

POVERTY AND CIVIL RIGHTS: A BEHAVIORAL ECONOMICS PERSPECTIVE

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The International Bill of Human Rights recognizes a universal entitlement to “the continuous improvement of living conditions.” A dignified existence is a common concern of modern civilization and of the social sciences. But the mindset that emerges when we have too little creates challenges that often impede the improvement of living conditions. Poverty is a shortage not merely of financial resources but of cognitive resources as well. When people are preoccupied with budgetary concerns, they have fewer mental resources to devote to other things. For the more wealthy, everyday budgetary considerations represent manageable intrusions. The wealthy have slack in their budget and can manage unexpected expenses with relative ease. The poor, on the other hand, have little slack: unexpected expenses require giving up essentials, like rent payments or utility bills, and making frequent and difficult tradeoffs. The frequent challenges and heightened stakes eat up comparatively more of the poor’s mental resources, leaving less mind for other problems.

This Article employs a suitcase metaphor for people’s budgeting. The wealthy have a “big suitcase” which allows them to pack modest items casually. The poor have a “small suitcase” which must be packed intently and with great care. The packer of a small suitcase must carefully consider the size of each new item, and what can be removed each time they want to put something in.

The Article describes the results of empirical research done by the author and his colleagues into decision making under conditions of plenty and of scarcity. Among the topics examined in the studies are the impact of easier versus more imposing financial challenges on cognitive capacity, the psychology of borrowing, and the potential impact of financial concerns on other, nonfinancial behaviors.

Scarcity impacts a person not only directly, as wants or needs go unfulfilled, but also indirectly, as we struggle to make do with less. Persistent financial concerns impose a cognitive load on a limited

* This article is based on the David C. Baum Memorial Lecture delivered at The University of Illinois College of Law, on March 28, 2012.

bandwidth, which can impinge on other aspects of life, and can create poverty traps. The solution for alleviating the problem cannot be to reduce the already modest needs of the poor, nor to try to increase our inherently limited bandwidth. When the suitcase cannot be enlarged through higher wages or wealth transfers, the next option is to facilitate packing. By creating a more reliable, stable, and forgiving context, which the wealthy already enjoy, the everyday management of life under scarcity can be made easier, some bandwidth liberated, and costly mistakes and their menacing consequences reduced. This approach may bring us closer to the delivery of the universal entitlement to “the continuous improvement of living conditions.”

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I. INTRODUCTION

“Freedom from want” was an indelible phrase articulated by President Franklin Delano Roosevelt in his Four Freedoms and ensuing speeches more than seventy years ago.¹ It establishes a link between freedom and economic wellbeing. Soon after Roosevelt’s Freedom speeches, a half century ago, the International Covenant on Economic, Social and Cultural Rights was adopted by the United Nations General Assembly.² A multilateral treaty, and part of the International Bill of Human Rights, it recognizes in Article 11 “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”³ Although freedom from want is not explicitly guar-

1. Franklin Delano Roosevelt, 32d President of United States, State of the Union Address, (Jan. 6, 1941), *available at* <http://www.fdrlibrary.marist.edu/pdfs/ffreadingcopy.pdf>.

2. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/RES/2200(XXI) (Dec. 16, 1966), *available at* http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/2200%28XXI%29&Lang=E&Area=RESOLUTION.

3. *Id.* art. 11, para. 1.

anteed by the U.S. Constitution, people's ability to live a dignified existence is not only part of the International Bill of Human Rights, but also a common concern of modern civilization and a main focus of the social sciences.

What it means to have an adequate standard of living, free from want, is not a trivial issue. It implicates cultural, societal, philosophical, and legal considerations. But it is also a fundamentally empirical question about what people in need perceive, what they want, and how they might go about trying to achieve their goals and desires.

It is this latter perspective, the psychology and behavior of the poor, that forms the core of this Article. In what follows, I review some recent research relevant to our understanding of the psychology of poverty. I argue that some of the central findings, which are often in tension with classical assumptions, have profound implications for how we ought to think about people's right to adequate standards of living and to the continuous improvement of living conditions.

Poverty has long been observed to correlate with a plethora of counterproductive behaviors.⁴ Not only do the poor show low and often misguided participation in the financial mainstream, they also fail to take advantage of entitlement programs for which they are eligible⁵ they engage in less preventive healthcare and fail to adhere to drug regimens,⁶ they are tardier and are less likely to keep appointments, and they are less attentive parents.⁷

The poor in the United States have access to several welfare programs.⁸ Yet these programs have a remarkably low take-up rate.⁹ The poor elderly, for example, participate in Supplemental Security Income (a cash program) at only a forty-five to sixty percent range.¹⁰ Similarly, Temporary Assistance for Needy Families (TANF) participation rate is in the fifty to fifty-five percent range for poor single mothers.¹¹ And smaller programs, such as State Children Health Insurance programs, have even lower take-up rates, in the eight to fourteen percent range.¹²

4. Marianne Bertrand, Sendhil Mullainathan & Eldar Shafir, *A Behavior-Economics View of Poverty*, 94 AM. ECON. REV. 419, 419 (2004).

5. Marianne Bertrand, Sendhil Mullainathan & Eldar Shafir, *Behavior Economics and Marketing in Aid of Decision Making Among the Poor*, 25 J. PUB. POL. & MARKETING 8, 16 (2006).

6. Steven J. Katz & Timothy P. Hofer, *Socioeconomic Disparities in Preventive Care Persist Despite Universal Coverage*, 272 JAMA 530, 530 (1994).

7. Andrew J. Karter et al., *Missed Appointments and Poor Glycemic Control: An Opportunity to Identify High-Risk Diabetic Patients*, 42 MED. CARE 110, 111-12 (2004); Richard D. Neal et al., *Missed Appointments in General Practice: Retrospective Data Analysis from Four Practices*, 51 BRIT. J. GEN. PRAC. 830, 831 (2001).

8. *The History of Welfare*, WELFARE INFORMATION, <http://www.welfareinfo.org/history/> (last visited Nov. 3, 2013).

9. See generally Janet Currie, *The Take-up of Social Benefits*, in PUBLIC POLICY AND THE INCOME DISTRIBUTION, 88-108, 121-26, Table 3.1, 3.2 (Alan J. Auerbach et al. eds., 2006).

10. Kathleen McGarry, *Factors Determining Participation of the Elderly in Supplemental Security Income*, 31 J. HUM. RESOURCES 331, 332 (1996).

11. Currie, *supra* note 9, at 98, Table 3.1.

12. *Id.* at 91, Table 3.1.

Approximately ten million households in the United States are “unbanked,” and another twenty percent of households are “underbanked,” relying on nontraditional forms of banking.¹³ Nearly thirty percent of U.S. households do not have a savings account.¹⁴ The great majority of these live in poverty and must rely on alternative financial institutions, such as check cashers to cash or process their checks—services for which these alternative financial institutions typically charge high fees.¹⁵ With little access to formal borrowing instruments, these households often resort to payday loans or borrow from friends and relatives so that they can make ends meet and cover emergency spending.¹⁶

The savings rate among the poor is very low. There is evidence that the poor have difficulty smoothing their consumption over time, which is associated with a drop in consumption toward the end of the month.¹⁷ This, in turn, leads to utilities being turned off at a high rate, with prohibitive reconnection costs.¹⁸

These and related behaviors are of particular concern not only because they make life more difficult, but also because they further deepen poverty, contrary to the resolve for the “continuous improvement of living conditions.”

Theories about behavior under poverty typically fall into two camps.¹⁹ One camp focuses on the *context* of poverty.²⁰ This camp rationalizes the observed behaviors as calculated and rational adaptations to prevailing circumstances.²¹ For example, there might be large hidden costs, like the stigma attached to participation, that dictate the supposed cost-benefit analysis the poor make when they decide not to participate in programs.²² Similarly, predatory lenders in poor areas may push high interest rate borrowing, and unreliable transportation can cause tardiness and absenteeism.

The other camp focuses on characteristics of the poor—on a “culture of poverty,” rife with psychological and attitudinal shortcomings that often render the inclinations of the poor lacking and their behaviors fallible.²³ Lower levels of education, for example, might account for mis-

13. FDIC, 2011 NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS 4 (2012).

14. *Id.*

15. MICHAEL S. BARR, NO SLACK: THE FINANCIAL LIVES OF LOW-INCOME AMERICANS 3 (2012); FDIC, *supra* note 13, at 23; Michael A. Stegman, *Payday Lending*, 21 J. ECON. PERSP. 169, 170 (2007).

