates among disabled people in states that have abolished the subminimum wage (US CCR 2020, p. 143). More significantly, given that minimum wage work is often impoverishing (Zipperer 2018), it is almost unimaginable that someone could survive off of the subminimum wage levels that section 14(c) permits. The law presumes that disabled workers rely on other resources to meet their basic needs, meaning that state benefit systems or unpaid care work subsidize employers' cuts to disabled workers wages, or meaning that disabled people lack access to basic resources entirely. In 2009, the Henry's Turkey Service case cast a spotlight on subminimum wage laws when an Iowa turkey plant was discovered to have kept 21 men with intellectual disabilities in captivity for over thirty years, paying each man approximately $65 a month for decades of full-time manual labor beginning at 3am each morning (Barry 2014, 2016). Henry's Turkey Service had been authorized to pay these men subminimum wages under section 14(c). Since the implementation of section 14(c) receives minimal federal oversight (Beckwith 2016; US General Accounting Office 2001; NCD 2018), news coverage has suggested that other disabled people may work in comparable conditions nationwide. Based on these concerns, the chair of the nonpartisan National Council on Disability testified in 2020, "there isn't a topic I feel more strongly about than ending subminimum wages for people with disabilities" (United States Civil Rights Commission 2020, p. 13). No published sociological research addresses section 14(c), so the excavation of its social preconditions – and in particular, the social preconditions of its political invisibility – is a worthwhile empirical endeavor.

This paper explores these preconditions through a detailed case study of the organizational dynamics driving the 1986 removal of the 50% wage floor. In the late 1970s, mounting criticism of disability-based subminimum wages led Congress to consider reforming or abolishing section 14(c), before changing course in the early 80s and entrenching the subminimum wage through the amendments this paper focuses on.[2] Beginning around 1975, disabled workers paid subminimum wages in eight states began to unionize in partnership with the Teamsters, setting off a series of National Labor Relations Board hearings which escalated to the Supreme Court. A set of investigations of the subminimum wage by national news outlets (Kwitny and Landauer 1979a, 1979b, 1979c; US Congress 1980:281-282) and government overseers (US GAO 1981) uncovered massive abuse and exploitation in subminimum wage programs, sparking public outcry. Between 1980 and 1982, five bills to eliminate the subminimum wage were introduced in Congress, with the most popular attaining over 50 cosponsors (US Congress 1980; US Congress 1981a; US Congress 1981b; US Congress 1981c; US Congress 1982a). Given the acceleration of the disability rights movement over the 1980s in the lead-up to the 1990 passage of the Americans with Disabilities Act (Charlton 2000), alongside the early support of labor unions, one might have expected these bills to gain momentum. Yet by 1986, exploitation had vanished from legislative discourse and advocates of subminimum wage entrenchment truthfully described this entrenchment as uncontroversial. The elimination of the wage floor received bipartisan sponsorship, and as bill sponsor Thomas Petri (R-WI) introduced the amendments, "It is *not a controversial bill*, but it is extremely important nonetheless" (US Congress 1986d:27495, emphasis added). Contrary to the expectations of the

[2] This paper uses the phrase "entrenchment of the subminimum wage" to indicate the steep declines in disabled workers' wages institutionalized by the removal of the 50% wage floor in 1986. These amendments deepened and legitimized ongoing cuts to disabled workers' wages. The term "entrenchment" thus functions synonymously to phrases like "the elimination of the wage floor" used elsewhere in this paper.

earlier period of turbulence, discussion of the 1986 bill took up seven pages of the Congressional record, no elected official spoke in opposition, and the bill passed both governing bodies without a roll call vote (i.e., by implicit consensus). By 1986, the subminimum wage had thus been thoroughly depoliticized.

The empirical question guiding this paper is: why was the floor on disabled people's wages removed in 1986, and why with so little fanfare, despite the alternate political possibilities of earlier hearings and the concurrent gains of the disability rights movement in other arenas? On a theoretical level, I ask: Through what means do new regimes come to be taken for granted? This paper draws on archival research to explore transformations in the subminimum wage as linked to the growing political power of disability employment program managers and to these managers' coordinated silencing of alternate framings of the subminimum wage. I analyze this growing political power as an aftershock of the deinstitutionalization movement, which transformed the system of professions surrounding disability, permitting employment program professionals to claim jurisdictional territory left vacant by the delegitimization and depopulation of state institutions for long-term disability care. I argue that employment program professionals leveraged their newfound jurisdiction over disability to successfully frame the subminimum wage as a technical matter subject to their professional knowledge, and I use this case to illustrate the depoliticization of social domains – in this case, the depoliticization of new techniques of exploitation – via expert influence over the state.

The Politics of Expertise

Deinstitutionalization and Reinstitutionalization

Institutional theory investigates the role of taken-for-grantedness in the reproduction social life. As Colyvas and Powell summarize, "*Taken-for-grantedness* has been central to

sociological institutionalism, providing the cognitive element in explaining the reproduction of the social order" (2006, p. 310). This paper deals with developing consensus on the subminimum wage among state decision-makers (though, importantly, I analyze the subminimum wage as an economic structure as well as a cultural paradigm), using institutional theory to illuminate the workings of this consensus. The arguments of institutional theory about the role of invisible consensus in social reproduction parallel claims of other conceptual frameworks, such as Bourdieu's (1991, 2001) work on symbolic domination or Lukes' (1974) three-dimensional view of power (see Clemens and Cook 1999, Hall and Taylor 1996 among other accounts of these convergences). The dispersal of these claims across sociological subfields suggests their resonance, though this paper will draw most heavily upon the language and debates of institutional theory.

However, theories of the role of consensus in the reproduction of the social order often neglect social change and the emergence of new institutions. This critique has been laid out in previous literature, e.g., by Fligstein and McAdam: "The general image for most institutionalists is one of routine social order and reproduction. In most versions of institutional theory, the routine reproduction of the field is assured" (2015, pp. 11-12). Scholars elaborating this critique argue that attention to the political economic underpinnings of cultural or cognitive agreement may be needed to theorize change (Clemens and Cook 1999, p. 446; Thelen 1999, pp. 386-387). Some of this research advocates for qualitative analysis of single historical cases to theorize the emergence of new institutional regimes (Colyvas and Powell 2006; Thelen 1999). Therefore, this paper analyzes how an unsettled situation (subminimum wage debates in the late 1980s) was resolved into taken-for-granted state action (the consensus entrenchment of the subminimum

wage in 1986), mapping material and cultural factors driving the institutionalization of new regimes.

In this analysis, the word "deinstitutionalization" holds both metaphorical and literal meanings. On a theoretical level, in the terms of institutional theory, I investigate the deinstitutionalization of old regimes and institutionalization of new ones; on a substantive level, I investigate consequences of the mass movement of disabled people from residential institutions to other settings, including disability employment programs. Prior scholarship approaches consensus in its treatment of deinstitutionalization as the cornerstone of twentieth-century disability history (Charlton 2000; Eyal et al. 2010; Kritsotaki, Long, and Smith 2016; Mechanic and Rochefort 1990). This transformation is most commonly attributed to the mid-twentieth-century convergence of disability rights organizing and declining government capacity to shoulder the long-term cost of disability care (Eyal, Hart, Oncular, Oren, and Rossi 2010:99; Mechanic and Rochefort 1990:305-306). Disability rights organizers responded to the dismal, often abusive conditions found within institutions and advocated for disabled people's rights to self-determination and community living (Bachrach 1978; Levinson 2010). Fiscal conservatives leveraged the rhetoric of this movement to justify massive cuts to services, yet they neglected to replace residential institutions with the alternative (and expensive) community-based replacements that organizers had envisioned (Scull 1984; Sedgwick 2015).

This paper contributes to the research literature on the consequences of deinstitutionalization at the joint levels of individual health outcomes and systems of care. Many analysts suggest that the promises of deinstitutionalization have never been realized, as collusion between disability rights organizers and fiscal conservatives limited state investment in replacement services for the disabled people released from institutions (Scull 1984; Sedgwick

2015; Gong 2019; Grob 2005). Instead, outcomes of deinstitutionalization ripple into other spheres of social life, such as the carceral system (Ben-Moshe 2020; Harcourt 2006; Markowitz 2006; Parsons 2018), the welfare system (Dear and Wolch 1987; Gong 2019), diagnostic classification processes (Eyal et al. 2010), and – in this article – labor markets and policy. Within this literature, ongoing debates address causal links between deinstitutionalization and mass incarceration (Harcourt 2006; Markowitz 2006; Parsons 2018; Roth 2018) and deinstitutionalization's influence on the expansion of disability as a social category (Eyal et al. 2010). Yet the labor process remains an underexplored impact zone. I present evidence linking deinstitutionalization to the entrenchment of the subminimum wage, contributing substantively to the deinstitutionalization literature as well as elaborating a theory of political transformation.