16. BARR, *supra* note 15, at 3.

17. Bertrand et al., *supra* note 5, at 14.

18. KATHRYN EDIN & LAURA LEIN, MAKING ENDS MEET: HOW SINGLE MOTHERS SURVIVE WELFARE AND LOW-WAGE WORK 28 (1997); Bertrand et al., *supra* note 5, at 14.

19. Bertrand et al., *supra* note 5, at 8.

20. Bertrand et al., *supra* note 4, at 419.

21. *Id.*

22. *Id.* at 421–22.

23. *Id.* at 419.

understandings about contract terms, and deficient parental attention may influence the next generation's parenting style.²⁴

In our research over the last decade or so, my colleague Sendhil Mullainathan and I, along with several collaborators, have studied decision making behaviors in contexts of scarcity.²⁵ Our research suggests a rather different account, one that focuses on the mental processes engaged when people have too little. This Article argues that poverty occupies the mind, that it requires substantial attentional resources, and that this leaves reduced resources and leads to diminished performance elsewhere. The poor must juggle and time their expenses to coincide with sporadic income, and they must make difficult tradeoffs. Even when not actively engaged in making financial decisions, these preoccupations can be present and distracting. The human cognitive system has limited capacity.²⁶ Preoccupations with pressing budgetary concerns leave fewer cognitive resources available to guide choice and action. Just as an air traffic controller who is focused on a potential collision course is prone to neglect other planes under her control, so do the poor. When attending to pressing monetary concerns, the poor lose their capacity to give other problems their full consideration.

This Article suggests that better insight into the behavioral demands of poverty can bring about better policies. An understanding of the demands imposed on the poor might allow for the development of contexts that alleviate some of those demands, and thus go part of the way towards improving the predicament of the poor, abiding by their human rights to improved conditions.

The rest of this Article proceeds as follows. In Part II, I present a brief metaphor developed to capture the persistent challenges faced by the poor.²⁷ In Part III, I summarize some of the more pertinent experimental findings that shed light on the psychology that comes with being preoccupied by poverty. I then discuss in Part IV who, according to that kind of thinking, we might consider "poor," and in Part V I conclude with a brief exploration of the implications of the research for what might be considered the rights of the poor.

24. Anandi Mani, Sendhil Mullainathan, Eldar Shafir & Jiaying Zhao, *Poverty Impedes Cognitive Function*, 341 SCI. 976, 976 (2013).

25. See, e.g., Anuj K. Shah, Sendhil Mullainathan & Eldar Shafir, *Some Consequences of Having Too Little*, 338 SCI. 682, 682 (2012) ("Resource scarcity creates its own mindset, changing how people look at problems and make decisions."). See generally SENDHIL MULLAINATHAN & ELДАР SHAFIR, SCARCITY: WHY HAVING TOO LITTLE MEANS SO MUCH (2013).

26. George A. Miller, *The Magical Number Seven, Plus or Minus Two: Some Limits on Our Capacity for Processing Information*, 63 PSYCHOL. REV. 81 (1956); see also Alan D. Baddeley & Graham Hitch, *Working Memory*, in 8 THE PSYCHOLOGY OF LEARNING AND MOTIVATION 47, at 50 (Gordon H. Bower ed., United Kingdom ed. 1974); ULRIC NEISSER, COGNITION AND REALITY: PRINCIPLES AND IMPLICATIONS OF COGNITIVE PSYCHOLOGY 97–103 (1976); Steven J. Luck & Edward K. Vogel, *The Capacity of Visual Working Memory for Features and Conjunctions*, 390 NATURE 279 (1997).

27. See MULLAINATHAN & SHAFIR, *supra* note 25, at 69–75.

II. A PACKING METAPHOR

Think of how you might pack a suitcase for a business trip. You might start by putting in all the essentials—toiletries, underwear, suit—and then, with room left over, you would add a few less essential items. You might pack an umbrella in case it rains and a sweater in case it is cold. You might even pack your gym clothes and running shoes. There are, of course, other things you could take but, content with what you have, you close the suitcase with some room to spare, and you are done.

Now imagine instead that you are packing a small suitcase for the trip. As before, you start by tossing in the bare essentials. But these quickly fill the suitcase. You reconsider, carefully stack, try to rearrange. You become creative in making room. You stuff your socks and phone charger inside the shoes, and remove the umbrella. This leaves a bit of room to spare. Should you take the sweater? Or a book? Is it worth risking being a bit cold for the chance to exercise? Packing the small suitcase forces you to focus on your packing and to make conscious tradeoffs.

Both the large and small suitcases impose limits. Both require a choice of what to pack and what to leave out. Yet psychologically it is the small suitcase that feels like a problem. The large suitcase is packed casually, carelessly; whereas the small suitcase is packed intently and with great care. When the packer of a big suitcase contemplates adding an item, she merely asks herself whether she wants it. Nothing needs to come out, no particular rearranging necessary—there's slack. The packer of a small suitcase thinks about what she must remove to make room.

We have used this packing metaphor to describe problems of “budgeting.”²⁸ We have a money suitcase into which we must fit our housing, clothing, and all other expenses. We have a limited time suitcase into which we must fit our work, leisure, and time with family. And when scarcity focuses us, when it captures our attention, it also changes how we pack. Scarcity introduces a need to focus and persistent tradeoff thinking. When we pack big, roomy suitcases, we pack loosely with plenty of slack in our budget. No real need to worry or to attend with great care. But when our suitcase is small, and not all the essential things fit, that is when we must pay special attention to our packing, attend to the size of items, carefully consider tradeoffs. We then often find ourselves with less mind for other things.

A. *The Poor Packing*

Those who pack very tight suitcases need to be expert packers. They do not have the luxury of not minding that abundance brings. Without the luxury of slack, of unused space in the suitcase, they need to evaluate every item. Indeed, when marketing researchers stop shoppers

28. *Id.*

exiting a supermarket and survey them, they find that lower-income shoppers are more accurate in knowing how much they spent and the prices of the items they bought.²⁹ To separate knowledge from experience, we asked commuters in South Station the fare at which the taximeter starts in the city of Boston.³⁰ Clearly, the rich take taxis much more frequently. And yet, the rich gave the correct answer only twelve percent of the time; the less affluent were correct three times as often.³¹

Knowing prices often involves more than just reading the label. It requires vigilance because what you see is often not what you pay. Studies have found, for example, that both rich and poor smokers smoke less when there is a rise in excise tax, which is visible in the posted price, but that only low-income smokers respond to changes in sales taxes, which are not posted, but only added at the register.³²

Of course, the poor are paying more attention because the stakes for them are higher. But that is the point—they need to know more, be vigilant, pay more attention to their everyday packing compared to those who experience abundance. In another survey we did, we asked people to list things they thought about when contemplating buying a TV.³³ All the obvious stuff was mentioned, like the size of the TV, the screen resolution, and the fairness of the price.³⁴ When we divided our sample into lower and higher income groups a pattern emerged.³⁵ People reported tradeoff thinking—thoughts such as, “What do I have to give up to buy it?”—and the people who asked themselves these questions were disproportionately poor.³⁶ The poor reported tradeoff thinking almost twice as often as those who were better off.³⁷

When your suitcase is large, most expenses will appear small. But with a modest budget, many expenses become prohibitively big. Take the cost of housing, for example. How big a proportion is it of all that you have got? How much space does it take in an American homeowner’s suitcase? The U.S. Census Bureau’s American Community Survey (conducted in 2008, before that year’s housing crisis) computed the number of Americans for whom the cost of housing occupied thirty percent or more of their money suitcase.³⁸ This was rare when income was above seventy-five thousand dollars, and it was the norm when income was

29. Isabel María Rosa-Díaz, *Price Knowledge: Effects of Consumers’ Attitudes Towards Prices, Demographics, and Socio-cultural Characteristics*, 13 J. PRODUCT & BRAND MGMT. 406, 415 (2004).

30. MULLAINATHAN & SHAFIR, *supra* note 25, at 93.

31. *Id.* at 93–94.

32. Jacob Goldin & Tatiana Homonoff, *Smoke Gets in Your Eyes: Cigarette Tax Salience and Regressivity*, 5 AM. ECON. J. 302, 320–25 (2013).

33. MULLAINATHAN & SHAFIR, *supra* note 25, at 72.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Financial Characteristics: 2008 Community Survey 1-Year Estimates*, U.S. CENSUS BUREAU, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_08_1YR_S2503&prodType=table (last visited Nov. 3, 2013).

low.³⁹ In other words, it is quite common to have a big chunk of your suitcase filled by housing costs when you are poorer but very rare when you are rich.⁴⁰

Now when you spend thirty percent of your budget on housing (and many low-income households spend a greater fraction than that) and add the cost of transportation, food, clothing, utilities, and the rising cost of education; you quickly find yourself with no slack. It takes all you have (and often more, making you borrow) to afford the things you feel you need. And that creates a big packing problem. Because now, when your car breaks, there is no place to fit that expense. There is another thing to pack with no room to spare.

And it can get quite costly. Those with small suitcases will pay a lot to break down the big unexpected expense into smaller, more manageable payments. During the most recent recession, dollar stores (where all items are a dollar or less) showed some of the biggest gains in shopper visits.⁴¹ The continued tightening of household budgets, especially as the month went on, increased demand for smaller packages that cost less.⁴² An increasing number of Americans were looking for under-a-dollar items like small packages of detergent, boxes containing just a few garbage bags, and single rolls of paper towels.⁴³ Wal-Mart, the world's largest retailer, was adding thousands of specially produced under-a-dollar packages to its shelves.⁴⁴ Note, of course, that these shoppers were going to buy more of these items, on a regular basis, and were therefore going to pay more in the long run, but they were going to do so a little bit at a time.

Of course, not all expenses can be broken down into one-dollar packages and this presents a big problem. Some of the things you need to fit in your tight suitcase are lumpy yet necessary, like fixing a broken car, or paying for a doctor's visit. In the absence of a buffer-stock of savings, even foreseeable expenses become a difficult and imposing challenge.

In November of 2011, the U.S. Census Bureau reported that fifty-one million Americans lived with incomes less than fifty percent above the poverty line, which, all told, placed over one hundred million people—one in three Americans—officially in poverty or in a thin and fretful zone just above it.⁴⁵ Over fifty percent of all Americans and sixty per-

39. *Id.*

40. In case it is not immediately obvious, most of those who dedicate thirty percent of their budget to housing live in houses that are much less nice than those who devote a much smaller proportion to housing.

41. Stephanie Clifford, *Stores Scramble to Accommodate Budget Shoppers*, N.Y. TIMES, Sept. 22, 2010, http://www.nytimes.com/2010/09/22/business/22dollar.html?pagewanted=all&_r=0.

42. *Id.*

43. *Id.*

44. *Id.*

45. Jason DeParle et al., *Older, Suburban and Struggling, 'Near Poor' Startle the Census*, N.Y. TIMES, Nov. 18, 2011, http://www.nytimes.com/2011/11/19/us/census-measures-those-not-quite-in-poverty-but-struggling.html?pagewanted=all&_r=0.

cent of children lived in households that earned less than 300 percent of the poverty level, still a zone of real tough packing.⁴⁶

When your suitcase is not very big, it is exceedingly difficult to maintain slack. And when you do not have slack, there is the constant worry about fitting in things. When you do not have slack, anytime anything goes slightly wrong, you have a big concern because you do not have the flexibility to deal with the problem—you are living with no room to fail. Preoccupation with pressing budgetary concerns, we find, occupies the mind, leaves fewer cognitive resources available elsewhere, and can thus impede cognitive function in all aspects of life, financial and otherwise. Scarce financial resources, in other words, bring with them scarcity in another resource, namely, cognitive capacity, or bandwidth.

III. EXPERIMENTAL FINDINGS

A. *Bandwidth and Distraction*

We ran studies at a New Jersey mall, where we induced richer and poorer shoppers to think about everyday financial demands.⁴⁷ We assumed that for the rich these would represent minor hurdles of relatively little consequence.⁴⁸ For the poor, in contrast, we expected these to trigger persistent and distracting concerns.⁴⁹ Participants in these studies were presented with hypothetical scenarios describing a variety of realistic financial problems that they might experience.⁵⁰ In one scenario, for example, their car was having some trouble and required a certain amount of money to be fixed.⁵¹ They could pay in full, take a loan, or take a chance and forego servicing the car for now.⁵² In another scenario, they experienced a drop in salary, and had to think of whether, and how, they might go about maintaining roughly the same lifestyle under the new circumstances.⁵³

Each scenario occurred either in a “hard” condition, where costs were relatively high (e.g., the car needed \$1500 to be fixed; the salary dropped by fifteen percent), or in an “easy” condition, where the challenges were smaller (e.g., the car required \$150; the drop was five percent).⁵⁴ The easy condition, we hypothesized, would evoke limited mone-

46. U.S. CENSUS BUREAU, AGE AND SEX OF ALL PEOPLE, FAMILY MEMBERS AND UNRELATED INDIVIDUALS ITERATED BY INCOME-TO-POVERTY RATIO AND RACE, 2011: BELOW 300% OF POVERTY—ALL RACES, 2012 ANN. SOC. & ECON. SUPPLEMENT, available at http://www.census.gov/hhes/www/cpstables/032012/pov/POV01_300_1.xls.

47. Mani et al., *supra* note 24, at 977.

48. *See id.* at 977–78.

49. *See id.*

50. *Id.*

51. *Id.* at 977.

52. *Id.*

53. *Id.*

54. *Id.*

tary concern in both poor and rich participants; whereas, the hard condition would evoke concern in the poor but less in the rich.⁵⁵

To test for the impact on participants' cognitive capacity, we looked at two common measures: fluid intelligence, a central component of cognitive ability, and executive control—the mind's capacity to allocate tasks in accordance with internal goals.⁵⁶ To gauge fluid intelligence we used a Raven's Matrices test, an accepted measure of fluid intelligence and a common component of IQ tests.⁵⁷ The Raven's test involves a sequence of shapes with one shape missing, and participants must choose which of several alternatives best fits in the missing space.⁵⁸ Raven's is the most common way that psychologists, educators, the military, and others measure fluid intelligence, the capacity to think logically, and to analyze and solve novel problems, independent of background knowledge or formal study.⁵⁹

To gauge executive control, we used a spatial task that required participants to respond to stimuli appearing on a screen, quickly and often in a manner contrary to their initial impulse.⁶⁰ The speed and accuracy of response measures executive control: the ability to guide thought and action in accordance with internal goals.⁶¹ Like Raven's, this task is structured so as to minimize the potential impact of literacy skills.⁶²

After viewing each scenario, participants performed a series of computer-based Raven's Progressive Matrices and spatial compatibility tasks.⁶³ Independently, we collected participants' household income information, computed effective income,⁶⁴ and separated participants into "rich" and "poor" based on a median split on income.⁶⁵

When we looked at performance on fluid intelligence and executive control following the easy scenarios, we found no difference between the two groups of mall-goers.⁶⁶ The rich and the poor looked equally smart.

55. *Id.*

56. *Id.*; see generally Michael I. Posner & Gregory J. DiGirolamo, *Executive Attention: Conflict, Target Detection, and Cognitive Control*, in *THE ATTENTIVE BRAIN* 401, 402–03 (Raja Parasuraman ed., 1998) (explaining the nature of executive control).

57. Posner & DiGirolamo, *supra* note 56, at 402–03; see also EARL HUNT, *HUMAN INTELLIGENCE* 46 (2010); John Raven, *The Raven's Progressive Matrices: Change and Stability over Culture and Time*, 41 *COGNITIVE PSYCHOL.* 1, 1–4 (2000).

58. Raven, *supra* note 57, at 2.

59. HUNT, *supra* note 57, at 46; Randall W. Engle et al., *Working Memory, Short-term Memory, and General Fluid Intelligence: A Latent-Variable Approach*, 128 *J. EXPERIMENTAL PSYCHOL.: GEN.* 309, 328 (1999).

60. Mani et al., *supra* note 24, at 977.

61. Matthew C. Davidson et al., *Development of Cognitive Control and Executive Functions from 4 to 13 Years: Evidence from Manipulations of Memory, Inhibition, and Task Switching*, 44 *NEUROPSYCHOLOGIA* 2037, 2037–38 (2006).

62. Mani et al., *supra* note 24 at 977.

63. *Id.*

64. To compute effective income we divided household income by the square root of household size. *Id.* Alternative measures, such as dividing household income by number of people in the household, yield similar findings.