To preview the argument, this paper uses the post-deinstitutionalization entrenchment of the subminimum wage to lay out a multicausal explanation of how social movements render exogenous shocks to jurisdictional systems, then how the unsettling of these jurisdictional systems may be resolved into the state-backed institutionalization of new regimes. The theory I present focuses not on the instrumental manipulation of social movement actors, but on the capacity of professional expertise to "thin" political discourse and limit activists' jurisdiction over contested populations or problems relative to the jurisdiction exercised by professional representatives of capital. I argue that social movement gains generate flux within the system of professions that certain professions may leverage to expand their own jurisdiction. When these professionals activate ties to the state and initiate depoliticization processes which neutralize social movement claims, elected officials or key regulatory agencies may take action to institutionalize this changing professional order, "settling" the flux described above and rendering rising professionals' dominance intransigent.

The Role of Expertise

This analysis relies most heavily on the expertise literature and links expertise to state power. Abbott's (1988) theory of the system of professions, a relational approach which roots professional transformations in exogenous shocks to this system, illuminates the impact of deinstitutionalization on the professional order governing disabled people's labor power. Each profession's *raison d'être* lies in its legitimate right to handle concrete problems – to diagnose, make inferences about, and treat these problems (Abbott 1988:35-58). This legitimacy is constantly contested by other professions and these jurisdictional disputes and settlements constitute "the real, the determining history of the professions" (Abbott 1988:2). Jurisdictional disputes are themselves set off by shocks which "ope[n] new task areas for jurisdiction and…destro[y] old jurisdictions" (1988:91), such as technological advances or social movement delegitimization of particular organizational forms, such as psychiatric institutions. Indeed, Abbott's work addresses the impact of deinstitutionalization on the medical and social welfare professions (1988:310-313), a substantive literature this paper extends.

More recent scholarship suggests that jurisdictional struggles are not limited to recognized professionals themselves, but may encompass other social actors. In an analysis with substantive salience for the case of the subminimum wage, Eyal (2013) argues that disabled self-advocates and their family members, as well as established health professionals, may engage in jurisdictional struggles surrounding disability. Like Abbott, he treats deinstitutionalization as the classic case of a shock to the jurisdictional system (Eyal, Hart, Oncular, Oren, and Rossi 2010). Based on analysis of this case and others, Eyal advocates for a rhetorical move from a "sociology of professions" to a "sociology of expertise," which sees expertise as dispersed and constituted across networks of individual and institutional actors. This viewpoint might identify social

movement groups or other organized interests as co-constituting the system of professions and engaged in the jurisdictional struggles set off by shocks to this system.

In these linked frameworks, jurisdictional struggles arise over changing problems and populations and the right to classify, reason about, and act upon these problems and populations. The deinstitutionalization movement left in flux both a *population* (people with significant disabilities) and a set of *problems* to do with that population (in this paper, how the material needs of disabled people should be met and how disabled people should occupy themselves on a daily basis). As Abbott predicts, this exogenous shock to the system of expertise set off new jurisdictional struggles, some of which continue to this day and others of which found temporary settlements in legislation like the 1986 entrenchment of the subminimum wage. For scholars interested in transformations to systems of expertise, and in particular the political economic underpinnings of these transformations, deinstitutionalization and the subsequent entrenchment of the subminimum wage represents an analytically rich case in how social movements, professionals, and agencies of the state interface with one another in moments of contested jurisdiction. Drawn together, Abbott and Eyal's perspectives explain how the subminimum wage became *unsettled*, but they leave ambiguous how it was *settled* – how and why organized professionals achieved their political goals at the expense of social movement groups.

Theories of statecraft may illuminate this settlement. Literature on the depoliticizing effects of professional expertise illuminates pathways through which jurisdictional struggles may influence policy across social domains (Escobar 1995; Edelman 2016; Evans 2002; Ferguson 1994; Mitchell 2002). For instance, working within Abbott's system of professions tradition, Evans' analysis of public debate over human genetic engineering documents a jurisdictional struggle which produced a shift from "thick" discourse (democratic and entailing a wide range of

considerations) to "thin" discourse (restrained to professional bioethicists and highly rationalized). I take the term "depoliticization" a step beyond Evans' metaphor of thick and thin discourses to emphasize the relationship between expertise and state power, a subject neglected within the professions literature. Within this paper, "depoliticization" describes processes through which specific groups of experts' aims are institutionalized in the law and other groups' aims are not only undercut by concrete legislative decisions, but are wholly excised from state consideration – are made to some degree unspeakable (see Ferguson 1994). This definition is most influence by the critical development studies literature on how foreign aid apparatuses in the global South transform political questions about power relations into technical questions subject to Western professional expertise, rendering colonial domination invisible and thus uncontestable (Escobar 1995; Ferguson 1994; Mitchell 2002). These perspectives on social movements, expertise, and the state enable the investigation of social processes producing the taken-for-grantedness of the subminimum wage in the mid-1980s when it had been publicly contested a few years before.

Research Design

This paper presents findings from archival research on the 1986 amendments to section 14(c) of the Fair Labor Standards Act. Specifically, I analyze over three thousand pages of primary historical materials related to the subminimum wage and produced between the 1960s and the 1980s. This paper focuses on five bodies of documents: 1) Congressional records comprising the 1986 bill itself, the House and Senate hearings that preceded the 1986 bill, and Congressional subcommittee hearings in 1980, 1982, and 1985 about proposed amendments to section 14(c); 2) records of Congressional debates on laws adjacent to the subminimum wage, such as the Javits-Wagner-O'Day Act (described in more detail below) and previous

amendments proposed to section 14(c); 3) nine government or government-commissioned reports on the subminimum wage produced between 1967 and 1981; 4) records of social movement groups, such as the monthly newsletter of the National Federation of the Blind and proceedings from disability rights conferences; and 5) period news coverage identified through references in other sources and searches of online databases. I rely on secondary histories of relevant institutions and movements (e.g., deinstitutionalization) to contextualize these primary documents. Research within these document collections enables the reconstruction of interactions between the state, employment program professionals, social movement organizations, and (to a lesser extent) labor unions, identified in this paper as the key institutional actors in the entrenchment of the subminimum wage.

This research uses a single historical case to investigate the theoretical questions outlined above. I work within the processual turn in historical sociology to trace the contingent means through which an unsettled situation was settled (Clemens 2007; Ermakoff 2015; Van de Ven and Sminia 2012). In Hirschman and Reed's (2014) terms, this paper offers a "formation story" for the 1986 entrenchment of the subminimum wage. I also rely upon principles of negative case methodology, investigating a situation where an outcome predicted by normative expectations did *not* occur, in this case the non-elimination (and contrary entrenchment) of the subminimum wage following social movement mobilization in the 1970s (Emigh 1997; Ermakoff 2014). Process tracing within this negative case allows me to extend prior sociological work on depoliticization. My aim in case selection is not to elucidate wholly general laws by asserting uniformity across situations where experts interface with the state, but to analyze processual factors distinguishing the empirical case of disability labor policy (see Burawoy 1998:19 on

comparative strategy and Emigh 1997:657 on the use of single cases). In Small's (2009) terms, I prioritize theoretical reconstruction over empirical generalization.

The next three sections of this paper describe findings of this historical research. First, I contextualize the 1986 amendments to the FLSA within large-scale professional transformations, outlining the meteoric growth of the disability employment programs industry in the 1960s and 1970s and drawing on qualitative and quantitative data to make the case for this growth as an aftershock of deinstitutionalization. I posit a connection between declining wages paid to disabled workers over this period and the increasing professionalization, autonomy, and overall political power of the employment programs industry. Second, I hone in on Congressional debates over the minimum wage between 1980 and 1986, identifying key actors in these debates and mapping their relationships. This section of the paper documents unfolding conflicts between social movement groups and employment program professionals and elucidates program professionals' close ties to the state and to private industry via program professionals' representation within federal agencies and state and industry purchases of goods produced in employment programs. Finally, I outline the cultural logics of subminimum wage entrenchment, recounting employment program professionals' successful case to the state that the subminimum wage was not a matter of labor politics, but a technical matter related to the provision of health care, and thus subject to these professionals' expertise rather than to democratic debate. This flattening of controversy, over an institutional terrain reshaped by deinstitutionalization and the growing size and power of the employment programs lobby, allowed program professionals to achieve the consensus removal of the wage floor in 1986.

Deinstitutionalization and the System of Professions

As described previously, the deinstitutionalization movement moved mass numbers of disabled people out of residential institutions and into alterative settings during the mid-twentieth century. This movement represented a collision of interests of fiscal conservatives and disability rights organizers. Figure 1 shows that the population of people with psychiatric or intellectual and developmental disabilities housed in state institutions peaked in the late 1950s and mid 1960s for each respective group, then fell for both groups from the second half of the 1960s through the 1980s.[3] Yet as the introduction to this paper described, the consequences of deinstitutionalization went beyond the changes sought by organizers and ripped through medical, welfare, carceral, and other systems. Findings presented below demonstrate that the deinstitutionalization movement had additional effects on labor policy and labor markets. These findings concur with those presented in Beckwith (2016), the only existing treatment of deinstitutionalization and subminimum wage labor.