65. Median household income was roughly \$70,000 with a lower bound of roughly \$20,000, which represented a fair cross-section of the United States. *Id.*

66. *Id.*

On the other hand, when we looked at their performance in the context of the hard scenarios, the “rich” participants did just as well as with the easy scenario, but the poorer participants did significantly worse.⁶⁷ When concerns of scarcity were brought to mind, the poor all of a sudden had significantly reduced fluid intelligence scores and exhibited diminished executive control.⁶⁸

We have run several such studies, always with the same results.⁶⁹ In one study, we paid participants more for good performance.⁷⁰ This presumably should especially incentivize the low-income group, but they did not do any better; in fact, they did just a bit worse than before.⁷¹

Coming up with the money to fix a car, or to maintain one’s standard of living after a salary cut, was presumably fairly easy for those who were well-off. They could just pay out of savings, charge a credit card, or cancel some other costly plans. For the less well-off, coming up with a very modest sum, or dealing with a minor cut in salary, was also manageable. But things changed when the sums got a bit bigger. In a recent study, nearly half of all Americans reported that they would probably be unable to come up with \$2,000 in thirty days even in an emergency.⁷² And while the scenarios we gave our participants were hypothetical, they were apparently realistic enough and close enough to home to engage participants with their money concerns, impose on their bandwidth, and lower their cognitive performance on other tasks. Participants not only focused on the problems at hand, they “tunneled” on them—they gave them the bulk of their attention, which came at the expense of other things, such as performing well on the cognitive tests.

And the effect was substantial. It was bigger than the impact on cognitive function observed following a night of sleep deprivation.⁷³ Because the Raven’s test measures a component of intelligence, it has a direct analogue with IQ.⁷⁴ The effects we observed (Cohen’s *d* ranging between 0.88 and 0.94)⁷⁵ correspond to between thirteen and fourteen IQ points.⁷⁶ By most commonly used descriptive classifications of IQ, thirteen points suffice to move you from “average” to “superior” intelligence.⁷⁷ Or, in the other direction, losing thirteen points can take you from “average” to “borderline deficient.”⁷⁸ The same person, when she

67. *Id.*

68. *See id.*

69. *Id.* at 978.

70. *Id.*

71. *Id.*

72. Annamaria Lusardi et al., *Financially Fragile Households: Evidence and Implications 2* (Nat’l Bureau of Econ. Research, Working Paper No. 17072, 2011).

73. Mani et al., *supra* note 24, at 980 (citing L. Linde & M. Bergström, *The Effect of One Night Without Sleep on Problem-Solving and Immediate Recall*, 54 PSYCHOL. RES. 127, 130 (1992)).

74. MULLAINTHAN & SHAFIR, *supra* note 25, at 48.

75. Mani et al., *supra* note 24, at 977.

76. *Id.* at 980.

77. MULLAINTHAN & SHAFIR, *supra* note 25, at 52.

78. *Id.*

is poor, has a lower IQ and less effective control, when she is preoccupied by scarcity than when she is not.

Naturally, comparing the poor to the rich is not so simple. Many other things—education, health, living conditions, social connections—differ between the two groups, making it hard definitively to conclude that the effects are causal rather than correlational.⁷⁹ We therefore conducted a very different kind of study, in which we ran the same participants a few months apart, once when they were poor and once when they were rich.⁸⁰ We gauged the same people's performance, first when they had a tight suitcase and then when their suitcase was roomier.⁸¹

Sugarcane farmers in India harvest once a year, and thus receive the bulk of their annual income annually at harvest time and find it hard to smooth their consumption throughout the year.⁸² As a result, these farmers tend to be poor before harvest and richer after. This allowed us to compare the cognitive capacity for the same farmer at two different points in time: when he is poor (pre-harvest) versus when he's richer (post-harvest).⁸³ As before, we used versions of the Raven's and executive control tasks, and found pronounced differences.⁸⁴ The farmers performed much worse on fluid intelligence and executive control when they were poor (pre-harvest) than when they were rich (post-harvest).⁸⁵ The same person behaved less intelligently and more impulsively when he was poor. And in this study it was not us who triggered the distracting scarcity-related thoughts—those thoughts occurred naturally when things were tight, but not when they were flush.⁸⁶

B. Borrowing

1. Borrowing Without Slack

When your budget is tight and there is nothing expandable and your car breaks down, where do you get the money to fix it? If you had liquid savings, you would use those. If you were well-off, you could just cut back on other consumption, like the opera, the fancy dinner, or the weekend away. If you had a second car, you would perhaps delay until you carefully allocated the money for fixing this one. These are all “easy” options. But when you lack savings and have no opera plans or a

79. Peter Butterworth, et al., *The Association Between Financial Hardship and Amygdala and Hippocampal Volumes: Results from the PATH Through Life Project*, 7 *SOC. COGNITIVE AND AFFECTIVE NEUROSCIENCE*, 548, 553–54 (2012); S. J. Lupien et al., *Can Poverty Get Under Your Skin? Basal Cortisol Levels and Cognitive Function in Children from Low and High Socioeconomic Status*, 13 *DEV. AND PSYCHOPATHOLOGY* 653, 653–54 (2001).

80. Mani et al., *supra* note 24, at 976.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.* at 979.

85. *Id.*

86. *Id.*; MULLAINTHAN & SHAFIR, *supra* note 25, at 58.

second car, this becomes a serious challenge: where will you get the money?

The impact of having no slack becomes clear when you think of the type of expenditures on which the poor are forced to cut back. Some frequent solutions to budget problems are late payments and phone and gas disconnections.⁸⁷ In 2004, a survey found that about one in six families in the lowest income quintile have been late in paying a bill within the last year,⁸⁸ and in one study of low- and moderate-income families, eighteen percent had their phone disconnected, ten percent had a utility shut off, six percent were evicted, and four percent filed for bankruptcy within a twelve month period.⁸⁹ A common outcome of this strategy is the need to pay reconnection and late fees and a lower credit score, which makes future transactions more difficult and potentially more expensive.⁹⁰

Many financial services impose late payment penalties, from the obvious credit card bill, to the less obvious like rent to own stores that penalize individuals for missing a payment by repossessing the item, thereby imposing greater loss. Landlords impose late fees, and all sorts of bills, from utility to medical bills, have steep late payment fees, effectively imposing what is the equivalent of high interest on a loan. In other words, if you cut back by skipping a bill payment you are effectively borrowing at very high interest. Researchers estimate that nearly five percent of the annual income of the poor is spent on just those “solutions,” not to mention the hassle, the phone calls, and the further long term and costly penalties to your credit score.⁹¹

Some families cut back on basic but less essential needs, like certain foods, or ignore the bills that will have the least negative direct consequences.⁹² Medical bills are often neglected since emergency care is guaranteed.⁹³ Such strategies may be coupled with utilizing easy to access but costly alternative credit sources. The Center for Financial Services Innovation estimates that Americans spend about thirteen billion dollars annually on transactions with alternative financial services providers.⁹⁴

Notice, incidentally, that in all these cases you will have incurred not only a financial challenge, but an imposing mental one as well. You

87. MULLAINATHAN & SHAFIR, *supra* note 25, at 107.

88. John P. Caskey, *Can Personal Financial Management Education Promote Asset Accumulation by the Poor?* 1 (2006) (unpublished manuscript), available at http://indstate.edu/business/NFI/leadership/briefs/2006-PB-06_Caskey.pdf.

89. Michael S. Barr, *Financial Services, Saving, and Borrowing Among Low- and Moderate-Income Households: Evidence from the Detroit Area Household Financial Services Survey*, in INSUFFICIENT FUNDS: SAVINGS, ASSETS, CREDIT, AND BANKING AMONG LOW-INCOME HOUSEHOLDS 81 (Robert M. Blank & Michael S. Barr, eds., 2009) [hereinafter INSUFFICIENT FUNDS].

90. See Sendhil Mullainathan & Eldar Shafir, *Savings, Policy and Decisionmaking in Low-Income Households*, in INSUFFICIENT FUNDS, *supra* note 89, at 121, 129–30.

91. *Id.* at 129.

92. See *id.* at 129–30.

93. See EDIN & LEIN, *supra* note 18, at 114–15.

94. MICHAEL J. HERRMANN ET AL., CTR. FOR FIN. SERVICES INNOVATION, INNOVATION TRENDS IN FINANCIAL SERVICES TO THE UNDERBANKED 3 (2008), available at http://www.cfsinnovation.com/system/files/cfsi_innovationtrends_mar08.pdf (last visited Nov. 15, 2013).

need to consider difficult tradeoffs and make decisions. You could skip your rent payment and risk your landlord finally getting serious about those eviction threats. You could, assuming you have managed carefully to avoid it thus far, tell your children, for the first time, that you are too poor to have dinner every day this week. Or you can take a payday loan. A person who is facing the prospect of having his phone shut off, with a hefty late fee to turn it on again and the assorted difficulties that come with having no phone service, may well be willing to borrow at high rates to avoid this from happening.

Payday loans are a commonly used financial vehicle amongst lower- and middle- income households.⁹⁵ These loans are easy and legal and avoid the stigma and stress of not paying your bills.⁹⁶ The typical payday loan involves receiving an advance on one's paycheck for a week or two, but this comes at a steep price, an effective interest rate that can be as high as 7000% APR.⁹⁷

These loans are highly contentious in policy circles and are often used to point out the myopia of the poor. Unless you are anticipating an imminent windfall, an expensive loan today is bound to be only harder to repay tomorrow. It looks shortsighted and unthinking. If only you had saved some money earlier, for what are, after all, expected mishaps, like a doctor's visit or the breakdown of a car, you would not find yourself in the predicament of having to take this prohibitively expensive loan now.

But when so much attention is directed towards immediate and pressing decisions, relatively little attention is allocated to important decisions that are less immediate. With this month's rent looming large and menacing, saving for a baby's eventual education, or for the future breakdown of a car, is left for some hopefully easier time in the future. A natural outcome of a volatile struggle with the moment will be a lack of buffer stock savings even, or especially, among those who in some ways need it most. When you live with no room to spare, a neglect of loftier, future needs comes with the territory. It is true, things might only get worse if you borrow at high rates, and if you fail to save, but for now at least you will have solved your most pressing problem.

When you live under scarcity, many things conspire against your ability to exercise the requisite control, to plan, and to save. As we just saw, there is the cognitive demand that comes from the persistent preoccupation with your finances. And right in the middle of it there is the recurring and pressing need to solve an immediate problem right now!

95. Mullainathan & Shafir, *supra* note 90, at 136; *see also* Stegman, *supra* note 15, at 173; Paige Marta Skiba & Jeremy Tobacman, *Payday Loans, Uncertainty and Discounting: Explaining Patterns of Borrowing, Repayment, and Default* 5 (Vanderbilt U. L. Sch. L. & Econ. & Nat'l Bureau of Econ. Research, Working Paper No. 08-33, 2008).

96. Barr, *supra* note 89, at 92.

97. Mullainathan & Shafir, *supra* note 90, at 136.

2. *Borrowing Simulations*

We ran several laboratory experiments consisting of games in which participants were randomly assigned budgets: “poor” participants had smaller budgets and “rich” participants had bigger ones.⁹⁸ Participants received “paychecks” from their budget on each round of the game: Poor participants had proportionally smaller paychecks than rich participants. On each round, participants used their allotment to earn points. If a participant moved on from a round without exhausting her paycheck, unspent units were saved for future use. Participants were also assigned to different borrowing conditions. Some were in a condition where they could not borrow—when a paycheck was exhausted, they moved to the next round. Other participants had the option, when they felt that they needed just a little more, to borrow at high cost, which was subtracted from their overall budget.⁹⁹

What we found was that the poor—those with smaller budgets—focused more, and were more efficient “per unit” with their small budget, while the rich, with their plentiful budgets, squandered their resources.¹⁰⁰ But while the poor focused on each stressed round and did quite well “per unit,” they also ran out of units too soon and, therefore, borrowed more, much more than the rich.¹⁰¹ And this really hurt them.

As the poor were making a focused effort to succeed on each limited-budget round, loans looked very appealing. Of course, the high interest was less good, but right then, as they focused on what was needed and what the loans could do, the interest loomed less immediate, and diminished in importance. So the poor resorted to borrowing, to help themselves at the present moment of need.

But in the end this borrowing hurt them. As they borrowed at high interest, they then needed to repay and ran out of their paycheck even earlier on the next round. Soon, most of their loans were just going to paying off earlier loans (plus interest). When we took away the ability to borrow—they now played each round as best they could and then moved to the next one—the poor earned sixty percent more points than when they could borrow. The rich, who rarely borrowed anyway, were unaffected.

It is worth noting that anyone might show this pattern of borrowing when they are particularly focused and pressed. It was just that the poor, with their smaller budgets, were in that state a lot more often.¹⁰² One of the standard explanations for borrowing among the poor is myopia—the over valuing of immediate benefits at the expense of future, more distant ones.¹⁰³ And in a sense, our poor subjects *were* being myopic. But what

98. Shah, Mullainathan, & Shafir, *supra* note 25, at 683.

99. *Id.*

100. *Id.*

101. *Id.* at 683–84.

102. MULLAINATHAN & SHAFIR, *supra* note 25, at 116.

103. *Id.*

is remarkable is that it was not their personality, or their lack of understanding, or some other personal characteristic that had rendered them myopic—it was the context in which they were placed. What is illuminating in these data is that subjects were *randomly assigned* to be poor: they were no different than the “rich” except for the flip of a coin.¹⁰⁴ It was scarcity itself that led to borrowing in these contexts, where rich and poor were otherwise entirely alike.

These studies further support the notion that the poor overborrow because of poverty itself. No need to appeal to personal myopia or to financial ineptitude. Predatory lenders, just by being there, certainly facilitate this type of borrowing, but they are not the source. The powerful impulse to borrow, the demand, despite high interest and potentially spiraling debt, for loans of the kind that create a slippery slope and look so ill-advised, is a direct consequence of scarcity and the persistent need to focus on the pressing difficulties of the present moment.

As a matter of fact, our subjects in these studies were not even really poor. In life, they were comfortable and rather sophisticated Princeton University students.¹⁰⁵ They demonstrated poverty’s effect on focusing and borrowing independently of anything else. In fact, there are many other challenges to being poor that make success even more difficult. There are the low expectations and the prejudice,¹⁰⁶ the difficult and unhealthy physical surroundings,¹⁰⁷ and the stigma.¹⁰⁸ Some recent research on the effects of stigma, for example, found that when clients at a soup kitchen were first “affirmed” (made to recount a recent positive experience that made them feel more capable and proud) their fluid intelligence and executive control scores were significantly higher than without such manipulation.¹⁰⁹

3. *Scarcity and Temptations*

And then there is the issue of temptations. We saw that the poor spend on housing proportionally more than the rich. Now imagine simple temptations, such as movies, cigarettes, a glass of wine. What proportion of people’s consumption goes towards such temptation goods? A survey of consumption patterns in Indonesia found that the poorest group spent as much as ten percent and as people got richer that proportion got lower: as low as one percent for the wealthy.¹¹⁰ Of course, as with housing, it is not that the wealthy were spending less money on

104. *Id.*

105. *Id.* at 112.

106. SUSAN T. FISKE, ENVY UP, SCORN DOWN: HOW STATUS DIVIDES US 162 (2012) Linda I. Reutter et al., “Who Do They Think We Are, Anyway?”: Perceptions of and Responses to Poverty Stigma, 19 QUALITATIVE HEALTH RES. 297, 299 (2009).

107. EXPERIENCING POVERTY: VOICES FROM THE BOTTOM 106 (D. Stanley Eitzen & Kelly Eitzen Smith eds., 2003).

108. Reutter et al., *supra* note 106, at 298.

109. Crystal C. Hall, Jiaying Zhao & Eldar Shafir, *Self-Affirming Among the Poor: Cognitive and Behavioral Implications*, PSYCHOL. SCI. (forthcoming 2013).

110. MULLAINATHAN & SHAFIR, *supra* note 25, at 82–83.

these items—they were spending a lot more. It is just that they were spending miniscule proportions of their incomes.