Organizations paying subminimum wages to disabled workers increased their jurisdiction over disability care in the wake of deinstitutionalization. From mid-century through the present day, most subminimum wage programs operated as nonprofits (though section 14(c) also applies to traditional businesses) and hired disabled people as in-house labor to carry out contracts with government agencies or for-profit corporations. In some cases, employment programs provided services beyond employment to workers, such as medical care or case management, and many provided some form of counseling or training for community-based employment. However, government data suggest that very few workers paid subminimum wages in segregated employment programs left these programs and moved into jobs in other, non-segregated industries (US GAO 1980; US GAO 2001), so in practice these programs were often career

[3] These figures undercount the full institutionalized population – which includes people with other disabilities and people housed in private institutions – but indicate the trend seen across groups.

employers. Employment programs' reliance on external contracts suggests that while most programs described in this paper did not generate profits themselves, the profit motive influenced their work to the extent that this motive guided the aims of the organizations they contract with. As a United States General Accounting Office report summarized the model, "Although the handicapped employed in sheltered workshops receive training and therapeutic benefits from the workshops, the primary emphasis of the employment aspects of a sheltered workshop is to provide goods and services for sale to Federal, State, and local governments and in the commercial market" (1981:45).[4]

As large state institutions exercised less control over the lives and labor power of disabled people, disability employment programs stepped up to replace them, often through direct transfers of individual disabled people. Representatives from the Department of Labor (US Congress 1980:20-21; US Congress 1982b:24) and four national consortiums of employment programs (US Congress 1980:153, 325; US Congress 1982b: 4-5, 50, 59, 86; US Congress 1985:6, 36-37, 43, 115) all reported before Congressional subcommittees that the deinstitutionalization movement had pushed disabled people out of state or private institutions and into employment programs. These claims are supported by quantitative data on program growth. In a trend perpendicular to the plummeting institutional population displayed in Figure 1, Figure 2 documents a greater than threefold increase in the disability employment program population over the late 1960s and 1970s, the period of most rapid deinstitutionalization. The number of employment programs licensed to pay subminimum wages also increased from 978 to

[4] "Sheltered employment" or "sheltered workshops" refers to organizations that *solely* employ disabled people (excepting supervisory roles). Earlier iterations of section 14(c) made bureaucratic distinctions between "sheltered workshops" and related program categories, such as "work activity centers," though as I will describe these distinctions were eradicated by the 1986 amendments. In recent decades, the term "sheltered workshop" has fallen out of fashion among program managers due to connotations of exploitation. This paper thus defaults to "employment program" or "disability employment program" as the more general term, returning to "sheltered workshop" only when greater historical specificity is needed.

3877 over this period (US GAO 1981:125). While these quantitative data do not prove a causal link between deinstitutionalization and employment program growth, trends align with reports before Congress of direct jurisdictional substitution.

As the disabled population working within the employment programs industry grew over the 1960s and 1970s, their labor conditions worsened. Figure 3 illustrates the falling value of the subminimum wage relative to the federal minimum over the twentieth century. Average section 14(c) wage rates declined from nearly equal to the federal minimum wage in 1938, when the FLSA was passed, to around 55% of the federal minimum in the mid-1960s, to below 40% during the debates of the 1980s, to under 25% in 2007. The real value of the federal minimum wage has also declined substantially over the late twentieth century (Mishel 2013), so this shift represents plummeting purchasing power for disabled workers.

Prior to the 1986 amendments, the declining relative value of the subminimum wage can be significantly attributed to the categorical substitution of *work activity centers* (and, to a lesser extent, evaluation and training programs) for *sheltered workshops*, a bureaucratic distinction. A loophole in the 1966 legislation exempted work activity centers (a classification designed for workshops which employed people with more severe disabilities) and evaluation and training programs from the 50% wage floor. A year after the 1966 amendments, the Department of Labor reported that programs which paid sub-50% wages had responded to the new wage floor merely by filing as work activity centers rather than sheltered workshops (US DOL WHD 1967:5). Most of these changes were in name alone, but led to massive growth in wage floor-exempt programs (Beckwith 2016). Figure 4 demonstrates that in the decade following the 1966 legislation, which saw a threefold overall population increase in employment programs corresponding to deinstitutionalization, the disabled population employed in licensed sheltered workshops held

approximately constant while the population employed in evaluation and training programs more than tripled and the population employed in work activity centers increased ninefold. While programs thus benefited materially from this loophole in the 50% wage floor, they came under scrutiny for potential exploitation via these filing practices and other elements of their financial model in the late 1970s. Therefore, they sought to institutionalize this loophole through the 1986 elimination of the wage floor, entrenching both their jurisdiction over disability and their subsequent autonomy to set revenue-maximizing wage levels.

In summary, deinstitutionalization reconstituted the system of professions surrounding disability in ways that included the expansion of employment programs and the declining value of wages paid within these programs as managers' autonomous power to determine wages increased as state limitations loosened. The quantitative data presented demonstrates that the 1986 amendments did *not* represent a watershed moment in the overall degradation of disabled workers' labor, as by the time of their passage the most significant declines in the relative value of subminimum wages had already occurred, but rather that these amendments reflected processes that were already underway linking jurisdictional conflict to labor conditions. This research thus takes the 1986 entrenchment of the subminimum wage not as causally determinative of falling wage rates, but as an empirical window into how jurisdictional struggles were directly negotiated in relation to the state, and how the new professional order was institutionalized through the legislative process.

Professionals, Activists, and the State 1980-1986

As the introduction to this paper described, at the start of the 1980s, the subminimum wage was subject to national news coverage, a highly publicized government investigation, and five bills to eliminate it. In particular, *Wall Street Journal* coverage (Kwitny and Landauer

1979a, 1979b, 1979c) sparked investigations of the subminimum wage program by the Department of Labor and the General Accounting Office at the behest of Senator Barry Goldwater (R-AZ). These investigations uncovered noncompliance to statutory requirements in 60% of programs authorized to pay subminimum wages and underpayments totaling $2.7 million in a limited sample of 500 programs[5] between 1977 and 1979 (US GAO 1981:30). The executive director of the National Association of Rehabilitation Facilities (NARF), the leading professional organization of the employment programs industry, summarized these investigations' effect on public discourse: "Currently, there is a certain public ambivalence to sheltered employment. Many advocacy groups regard sheltered workshops as exploitative and there is enough smoke with this fire to attract the attention of national news media" (US Congress 1980:140-141). Leaders of the National Industries for the Blind, a major consortium of employment programs, similarly bemoaned the "unprecedent publicity" the subminimum wage program received in 1979-1980 (US Congress 1980:485). As quotes presented below demonstrate, Congressional hearings held in 1980 were conflict-laden, with elected representatives, employment program managers, and disability rights advocates trading regular barbs on the floor of Congress. Visible conflict began to fade by subcommittee hearings held in 1982, then vanished almost completely from the 1985 hearings. The next two sections of this paper draw upon qualitative data from the 1980s to explain this institutionalization of consensus.

Congressional subcommittee hearings during the 1980s were dominated by representatives of disability employment programs and these programs' governing professional organizations, with social movement groups, private industry, and government agencies

[5] Underpayments were calculated relative to section 14(c)'s subminimum wage requirements, not relative to the minimum wage itself. They further do not include use of many of the "statutory loopholes" described above, as payment of sub-50% wages under special categories was permissible under the earlier legislation, if contrary to its spirit.

contributing only secondarily to legislative discourse. Figure 5 maps these institutional actors' basic positions vis-à-vis one another. During hearings before the Subcommittee on Labor Standards held in 1980, 1982, and 1985, twenty-four organizations[6] representing program management delivered 93.5 pages of verbal statements and 501 pages of written statements, compared to 18.5 pages of verbal statements and 59.5 pages of written statements delivered by two social movement groups, 15 pages of verbal statements and 25 pages of written statements from three government agencies, and a 13-page written statement from one private corporation. Twenty-two of the twenty-four professional organizations represented spoke in favor of the subminimum wage, and all who took a position on the removal of the 50% wage floor endorsed it. By comparison, both social movement groups represented in subcommittee hearings opposed the subminimum wage (though organizers endorsed an appeal procedure included in the final bill for cases of statutory violations). No representatives of organized labor were present in these subcommittee hearings. These data suggest that conflict between disability rights groups and employment program professionals, and the close ties of the latter to state decision-makers, formed the organizational foundation of subminimum wage entrenchment.

Employment Program Professionals

By the time of the 1980-86 debates over the subminimum wage, disability employment programs comprised a highly organized industry. According to estimates of the National Association of Rehabilitation Facilities, 200,000 people worked for subminimum wages each day in these programs in 1980 (US Congress 1980:155). In the same year, using publicly-available industry documents and tax filings, the National Federation of the Blind estimated the

[6] This count is a conservative estimate, as many speakers had ties to multiple associations (e.g., some directed local employment programs and were separately affiliated with national accreditation organizations), but were counted only as representing the organizations that they explicitly identified themselves as speaking for.

industry's aggregate financial holdings at nearly half a billion dollars (approximately $1.5 billion in today's dollars) (US Congress 1980:49). The employment programs industry maintained their own National Accreditation Council for Agencies Serving the Blind and Visually Handicapped (NAC), founded in the late 1960s (US Congress 1980:340, 346). Many national organizations represented in Congressional hearings (including Goodwill, the National Association of Jewish Vocational Services, the National Easter Seal Society, and others) administered large numbers of individual programs at the local level, and other programs received resources and oversight from professional organizations including the National Association of Rehabilitation Facilities (NARF). Qualitative analysis of primary documents makes evident the density of the employment programs industry, with many individuals serving on the boards of multiple organizations, working closely together with one another via conferences, sales meetings, professional councils, or accreditation organizations, and coordinating their legislative and practical activities.