And it is not merely that the same temptation good hits the poor the hardest. It is that being poor turns more things into temptation goods. The *same good*, which is a mere frivolity, hardly a temptation, when you have plenty, becomes a temptation that must be resisted when you do not have much. Thus, when there is abundance, temptation not only is less costly, but there is less of it. To the extent that failing to resist temptation can create problems, scarcity entails more frequent and bigger problems. In fact, research suggests that self-control is itself a limited resource.¹¹¹ When a lot is used, less remains. Several studies have found that engaging in tasks that require self-control lowered participants' ability to perform tasks that required persistence and concentration.¹¹² When you apply self-control in one place, you have less left for other uses. And that is the irony of poverty. When you have too little, many more things are temptations that must be resisted, and thus require self-control. But self-control is a finite resource, and when you use it you end up depleting it. Poverty, in other words, requires more self-control, and exercising more self-control depletes you and leaves you with less of it.

And the consequences are typically more menacing. Abundance gives you slack: resources you can dip into in order to adjust for the momentary failure of self-control. Scarcity, on the other hand, means no slack: with no resources to tap into, the consequences of giving into temptation can be severe. Yet another part of the irony: scarcity presents many more self-control needs, many more chances to fail, and at the same time penalizes self-control failures more severely. The struggle with a chronic lack of slack that comes with being low-income occurs at the precipice of becoming ever more destitute.

What the discussion above suggests is that a slew of planning, management, and self-control failures, and the bad choices that result, can be thought of as the consequences of poverty, not its causes. They are failures attributable not to "poor people," but to people who find themselves in poverty. And they further highlight the rights of the poor to improving conditions, the kind of conditions that may allow them to thrive.

It is important to point out that the proposal is not to absolve people of personal responsibility; it is quite the contrary. In poorly designed airplane cockpits, both excellent and less talented pilots will err. It is the well-designed cockpit that allows the better, dedicated pilot to shine. Similarly here, in contexts that impose great load and frequent obstacles, most people will fail. It is precisely those trying to exhibit responsible

111. ROY F. BAUMEISTER & JOHN TIERNEY, WILLPOWER: REDISCOVERING THE GREATEST HUMAN STRENGTH 22–27, 35 (2011); Mark Muraven & Roy F. Baumeister, *Self-Regulation and Depletion of Limited Resources: Does Self-Control Resemble a Muscle?*, 126 PSYCHOL. BULL. 247, 248 (2000).

112. BAUMEISTER & TIERNEY, *supra* note 111, at 22–23; Muraven & Baumeister, *supra* note 111, at 252.

behaviors who will be most sabotaged in scarcity contexts and who may thrive if only circumstances were more manageable. Behaviorally informed and more conducive contexts like a well-designed cockpit facilitate the success of those trying hardest to succeed.

A true commitment to improving conditions, informed by findings about poverty's contributions to mismanagement and error, and to further deterioration, lead to an inevitable conclusion: as we strive to improve the conditions of the poor, we owe them the sorts of arrangements that facilitate the everyday management of scarcity conditions.

IV. WHO IS POOR

Recall the survey mentioned earlier where we found that low-income respondents in Boston who were contemplating buying a TV were twice as likely as the wealthy to report thinking about tradeoffs.¹¹³ When we conducted a similar study in India, we observed the predictable interaction between one's budget and the size of items.¹¹⁴ When they thought about buying a blender, poorer subjects mentioned tradeoffs more than twice as often as richer subjects, much like the pattern we observed in Boston.¹¹⁵ But when we asked about a more expensive item—a television—rich and poor in India reported thinking tradeoffs equally often.¹¹⁶

Whether we think about tradeoffs depends on the size of the item relative to our budget. The blender is a significant fraction of the budget for the poor but not for the rich. The TV, in contrast, was a significant expense even for the richer Indian households. Put differently, the blender evoked tradeoffs for some but the TV—because it is big relative to most everyone's budget—evoked tradeoffs for all, much as contemplating a car would most likely generate tradeoff thinking in most Americans. Which leads to the question of who, exactly, are the poor? And the answer is neither simple nor happy.

In the packing metaphor, scarcity is a function of the size of your suitcase and the stuff you try to fit in. Broadly construed, scarcity is the gap between one's needs and the resources available to fulfill them. Because this is based on subjective needs, it encompasses low-income individuals both in the developed and the developing world, as well as those experiencing transitory income shocks such as unemployment.¹¹⁷ And it

113. MULLAINATHAN & SHAFIR, *supra* note 25, at 72–73.

114. *Id.*

115. *Id.*

116. *Id.*

117. The suitcase metaphor also attributes a scarcity mindset to those who might have extremely large suitcases, but whose wants are so large that they still fail to fit—the greedy rich, if you will. Indeed, following the 2008 economic recession, there were multiple reports about the psychological stress and anxiety experiences by multi-millionaires who found themselves needing to curb their spending and alter their habits. See, e.g., Marilyn Gardner, *Spending Habits: Americans at All Income Levels Tighten Their Belts*, CHRISTIAN SCI. MONITOR, Feb. 25 2008, <http://www.csmonitor.com/Business/2008/0225/p13s04-wmgn.html>. It is very likely that the stress that comes from having to renounce one's expensive club membership is qualitatively different from that which comes from not

is not independent of context. Beyond the most basic needs, what you aim to fit in your suitcase is, to a large extent, a function of your surroundings and the time and place in which you live.

Tap water, for example, would hardly make anyone in the developed world feel terribly lucky these days, yet it was pretty much inconceivable until the last quarter of the nineteenth century, and it is still a dream in many places today.¹¹⁸ The Packard Motor Car Company introduced the first air-conditioned automobile in 1939, and in 1953 Chrysler offered air conditioning in their Imperial model, the company's top-of-the-line, most luxurious model.¹¹⁹ Driving an air-conditioned car then meant something. It meant you were rich. Even in 1960, if you drove with air conditioning, you were among the very rich.¹²⁰ Today, air conditioning in cars is universal (the July 2010 issue of *Automobile* magazine reports that more than ninety-nine percent of all new cars are air-conditioned).¹²¹ In today's America, air-conditioned cars fit in modest budgets.¹²²

Driving an air-conditioned car, like having tap water, no longer means you are packing comfortably because those things have become standard, and there are many other things you need to fit in before you have packed successfully. This is true for electricity in the home, internet access, and cell phones.¹²³ Just a few years ago, cell phones were a luxury, the exotic domain of the rich; today, without a cell phone you cannot fully function in a modern city.¹²⁴

And yet, this evolving notion of what makes for an acceptable life is subtle and can be confusing. A recent Heritage Foundation publication reports that "most of the persons whom the government defines as 'in

being able to afford rent. In any case, scarcity among the rich is beyond the purview of this paper and will not occupy us further.

118. OFFICE OF WATER, ENVTL. PROT. AGENCY, THE HISTORY OF DRINKING WATER TREATMENT 2-3 (2000), available at http://water.epa.gov/aboutow/ogwdw/upload/2001_11_15_consumer_hist.pdf.

119. RICHARD M. LANGWORTH, CHRYSLER AND IMPERIAL: THE POSTWAR YEARS 94-96 (1976); *Packard Motor Car Company Firsts*, PACKARD, <http://www.packardmotorcar.com/index.php/packard-firsts/> (last visited Nov. 15, 2013).

120. See Wade Greene, *Air-Conditioning: Invention as the Mother of Necessity*, N.Y. TIMES, July 14, 1974, <http://select.nytimes.com/gst/abstract.html?res=F10E15FC3A5C1A7A93C6A8178CD85F408785F9> ("In Texas, the automobile air-conditioner has become a status symbol so powerful that some who cannot afford it have been known to drive in sufferance under the hot sun with all their windows rolled up to give at least the appearance of air-conditioning.").

121. *Automotive Air Conditioning History*, AUTOMOBILE MAGAZINE (July 2010), http://www.automobilemag.com/features/news/1007_automotive_air_conditoning_history/ ("Today, more than 99 percent of all new cars are air-conditioned.").

122. See, e.g., *10 Best Used Cars Under \$8,000*, KELLEY BLUE BOOK (Jan. 29, 2013, 11:37 AM), <http://www.kbb.com/car-reviews-and-news/top-10/best-used-cars-under-8000-2013/2000008992/> (listing ten used automobiles equipped with air-conditioning that have a suggested retail price under \$8,000).

123. Robert Rector & Rachel Sheffield, *Air Conditioning, Cable TV, and an Xbox: What is Poverty in the United States Today?*, BACKGROUND, July 18, 2011 at 1, 8, available at <http://thf-media.s3.amazonaws.com/2011/pdf/bg2575.pdf>.