Employment program professionals also had close ties to the state and to private industry. The Javits-Wagner-O'Day Act of 1971 mandated that the federal government purchase specified services and supplies from programs with the mission of employing disabled workers, institutionalizing these ties. This legislation established the Committee for Purchase from the Blind and Other Severely Disabled as a staffed government agency facilitating contract assignment through collaboration with two designated representatives of the employment programs industry: the National Industries for the Blind (NIB), a national organization representing 91 local agencies in 1980 (US Congress 1980:451), and the National Industries for the Severely Handicapped (NISH), a coalition of six of the largest national disability employment programs (US Congress 1980:37, 436; US Congress 1985:48). Employment

programs further contracted with many large private companies, increasing their political power, despite these companies' lack of direct representation in Congressional debates. For instance, *Wall Street Journal* investigations in the late 1970s identified Proctor & Gamble, GE, and AT&T as major for-profit companies contracting with disability employment programs, and representatives of all three corporations told journalists that employment programs' low labor costs contributed to their own profits (Kwitny and Landauer 1979a). Program managers' embedded ties granted them control over political discourse. For instance, the NIB and the NISH exercised editorial control over the General Accounting Office report commissioned to investigate this industry's own practices after critical *Wall Street Journal* coverage, submitting over fifty pages of line edits pre-publication which included the requested removal of critiques and endorsement of the removal of the 50% wage floor (US GAO 1981:132-189). The Committee for Purchase from the Blind and Other Severely Handicapped also endorsed the subminimum wage in subcommittee hearings. Alongside this bureaucratic influence, the employment program industry's high level of organization and embedded ties to major social actors may explain their extensive direct representation in Congressional hearings relative to other types of organizations. Below, I describe their disputes with organizers over the right to speak for disabled people within and beyond these hearings.

Labor Unions

The absence of labor unions from Congressional hearings contrasts to their ground-level organizing in employment programs during a period of unions' comparative strength. Between 1975 and 1981, the Teamsters (and, to a lesser extent, the Communication Workers of America) facilitated unionization drives in employment programs in eight states (Inman 1979; Hudson 1981; NFB 1978:249-250; NFB 1981a:316; NFB 1981b:185-188) and promised their support to

disabled workers seeking to unionize elsewhere (NFB 1978:256). Managers appealed unionization votes to the National Labor Relations Board, claiming that employment programs provided rehabilitation services and as such were not subject to the provisions of the National Labor Relations Act, but in 1982 the Supreme Court upheld the decision of lower courts that disabled workers did indeed have the right to organize (NFB 1983:1). James Gashel, an influential leader within the National Federation of the Blind (described below), characterized these local organizing efforts as an early stage of the failed push to eliminate the subminimum wage (Gashel 2011:29-31). As he stated in an oral history, "They were far more successful at [local organizing] than we were in the Congress in getting the Fair Labor Standards Act changed" (Gashel 2011:31).

In contrast to these local victories, labor unions were not only unsuccessful but wholly uninvolved in lobbying Congress against the subminimum wage during the 1980s. Neither the Teamsters nor other unions testified in the 1980-86 hearings on the subminimum wage and no union took a public position on its 1986 entrenchment. This limited involvement is reflected in the Teamsters' declining coverage by *The Braille Monitor*, the monthly newsletter of the National Federation of the Blind, and disappearance from these records in 1984. This desertion of the subminimum wage may reasonably be attributed to the threefold onslaught the Teamsters faced during the 1980s: 1) the deregulation of the trucking industry, which devastated their core membership via the closures of some 140 unionized firms and the layoff of a third of the workers covered by their master contract (Belzer 1994:238); 2) the legal problems of their president, who went to prison in 1985 after a highly politicized corruption trial (Witwer 2003); and 3) internal conflict within the Teamsters' national bureaucracy (Belzer 1994:280-28). The Teamsters' deprioritization of section 14(c) is illustrative of the general defensive position that labor unions

were forced to adopt during the Reagan years. Their declining advocacy against the subminimum wage suggests that as deregulation took hold, unions faced so many competing priorities in the defense of their preexisting jurisdictional territory that they lacked the resources to expand this jurisdiction to disability employment programs. These findings suggest that the relative weakness of the labor movement during the 1980s cleared the way for the depoliticization and entrenchment of the subminimum wage.

Disability Rights Activists

By contrast, though the direct representation of social movement representatives in Congressional hearings was limited, the acceleration of the disability rights movement in the 1970s and 1980s was the recognized backdrop of these hearings. Movement organizations were partially responsible for rapid deinstitutionalization over this period, then underwent internal transformations in response to the jurisdictional space opened up by deinstitutionalization (as illustrated, for instance, by the proliferation of Centers for Independent Living over this period as movement-backed alternatives to institutionalization) (Charlton 2000). Social movement organizing pulled disabled people's labor conditions under section 14(c) into the legislative spotlight in the late 70s. As the Assistant Secretary of Labor stated in the 1980 hearings before the Subcommittee on Labor Standards, "For many years the sheltered workshop program has been relatively obscure with little attention focused upon it…it was only in recent years, as the disabled rights movement gained momentum, that public attention has focused on sheltered workshops" (US Congress 1980:29). Disability rights organizing put professional organizations of employment program managers on the defensive, with one high-ranking professional railing against "this damned nonsense where the workshops are always wrong and somebody else is always right" (US Congress 1980:218). Congressional records suggest that, in response to this

perceived threat, professional organizations mounted a coordinated effort to delegitimize movement organizations in the early 1980s. This delegitimization effort is most clearly illustrated by their interactions with the National Federation of the Blind.

The National Federation of the Blind (NFB), the only movement organization consistently represented in the legislative process, distinguished between their constituency and professional organizations' constituencies at several points. According to documents submitted to Congress, "NFB is not an agency '<u>for</u>' the blind; it is an organization 'of' the blind, speaking on behalf of the blind" (US Congress 1980:360, emphasis in original), with a reported membership in the early 1980s of 50,000. As elaborated by NFB president Kenneth Jernigan, "The agencies which serve the blind and the workshops which employ the blind have often assumed the status of self-appointed spokesman for the blind, so you should be alert to the distinction between the blind themselves on the one hand and the agencies or workshops on the other. Let there be no confusion between the respective positions of labor and management" (US Congress 1980:47-48). This effort to draw boundaries between disabled activists and disability professionals reflects a generalized theme of the disability rights movement, from early organizing against institutionalization to contemporary movement criticism of professional organizations such as Autism Speaks and the National Alliance on Mental Illness, accused of mobilizing expertise to maintain political authority to the detriment of disability rights activists pursing alternate goals (Charlton 2000; Silberman 2015). While the NFB was the primary source of Congressional testimony against the subminimum wage, they shared their position with other disability rights organizers; for example, in 1978, a national conference comprised of nearly 4,000 disability rights activists adopted multiple resolutions against the subminimum wage (Office for Handicapped Individuals 1978a, p. 70, p. 94, pp. 113-114; 1978b, p. 134).

Debates over the subminimum wage are rife with conflict between the NFB and program management organizations. For instance, NFB president Kenneth Jernigan recounted reports of a conspiracy against him between the respective executive directors of the Industrial Home for the Blind and the Dallas County Association for the Blind, the former of whom chaired the General Council of Workshops for the Blind and the latter of whom sat on its executive committee. At a 05/05/1980 sales meeting in San Diego sponsored by the National Industries for the Blind (NIB), these two directors denounced Jernigan and the NFB and planned "to see to it that I [Jernigan] am ruined both personally and professionally within the next two years" (US Congress 1980:50). For example, professionals allegedly planned to discredit Jernigan to New York officials in order to prevent NFB fundraising with the state (US Congress 1980:51). Jernigan further reported that two Washington, DC lawyers had informed the NFB that employment program representatives led by the National Accreditation Council for Agencies Serving the Blind and Visually Handicapped (NAC) had "asked [these lawyers] to carry out a campaign of lobbying and quite possibly litigation against me personally" (US Congress 1980:51-52). Jernigan's accusations were backed in subcommittee hearings by Ralph Sanders, president of the employment program Blind Industries and Services of Maryland, a purported direct witness to the May 5th meeting (US Congress 1980:103-104).

Though employment program representatives denied Jernigan and Sanders' specific claims, professional organizations' statements and actions regarding the NFB do appear part of a coordinated attack over this period. For instance, the National Accreditation Council wrote to the Department of Labor on April 21, 1980 to protest with "grave concern" their award of a $156,323 contract for "Job Opportunities for the Blind" to the NFB. The NAC letter argued that this grant "supports – and tacitly endorses – the activities of a group that attacks legitimate

organizations of and for the blind that refuse to be dominated by NFB's tactics," citing the NFB's written critiques of exploitation in NAC-accredited organizations, and asked "What safeguards has the Department established to prevent the 'Job Opportunities for the Blind' contract from becoming an undisguised showpiece for NFB's radical philosophy and militant methods?" (US Congress 1980:342-343). Similarly, following a series of 1979 *Wall Street Journal* investigations of exploitation in sheltered workshops, the executive director of the Dallas Lighthouse for the Blind wrote to the *WSJ* to critique their articles as "straight out of the Federation's party line" and "suggest that The Wall Street Journal investigate the National Federation of the Blind, including the director of the organization" (US Congress 1980:335). The Dallas Lighthouse further argued in this letter, which they submitted to Congress in the subminimum wage hearings sparked by *WSJ* coverage, that "It is very obvious that The Wall Street Journal has published this material on behalf of the National Federation of the Blind" (US Congress 1980:510). Critiques of *The Wall Street Journal* as a mouthpiece for radical social movements may appear surprising, but they highlight the level of political invisibility that program professionals sought to cultivate. The next section of this paper highlights discursive tactics of depoliticization, which built upon and reinforced the institutional relations detailed above.

The Depoliticization of the Subminimum Wage

Shifting relations between employment programs, labor unions, disability rights groups, and policymakers produced discursive transformations between 1979-1980, when subminimum wage legislation was unsettled politically, and 1986, when the subminimum wage was settled as a technical issue under the jurisdiction of employment programs. Three closely connected rhetorical techniques drove depoliticization: 1) the delegitimization of social movement (and

especially labor) organizing, 2) programs' self-styling as social welfare organizations, and 3) claims about the rehabilitative value of low-wage work.

During the turbulent 1979-1980 period, program managers' delegitimization of political advocacy can be witnessed in a 1980 exchange between Harold Richterman, director of rehabilitation for the National Industries for the Blind, and Congressman Edward Beard (D-RI). Beard, as an open skeptic of the subminimum wage, queried the NIB on their political divergence from the NFB following NFB testimony against the subminimum wage:

> Mr. Richterman: Mr. Beard, when you talk about the leadership of the blind, I think that needs a little explanation…I think that it is unfair to suggest that those people here yesterday [NFB representatives] represent the blind of the United States.
> Mr. Beard: We in Rhode Island recognize the gentleman here, Mr. Beck [blind worker who spoke as part of NFB delegation].
> Mr. Richterman: How do you recognize him?
> Mr. Beard: He is blind, to start off with. Some of the so-called leaders of the blind are not blind. They can't have the same sensitivity to the problems of the blind.
> Mr. Richterman: Mr. Beard, I don't accept this. I have spent 33 years in this business and I match my sensitivity in it with any person whether blind or sighted as far as the sensitivity and understanding of serving blind people. I would not accept that at all, Mr. Beard…*Our organization is primarily interested in serving blind people in the workshops. We don't have the time or the money to keep walking the halls of Congress...It might be worthwhile, Mr. Beard, if someone would ask the Federation with the money they raise what are the services they provide? I think this would be a fair question to ask them. Perhaps the service they provide is going through the halls of Congress making friends with the Congressmen and we just have not got the time or money to do that*. (US Congress 1980:217-218, emphasis added)

These italicized final statements posit political advocacy as an inappropriate response to the situation of disabled people. The irony of these statements lies in the disproportionate lobbying influence of the NIB and other program management organizations relative to the NFB or other social movement groups. Indeed, the NIB received the greatest representation in subcommittee hearings of *any* single organization. Furthermore, the NIB's embedded ties to the state through their statutory role as a distributor of federal contracts under the Javits-Wagner-O'Day Act granted them far more opportunity to "make friends with the Congressmen" than the NFB, and

the 1986 entrenchment of the subminimum wage fulfilled their legislative agenda to the direct detriment of the NFB's goals. Yet the NIB's treatment of "service provision" rather than activism as the sole legitimizing response to the situation of disabled people illustrates the ideational thrust of employment program lobbying. Programs depoliticized disabled people's work conditions and overall economic subjugation by framing these matters as health and social welfare issues subject to their professional expertise, not labor issues subject to social movement claims.

Representatives of the NFB recognized the power of social welfare rhetoric in jurisdictional struggles over labor law. As NFB president Kenneth Jernigan stated in 1980 subcommittee hearings,

> It is thought that management of industries which employ blind labor is surely possessed of benevolent spirit – after all, who would actually steal from the blind…Historically, many of the institutions which operate sheltered workshops have covered their business activities with a veil of 'social services' which they allege they provide to blind workers and others. Under this scheme the workshop is described as one of the 'services,' and the people who work there are called 'clients' (US Congress 1980:53).

This description successfully predicts the discourses mobilized over the next six years to delegitimize labor and disability rights organizing and advocate for the entrenchment of the subminimum wage. Employment program representatives consistently used the language of "services" and "clients" (as opposed to "labor" and "workers") throughout the 1980-1986 Congressional records. Seventeen of the 22 employment program representatives who testified in favor of the subminimum wage mobilized rhetoric of health or social welfare service provision in this testimony. When activists or elected representatives brought the language of labor politics onto the floor, employment program representatives contested the legitimacy of this discourse. This contestation can be seen in the 1980 extended exchange between Beard (D-RI) and Richterman (NIB director of rehabilitation):

> Mr. Richterman. Well. I tell you, Mr. Erlenborn, if I may, every year when the minimum wage goes up 10 cents, 20 cents, we begin to have our headaches in the shop. Should we take anybody in any more. Should we keep what we have but not take anybody else. It is a very serious problem. I am not objecting to blind people making as much money as they can, but there is no money to give if he does not earn it.
> Mr. Beard. You sound like a big businessman.
> Mr. Richterman. *My concern is with individual blind people, with rehab service. I have nothing to do with the business end.* (US Congress 1980:219-220, emphasis added)

Program managers' effort to frame the subminimum wage as a matter of "rehab service," and to distance themselves from the "business end," supported their claims that the subminimum wage is subject to the expertise of health professionals and divorced from labor policy and practices or economic inequality, historically more subject to social movement claims. Here, program managers contested not the concrete claims of labor movements, but the legitimacy of discussing the subminimum wage *in terms of labor at all*. This rhetorical project was made possible by the disappearance of labor unions themselves from national-level debates against the backdrop of Reagan-era attacks on labor and the consistent delegitimization of disability rights groups' own mobilization of labor-based logics. In the long term, this excision of labor politics from disability labor lawmaking advanced program managers' professional projects more effectively than contesting labor claims on their own terms.

Employment programs achieved this reframing of the subminimum wage as rehabilitative through a hybrid economic and social welfare logic that I term *work-as-care.* Employment program managers portrayed disability as entirely dismal, with disabled people's lives lacking all meaning but the meaning brought by low-wage work. As a letter to Congress from the president of the Rhode Island Association for the Blind (RIAB) stated,

> As professionals in the rehabilitation and welfare of blind people, we truly believe that it is better for those requiring a sheltered workshop situation to have employment at a lower wage than no wage at all. Having a job – even a low paying one – is essential to rehabilitation for it forces workshop employees to leave the home, to travel to work, and

> to perform in a job…it gives blind persons a reason for being. In fact, for many it may be the only purpose they have in life. (US Congress 1980:517)

These claims (repeated in similar terms throughout employment program testimony) are based on the assumption that disability itself robs life of any "reason for being," a claim strongly disputed by disability rights advocates. The hybrid logic of work-as-care further draws on claims about the moral significance of work (which parallels advocacy for welfare reform over the same period) to construct low-wage labor as the appropriate cure for the posited meaninglessness of disabled lives. As argued by the National Industries for the Severely Handicapped (NISH),

> But even more important than a quantitative difference in wages earned is the opportunity to work. Few of us would deny the therapeutic aspect of a day's work. To the handicapped individual, work means much more than therapy or wages. It means that there is a place to go where people are friendly, understanding, and accepting. A place where the person has the chance to make a real contribution, to be appreciated as a valuable member of a team effort, and to participate in a meaningful and stimulating environment. This is what our program, and sheltered workshops in general, offer to handicapped persons. Federally controlled sub-minimum wages help make these achievements a reality (U.S. Congress 1980:229)

For employment program managers, the therapeutic value of work thus supplanted the question of whether employees could survive on their wages. This treatment of work as care discounts the importance of work as a source of material subsistence, as highlighted (to little avail) by NFB representatives at several points. The mobilization of work-as-care logics to advocate for low wages for disabled workers is exemplified in a 1982 statement from the President and CEO of Goodwill, a major proponent of subminimum wages: "We are not there to make money; we are there to serve. On the other hand, we are not there to lose money, because if we do, we cannot serve" (US Congress 1982b:46). Here, moral discourses justify economization, as has been observed in other industries (Livne 2014).