124. See KEVIN LANG, POVERTY AND DISCRIMINATION 38 (2007) ("Today participating in society may require having a phone. In some groups, having a cell phone is increasingly becoming necessary in order to arrange social occasions."); see also Lee Rainie, *Cell Phone Ownership Hits 91% of Adults*, PEW RESEARCH CENTER (June 6, 2013) <http://www.pewresearch.org/fact-tank/2013/06/06/cell-phone-ownership-hits-91-of-adults/>.

poverty' are not poor in any ordinary sense of the term. The overwhelming majority of the poor have air conditioning, cable TV, and a host of other modern amenities."¹²⁵ But what does "ordinary" mean? Can a person be ordinarily poor and have running water but not air conditioning?!

The following quote from *The Washington Times* captures similar sentiments.

It turns out many poor people today own appliances that were considered luxuries when I grew up, and some that would still be considered luxuries today. For example, 91 percent of those in the lowest 10 percent of households—all officially poor—own color TVs, 74 percent own microwave ovens, 55 percent own VCRs, 47 percent own clothes dryers, 42 percent own stereos, 23 percent own dishwashers, 21 percent own computers and 19 percent own garbage disposals. When I grew up in the 1950s, only the wealthy owned color TVs, clothes dryers, stereos, dishwashers and disposals. These were all considered luxuries. . . . Not even the wealthiest people owned microwave ovens, VCRs or computers.¹²⁶

But why do all this counting of microwave ovens? Why not just talk about tap water, or electricity, or cotton shirts, for that matter? Surely, most poor people in the United States have those things!

Two astute observers of the U.S. scene made penetrating, if amusing, remarks when the Heritage Foundation report appeared. A blog post associated with Jon Stewart's *The Daily Show* read, "I had never realized that poor people in this country had it so good. No wonder the middle class is pouring into their ranks in droves!"¹²⁷ "This report," remarked Stephen Colbert, "proves that poor people are just not living down to our expectations. If you still have the strength to brush the flies off your eyeballs, you're not really poor."¹²⁸

In fact, two hundred and fifty years before this counting of microwave ovens and TVs, Adam Smith, the Scottish economic thinker, explained it all quite neatly:

A linen shirt, for example, is, strictly speaking, not a necessity of life. The Greeks and Romans lived, I suppose, very comfortably though they had no linen. But in the present times, through the

125. Rector & Sheffield, *supra* note 123, at 1.

126. Bruce Bartlett, *Poverty Yardstick Variables*, THE WASH. TIMES, Oct. 5, 2003, <http://www.washingtontimes.com/news/2003/oct/05/20031005-111129-3478r/>.

127. Dennis DiClaudio, *Jon Stewart on Those Money Grubbing Fat Cat Poor People*, COMEDY CENTRAL'S INDECISION (Aug. 19, 2011, 10:29 AM), <http://web.archive.org/web/20110925123335/http://www.indecisionforever.com/2011/08/19/jon-stewart-on-those-money-grubbing-fat-cat-poor-people/>.

128. *The Colbert Report* (Comedy Central television broadcast July 26, 2011), available at <http://www.colbertnation.com/the-colbert-report-videos/393168/july-26-2011/-poor--in-america--peter-edelman>.

greater part of Europe, a creditable day-labourer would be ashamed to appear in public without a linen shirt. . . .¹²⁹

Smith captures one of the basic features of the psychology of scarcity. To the extent that TVs or air conditioning or internet access have become part of what is considered standard in a modern life, then fitting those items in one's suitcase is part of a person's standard "needs."¹³⁰ Of course, you might be able to *survive* without those items, but expecting them has become normal—like tap water and a shirt. And not being able to fit them in your tight suitcase produces a sense of "scarcity," of not being able to fulfill your basic needs. If I cannot afford to provide my kids with internet access for their homework in today's America—not the United States of fifty years ago, and not in some remote corner of the earth—then my suitcase by today's standards is just too small, and I feel poor.

In an essay capturing the voices of the poor, a mother living in the United States is unemployed and has a sick child for whom she is unable to obtain the right medical care. She recounts a shopping experience:

I was grocery shopping one day and a stranger noticed the food stamps in my hand as we waited at the register. I became aware that he was reviewing everything in my cart as well as noting what I was wearing. After a few minutes, he looked right at me and said, I suppose you think my tax dollars are supposed to buy ice cream and chocolate syrup. And those sandals you have on look pretty expensive, I suppose I bought those for you too.¹³¹

It is possible the stranger is just generally opposed to food stamps, but that is not what he seems to focus on. What really seems to upset him are the "luxuries" this food stamp recipient allows herself—a pint of ice cream and fine shoes. And many of us can probably sympathize. Intuitively, our image of the "truly" poor does not include TV's, or microwave ovens, or ice cream. But the fact is that you can have all these things today and still be very poor.

That's what societal norms do. As society evolves, it starts taking for granted things that may have been luxuries a mere ten or twenty or thirty years earlier. The average American home was 750 square feet right after WWII.¹³² It was 950 square feet in 1950, 1350 square feet in 1970, and 2300 square feet in the year 2000.¹³³ Like air conditioning, the "acceptable" size of housing has changed. This means not only that tastes have changed, but that standards themselves have also changed: where the children sleep, what furniture a family needs, and so forth.

129. ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 393 (Edwin Cannan, ed., 5th ed. 1904), available at <http://www.econlib.org/library/Smith/smWN21.html>.

130. See Rector & Sheffield, *supra* note 123.

131. Janis Johnston, *On the Margins: The Lack of Resources and the Lack of Health Care*, in EXPERIENCING POVERTY: VOICES FROM THE BOTTOM, *supra* note 107, at 139, 141.

132. JERRY R. DUKE, THE GENERATION OF CRISIS: AN EXAMINATION OF THE LAW DAYS, PERILOUS TIMES, AND THE CONVERGING CRISES OF THE TWENTY-FIRST CENTURY 182 (2009).

133. *Id.*

Just as it would be exceedingly difficult to buy a non-air-conditioned car today, it is becoming increasingly difficult to find modest housing 1950's-style, especially if you want to live in desirable places, where there are good schools and hospitals. Bedrooms, cell phones, internet access, even cable TV if you have children, are not just flamboyant "wants"—they have become part of everyday life, so that not being able to afford them can make life palpably lacking.

Along with a standard of living that increases faster than your budget, inequality is likely to make things even worse.¹³⁴ To the extent that some have much larger suitcases than others, they can influence the norm. In 2007 in the United States, the top twenty percent owned eighty-five percent of all the wealth, and the bottom forty percent owned less than one quarter of one percent.¹³⁵ Inflated wages and wealth lead to competitive bidding on housing and other goods that further strain the packing of the below-average earner. If you live in a place where house sizes have tripled and your suitcase is modest, not only can you not compete for the new mansions, but you also may find it hard to stay where you always lived. Additionally, if those from the big houses start coming to your local restaurant, you may soon find it prohibitively expensive to eat where you had always enjoyed a good meal.

V. THE RIGHT TO THE CONTINUOUS IMPROVEMENT OF LIVING CONDITIONS

When you are living with scarcity and are "tightly packed," you are distracted and depleted with little room to maneuver and no room to fail. So when something predictably does fail—when your health falters, or your car breaks down, or the harvest's yield is too low—you find yourself unable to handle the crisis. You then borrow, pay dearly for it, and fall further. In times of vulnerability, what turns out to be essential are those small pockets of slack—savings for a rainy day or access to quick low-cost loans—that help make it over the crisis. A study based on interviews with over 1,600 adult respondents in Chicago found that access to an affordable \$500 loan was associated with as much a reduction in the incidence of hardship as a tripling of household income.¹³⁶

Loans in times of crisis are like water when there is fire. When you are fighting a fire, the access to a bucket of water is critical and irresistible. As you reach for that bucket, you do not stop to inquire how much it might cost you two weeks down the road. If the loan is prohibitively expensive, and the fire is raging right now, you will still reach for it, but two weeks later you will face another potentially greater crisis. On the

134. See generally CHRISTOPHER JENCKS ET AL., *INEQUALITY: A REASSESSMENT OF THE EFFECT OF FAMILY AND SCHOOLING IN AMERICA* (1972) (discussing inequality in education and occupations).

135. G. William Domhoff, *Wealth, Income, and Power*, WHO RULES AMERICA?, <http://www2.ucsc.edu/whorulesamerica/power/wealth.html> (last updated Feb. 2013).

136. Susan E. Mayer & Christopher Jencks, *Poverty and the Distribution of Material Hardship*, 24 J. HUM. RESOURCES 88, 108–09 (1989).

other hand, if access to the water is manageable, your chances of making it through are much improved. And under scarcity, there are frequent fires, so you need continuous access to water.

For many workers, employer-provided benefits are the single most important safety net. When you live under conditions of scarcity, benefits like job stability, regular pay, predictable hours, affordable health coverage, guaranteed pensions, and unemployment benefits are all central features of a more manageable, less challenging financial life. According to this vision, government safety nets are more than mere luxuries that nations might be able to afford when things go well; rather, they are an essential element in the attempt to provide the right to improving conditions, especially when things go poorly.

Easily accessible and affordable health coverage, for example, meets a critical need. Health-related expenses can go from minor to massive very quickly.¹³⁷ But when you are overwhelmed juggling your everyday existence, tunneling on your immediate problems, insurance is one of the things that appear less urgent and more suitably addressed when things become a bit more manageable. At the same time, when you are uninsured one serious illness can exhaust all your resources. In fact, as it stands at present, it can exhaust the resources of a large fraction of U.S. households.

People living with scarcity have too little to be able to cope well with life's financial mishaps. They just do not have enough slack, no room to fail. And when they fail, they risk steep and painful declines from which it is sometimes hard to climb back up again. And the painful fact is that many are bound to fail precisely because it is hard to avoid in a life of tight packing with no slack. The irony when you live with no room to fail is that you almost certainly will.

To make things even worse, the attention given to the finances of the poor is often of the wrong kind. Aggressive marketing campaigns have targeted the poor with products ranging from predatory mortgages, high-interest credit cards, payday loans, rent-to-own, and various other fringe-banking schemes.¹³⁸ This further pushes the budget constrained to spend on small "luxury goods," because, for a moment, it allows them to feel like "real Americans," and it allows their kids to feel like "ordinary kids."¹³⁹ At the same time, significantly less has been done to aggressively promote more supportive options, such as various not-for-profit services, short-term low-interest loans, or at the very least prime-rate lend-

137. For example, the average cost to spend a single day in a U.S. hospital in 2012 was \$4,287. INTERN'L FED'N OF HEALTH PLANS, 2012 COMPARATIVE PRICE REPORT 9, available at http://hushp.harvard.edu/sites/default/files/downloadable_files/1FHP%202012%20Comparative%20Price%20Report.pdf.

138. See generally JOHN P. CASKEY, FRINGE BANKING: CHECK-CASHING OUTLETS, PAWNSHOPS, AND THE POOR (1994) (discussing the rise of fringe banking and the impact on the poor); Dick Mendel, *Double Jeopardy: Why the Poor Pay More*, in ADVOCASEY 14 (2005).

139. Sarah Halpern-Meekin, Kathryn Edin, Laura Tach, and Jennifer Sykes, *It's Not Like I'm Poor: How Working Families Make Ends Meet in a Post-Welfare World*, (Berkeley: University of California Press, forthcoming).

ers, friendly banks, and so forth.¹⁴⁰ When various real potential benefits are offered, they are often offered in a manner that imposes a high demand on the bandwidth of the poor rather than in ways that lower the load and make things easy.¹⁴¹ The Free Application for Federal Student Aid (FAFSA) is a federal program, consisting of a sixteen-page relatively complex application form, and offering considerable financial incentives (many thousands of dollars) to attend college, whose take-up among eligible students is remarkably low. In a study with eligible candidates and their families who had been fully informed of their eligibility, researchers found that simply helping people fill out the required forms not only raised the application rate, but also increased actual college enrollment by almost thirty percent!¹⁴²

People who are better-off often find themselves, either by default or through very minimal effort, inhabiting a comfortable system composed of attractive ‘no-fee’ options, automatic deposits, reminders, expert and reliable advice, and so forth—all built to minimize imposition on their limited attention span, shelter them from error, and help them reap the greatest benefits.¹⁴³ All of these facilities exist for the well-off while those who are less well-off struggle with no room to fail and face more imposing costs to failure. The less well-off often find themselves without the ‘aids’ mentioned above, and instead face institutional, social, and psychological obstacles that render their economic conduct all the more challenging and fallible.¹⁴⁴

We have reviewed here some basic features of cognitive life under scarcity with important implications for people’s right to freedom from want. It appears that scarcity, or want, impacts you not only directly in the things that are wanting, but it also handicaps you indirectly, in other aspects of your life.¹⁴⁵ Living under scarcity is all-consuming, error-prone, and unforgiving. It makes you less capable, less attentive, more forgetful, even less intelligent. It presents persistent challenges and, contrary to the right to improving conditions, it increases the chances that you will fail. Scarcity puts you in a position where you can hardly afford to err, but your chances to err are greater. And when you err, it is hard to recover. As a result, instead of improving conditions, you face the opposite—persistent challenges accompanied by constant risk of deterioration. A major source of the problem, one that goes beyond the material things that are wanting (although those can be painful too), is the focus that is consumed by being packed so tightly and by living with no slack.¹⁴⁶ As you tunnel on your persistent challenges, you have less bandwidth for everything that is in the periphery and, as a result, you ignore, discount,

140. Bertrand et al., *supra* note 5, at 8.

141. *Id.* at 13, 17–18.

142. Eric P. Bettinger et al., *The Role of Application Assistance and Information in College Decisions: Results from the H&R Block FAFSA Experiment*, Q. J. ECON. 1205, 1206 (2012).

143. Bertrand et al., *supra* note 5, at 8.

144. *Id.*

145. See discussion, *supra* Part II.B.

146. See discussion, *supra* Part II.A.

and forget things that may really matter. As several studies have shown, the poor are more likely to forget to take their medications, they tend to be less attentive parents, and poor farmers are less likely to weed their fields compared to less poor farmers.¹⁴⁷

The Roman poet Juvenal said, “The misfortunes of poverty carry with them nothing harder to bear than that it makes men ridiculous.”¹⁴⁸ In that spirit, the International Covenant on Economic, Social and Cultural Rights has recognized “the right of everyone to an adequate standard of living . . . and to the continuous improvement of living conditions.”¹⁴⁹

Going back to the suitcase metaphor, there seem to be two clear ways to alleviate tight packing. One, call it the “capitalist” solution, is to enlarge one’s suitcase—have a bigger budget; the other, call it the “Buddhist” solution, is to try to pack fewer items—reduce one’s needs. Unfortunately, when it comes to the poor neither solution is easy. The poor already have modest needs. It is impractical—if not immoral—to expect them to care a bit less about having a minimally acceptable place to live, or enough food to stave off hunger, or even the minimum required for their kids’ adequate participation at school. As for enlarging the budgets available to the poor, higher wages and the transfer of wealth are ways to achieve this, although, politically at least, such measures are not always feasible. As long as those two solutions are not available—i.e., neither packing fewer items nor enlarging the suitcase are feasible—we must maintain an eye on the rights of the poor to a continuous improvement of living conditions and try to ease their packing. We must concern ourselves with creating contexts—like those typically available to the more comfortable—where the everyday conduct of life is made easier and is thus helped to succeed. There are several ways to go about it. We need to think about defaulting and “nudging” people into better options.¹⁵⁰ We must concern ourselves with behaviorally informed consumer protection and regulation,¹⁵¹ and there are several program design features that can facilitate access and improve success.¹⁵² Beyond mere subsistence, we have an obligation to take some of the above findings into account as we aim to provide a context that greatly facilitates that which the Universal Bill of Human Rights recognizes as a universal entitlement: “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”

147. MULLAINATHAN & SHAFIR, *supra* note 25, at 151–53.

148. DICTIONARY OF QUOTATIONS 197 (Connie Robertson ed., 3d ed. 1998).

149. G.A. Res 2200A, *supra* note 2, art. 11.

150. See generally RICHARD H. THALER, & CASS R. SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS* (2009).

151. See generally MICHAEL S. BARR, SENDHIL MULLAINATHAN, & ELДАР SHAFIR, *BEHAVIORALLY INFORMED FINANCIAL SERVICES REGULATION* (2008) (articulating a behavioral economic framework that considers firm incentives to respond to regulation).

152. MULLAINATHAN & SHAFIR, *supra* note 25, 170–81.