The bipartisan status of section 14(c) demonstrates these shifts in discourse as a manifestation of depoliticization; shifts were *not* understood as a right-wing victory over the

labor protections favored by the left. Indeed, the most active critic of the subminimum wage during the late 70s and early 80s was conservative statesman Barry Goldwater. In response to *Wall Street Journal* coverage, Goldwater commissioned a 208-page investigation of employment program practices, sponsored legislation against the subminimum wage, and was even given an award by the National Federation of the Blind for his advocacy against exploitation in employment programs (NFB 1982:369-371), though he vanished from debate after receiving this award and assented to the removal of the 50% wage floor in 1986. Meanwhile, many elected Democrats failed to see through the smokescreen of social welfare discourse: sponsors of the 1986 amendments included Austin Murphy (D-PA), Augustus Hawkins (D-CA), Pat Williams (D-MA), William Clay (D-MO), Nick Rahall (D-WV), Robert Torricelli (D-NJ), James Jones (D-OK), Harley Staggers (D-WV), Howard Metzenbaum (D-OH), and Sam Nunn (D-GA) (US Congress 1986a, 1986b). These unexpected partisan alliances indicate that the subminimum wage (and perhaps disability more broadly) was not understood through the lenses of power, exploitation, or profit that tend to determine political alignments, leaving it subject to the technicalizing tactics of employment program managers.

By the 1985 subcommittee hearings which finalized the 1986 bill, employment program managers' claims to jurisdiction went unchallenged. As the acting executive director of the National Association of Rehabilitation Facilities (NARF) recapped this transformation in framing, "It is our understanding that HR. 3091 [a bill to remove the wage floor proposed in 1982] was never moved in the 98th Congress because of the political sensitivity of the FLSA. We understood and reluctantly accepted that fact. That is a major reason we are so pleased that this hearing is being held today. *It helps acknowledge that the issue to be addressed today is employment of handicapped persons and not just another wage-hour law issue*" (US Congress

1985:8, emphasis added). Indeed, by 1985 the purported political sensitivity of the wage floor had vanished, with witnesses to the subcommittee hearings that produced the final bill asked to keep their remarks short so that Congressional representatives could leave to attend hearings for an unrelated farm bill (US Congress 1985:2). The apolitical framing of the subminimum wage developed over time through a systematic shift in tone, produced by the documented influence of employment program managers, which distinguished between "employment of handicapped persons" as subject to the professional jurisdiction of disability experts, versus as "just another wage-hour law issue" subject to economic or political claims.

Over the course of the 1980-1986 debates, elected officials set aside their criticisms (like those quoted from Beard) and came to adopt employment programs' rhetoric about the subminimum wage as a technical issue related to service provision. For instance, Senator Don Nickles (R-OK), a sponsor of the 1982 bill to remove the 50% wage floor adapted and passed in 1986, confronted James Gashel of the NFB on these grounds: "I guess a lot of the thrust of your statement seemed to say that this would be for the benefit of the managers of these businesses, at the expense of the [disabled] individual. I find that very contrary to our previous panelists today, whom I believe were very sincere individuals who are working very sincerely in trying to help disadvantaged or handicapped individuals" (US Congress 1982b:82). Similarly, in Congressman Thomas Petri's (R-WI) introduction to the 1985 subcommittee hearings that finalized the bill which ultimately passed, Petri stated,

> Whenever you consider any amendments to the Fair Labor Standards Act, you raise fears that you may be opening up all kinds of complicated and highly contentious issues, and this is understandable indeed. However, if the bill which is the subject of this morning's hearings moves forward through the legislative process, *I feel confident that we can insulate it from other Fair Labor Standards Act questions. For this issue is not really a labor standards issue at all, but rather a handicapped services issue.* (US Congress 1985:3, emphasis added)

By the time of the subcommittee hearings that finalized the 1986 bill, the subminimum wage (and specifically the removal of the 50% wage floor) had been so thoroughly depoliticized that legislators appeared literally incapable of hearing opposing perspectives. After an extended presentation against the entrenchment of the subminimum wage by the NFB, the only organization to speak against the removal of the wage floor in the 1985 hearings, Congressman Austin Murphy (D-PA) replied "So, really, you have no problem with this." The NFB representative appeared taken off guard and reiterated "We have a lot of problem with it…we have a great deal of problem with it" (US Congress 1985:73). Under the professionalized framing of disability labor law, elected representatives came to take employment program managers for granted as the legitimate authors of these laws. This shift enabled the 1986 elimination of the wage floor and the institutionalization of a new labor regime.

Conclusion: The Rule of Experts

Disability rights advocacy undertaken concurrently to the state's fiscal crisis instigated deinstitutionalization, yet as large state institutions were dismantled, the state handed over control of disabled people's time use and labor power not to disability rights groups but to professionals on the rise. Debates over the subminimum wage during the 1979-1986 period spotlight this jurisdictional transformation. Disability employment program professionals leveraged market ties to the state and to private business to achieve disproportionate representation in Congressional debates and achieve within these debates the discursive reformulation of the subminimum wage as an issue of service provision, not a labor issue. This paper does not reify the 1986 bill as the determinative moment of these jurisdictional struggles– as I have described, the most significant declines in disabled workers' wages occurred pre-1986

– but uses the institutionalization of wage floor loopholes as a window into the negotiation of jurisdiction and the processes through which conflict was disappeared.

On a substantive level, this paper contributes to the research literature on deinstitutionalization and aligns with Scull (1984), Sedgwick (2015), and others in its emphasis on the political economy of deinstitutionalization. Like these critics, I find that the profit motive shaped the aftermath of deinstitutionalization, often undercutting the aims of disability rights organizers. However, I emphasize not the dearth of community-based services (the focus of prior materialist critiques of deinstitutionalization), but the exploitative character of what "services" did replace institutions. Disability is rarely analyzed through the lens of exploitation; perhaps scholars are complicit in the classification propagated by employment programs of disability as a medical rather than a material category. This paper provides empirical backing for materialist models of disability sketched out in scant prior work (Nibert 1995; Rose 2017; Russell 1998; Russell 2019) and indicates the relevance of these models to the deinstitutionalization debates.

On a theoretical level, this paper's empirical case enables the identification of some processes which produce new institutional regimes, a neglected subject in the literature, which focuses on the reproduction of existing regimes. I argue that on a legislative level, policies may come to be taken for granted when the state cedes jurisdiction to experts who reframe the issue at hand as apolitical. These jurisdictional concessions are likely to occur in periods of jurisdictional flux, when some professions (or other groups of "experts" like social movement actors) are rising and others declining. Exogenous shocks to jurisdictional systems, like those delivered by social movements, are probable causes of this flux as established in Abbott (1988) and Eyal (2013). To restate this chain of events in chronological order, social movements set off jurisdictional flux which sets off state reassignment of jurisdiction to experts which sets off

depoliticizing rhetoric which sets off institutionalization. This posited sequence is highly path-dependent and cannot be generalized across all cases. For example, in other scenarios, social movement actors may be more successful in dominating political discourse past the initial period of flux. However, this framework may sensitize scholars to specific factors which may lie behind a given case of institutionalization, including an earlier period of flux, a group of professionals on the rise, these professionals' ties to capitalists or the state, or rhetoric among these professionals that delegitimizes alternate discourses.

Substantive characteristics of this empirical case may help scholars identify situations where these factors become more or less relevant. For instance, disability may be especially subject to depoliticization tactics. As one issue of the NFB monthly newsletter put it,

> When Congress passes a civil rights statute for the handicapped, the ink is barely dry before someone suggests that enforcement of the statute be taken out of the Office for Civil Rights and transferred to the Architectural and Transportation Barriers Compliance Board. The basis for this is that equal treatment for the handicapped must obviously be different in kind from equal treatment for other minorities or women—it is clearly a matter for 'experts' in handicaps, for people who have studied us in graduate school…Nowhere is this false notion more prevalent, and more damaging, than in the special labor laws set up (NFB 1978:248).

Though this passage may overstate the uniqueness of disability – I identify sites of parallel depoliticization tactics below – it highlights some of its analytic characteristics. The specific depoliticizing potential of medical and social welfare expertise, paired with preexisting collective paternalism towards disabled people (Barriga 2012), may make disabled people especially vulnerable to rule by experts. These factors render disability an effective "extreme case" for scholarship on expertise and power.

In the empirical case of disability labor law, depoliticization processes contributed to the accumulation of capital (among employment programs' for-profit customers if not among employment programs themselves). Theorizing the institutionalization of new labor regimes may

thus be especially important for scholars interested in rule by experts as a generalized characteristic of late capitalism. The consensus entrenchment of section 14(c) was conditional upon the reconstitution of disability as a medical category rather than a laboring category. Reclassifications of other labor processes or groups of workers as subject to technical expertise, not the hard-won logics and protections of labor movements, may clear the way for parallel forms of exploitation. For instance, as indicated previously, work-as-care rhetoric during subminimum wage debates closely paralleled the rhetoric of welfare-to-work debates over the 1980s and 1990s. During the 1990s and 2000s, stakeholders struggled over the classification of workfare recipients as clients or workers, and as in my empirical case, the mobilization of professional expertise depoliticized their labor conditions and rendered exploitation less visible (Goldberg 2001). Prison labor represents another possible comparison, as it is also commodified at subminimum wages under federal law and may be subject to similar depoliticization tactics. Empirical research on these or similar cases may further illuminate the material stakes of the theoretical perspective on non-decisions that this paper presents.

This analysis might sensitize scholars to the material underpinnings of the co-optation of social movements by experts even when profit sources are less transparent. The case of the subminimum wage suggests that while social movement organizing may produce flux, the legislative process privileges the testimony of rising professionals, especially those with ties to capital. Social movement actors may thus be excluded from the legal resolution of debates that they themselves have instigated. In a parallel empirical case, Sweet (2015) finds that the growing influence of professional expertise in domestic violence policymaking and practice transforms domestic violence into a medical issue and minimizes its gender dimensions. Edelman (2016) finds that the professionalization of “diversity” through processes of legal endogeneity

circumscribes what feminist and anti-racist movements can achieve in the workplace. Some research suggests that radical environmental movements face similar co-optation by experts, which might diminish their anti-capitalist demands (Liévanos 2012). Looking towards nascent social movements, the case of the subminimum wage has significant theoretical and practical stakes important for scholars and activists interested in dismantling contemporary systems. Gong's (2020) analysis of police and prison abolition movements argues that the research literature on deinstitutionalization demonstrates that alternative systems of care must be put in place before abusive systems are fully abolished. In an extension of his argument, the 1986 entrenchment of the subminimum wage might inspire critical consideration of what qualifies as "care" and who profits from it.

Broadly, this paper demonstrates the pitfalls of rule by experts in the wake of social movement action, especially when these experts represent the interests of capital. This analysis offers a reconstruction of Abbott (1988) and Eyal's (2013) work on expertise which focuses on experts' ties to the state and to capital, and it traces pathways for the resolution of flux which advance institutional theory. It furnishes empirical evidence for understudied consequences of deinstitutionalization within the realm of labor and its theoretical arguments may generalize to other cases including welfare reform, prison labor, police and prison abolition, environmental justice, anti-discrimination law, or domestic violence.

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Figures

Figure 1. The populations of people with intellectual and developmental disabilities (I/DDs) and psychiatric disabilities housed in state institutions annually, 1950-1985. I/DD data refer to average daily population, while psychiatric data refer to year-end population. Sources: Mechanic and Rochefort (1990:7), Larson et al. (2017:147).

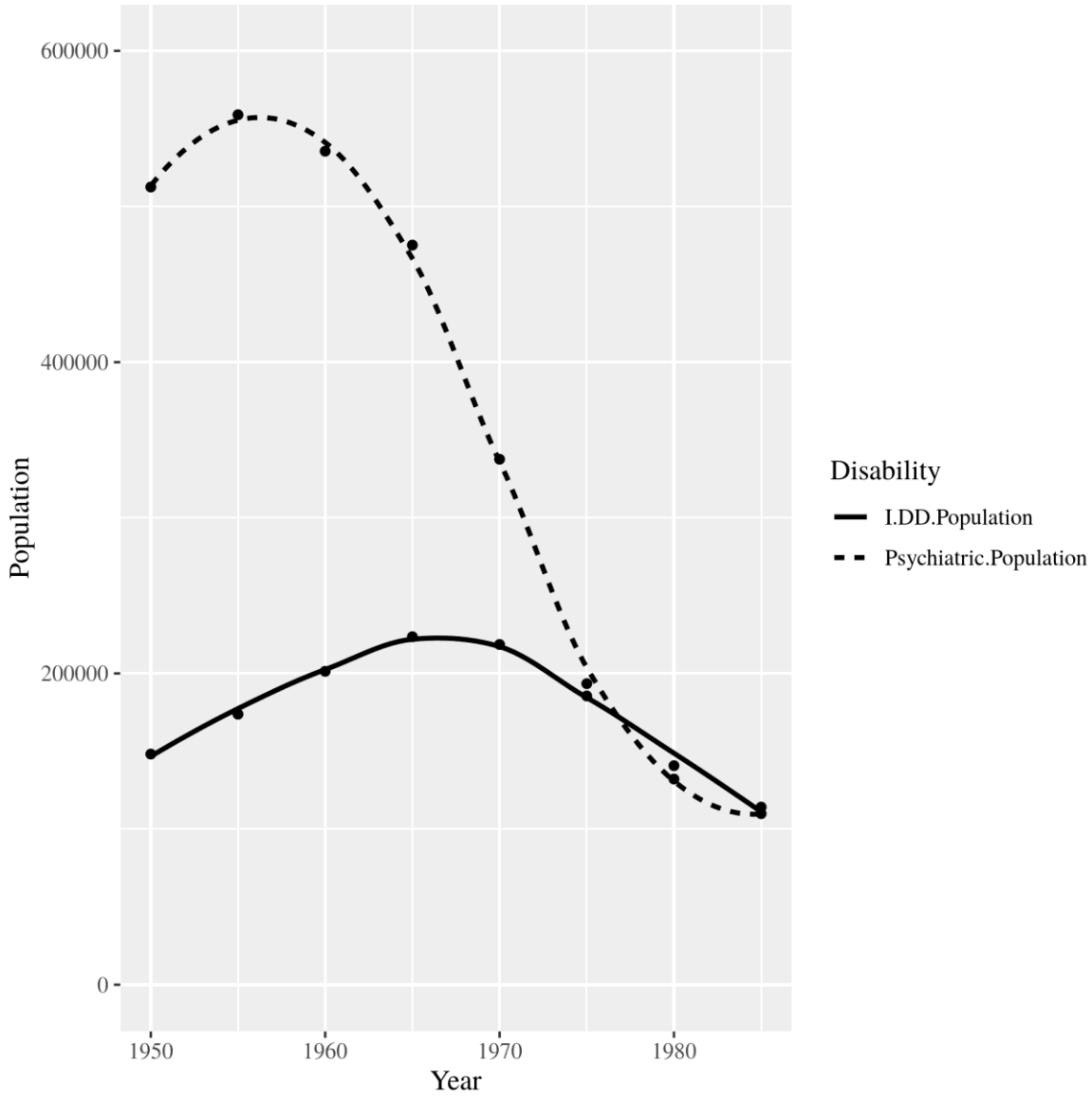


Figure 2. The total population employed in disability employment programs, 1967-1979. Source: US GAO (1981:125).

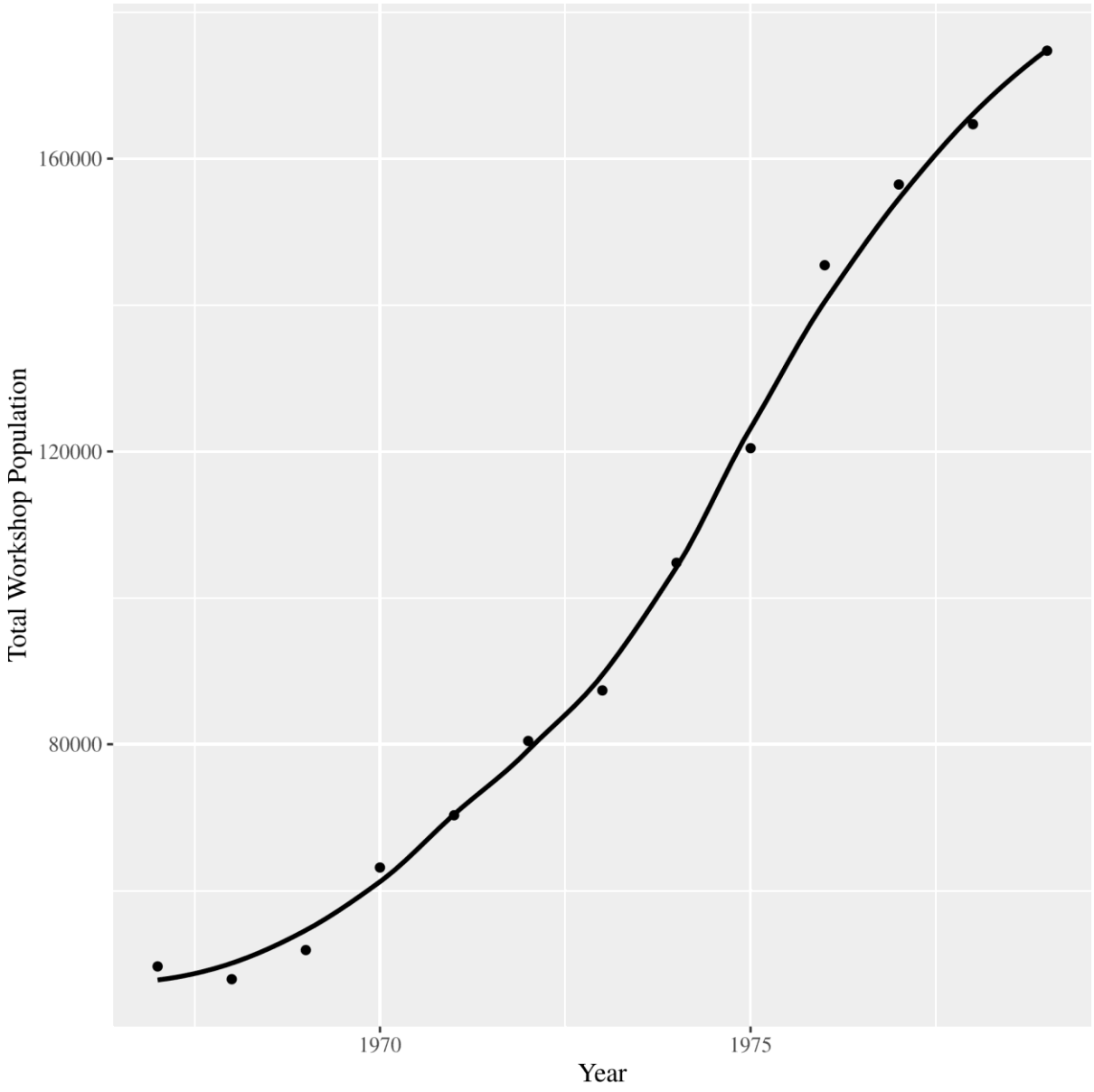
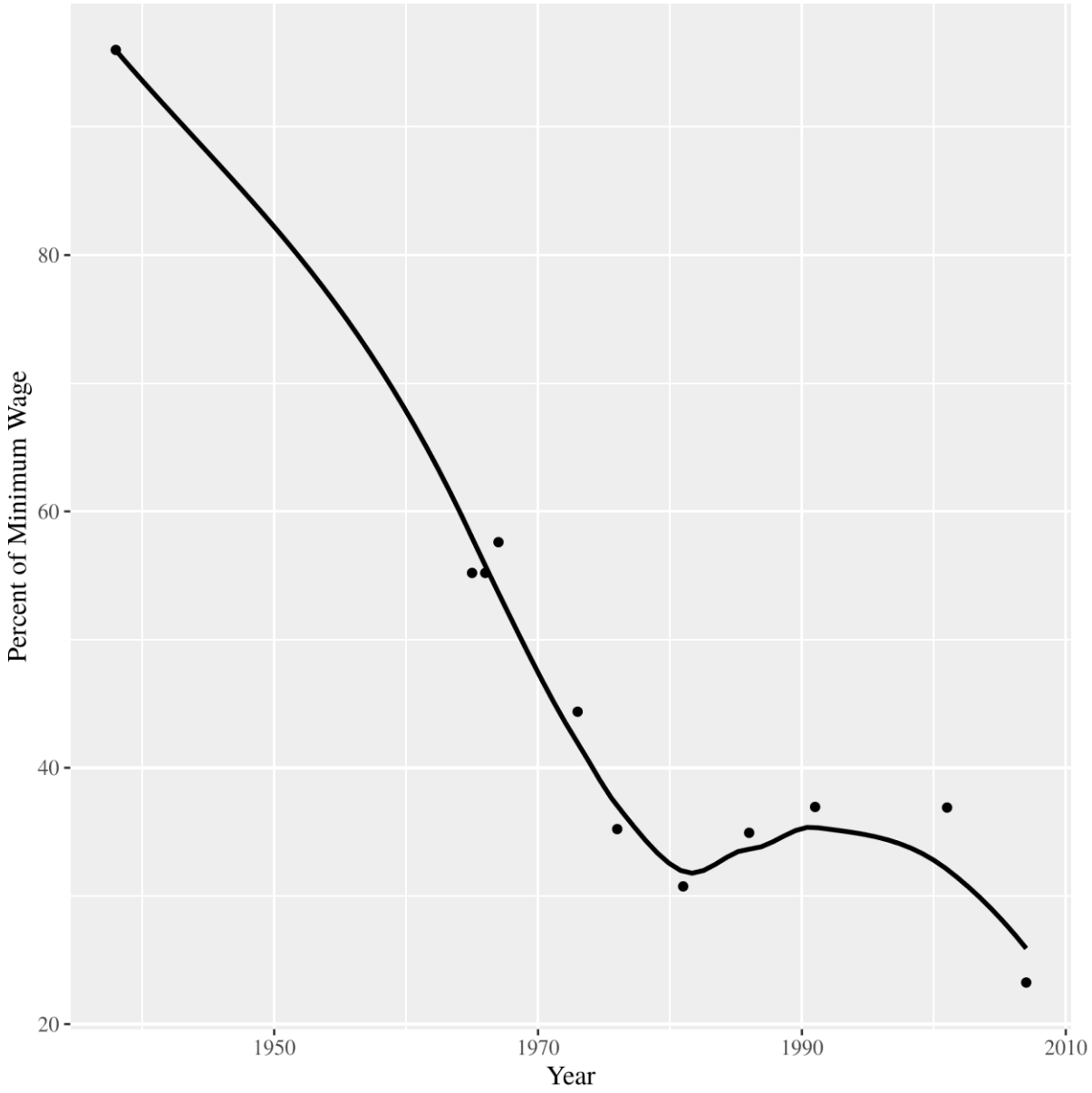


Figure 3. Average wages paid under section 14(c) as a percentage of the federal minimum wage.[7] Sources: Beckwith (2016:105-106), US DOL WHD (1967:42).



[7] Beckwith (2016) provides inconsistent reports of average earnings in the 1965-1967 period, citing US DOL WHD (1967) and an external study by Button (1967). Beckwith's wage data appears to blur the distinction between wages paid in work activity centers and sheltered workshops, reporting their disparate averages as the overall national average for each year. Beckwith further appears to mistake the average hourly wage Button reports in the state of Pennsylvania for a national average. Figures presented above for 1965-1967 were therefore recalculated from US DOL WHD (1967:42). I have excluded Button's regional data from the present analysis of national wages.

Figure 4. Disabled population employed in sheltered workshops, work activity centers, and evaluation and training programs in each fiscal year. Source: US GAO (1981:126).

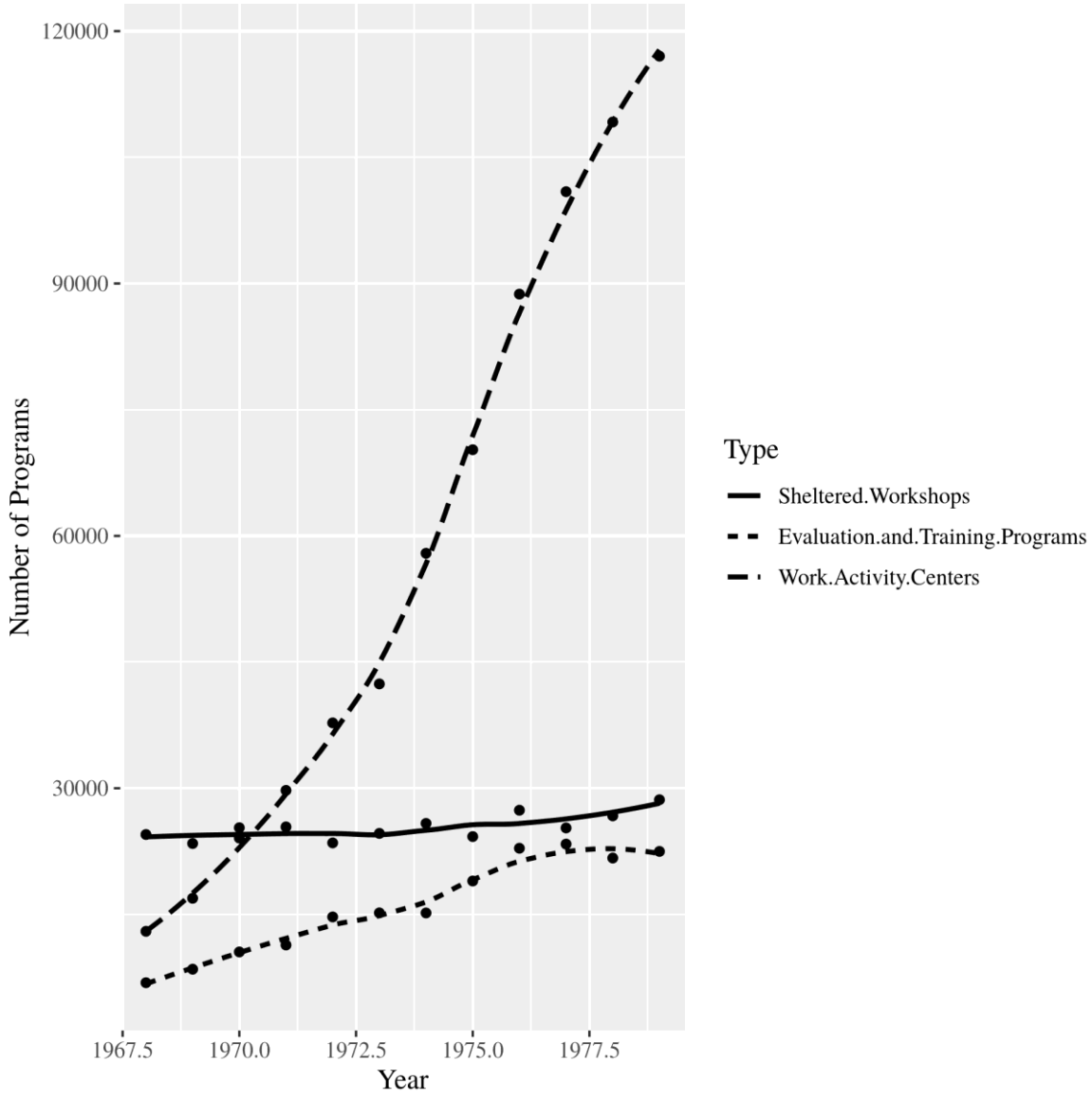


Figure 5. Key stakeholders in subminimum wage debates and their positions vis-à-vis one another.