

THREE BIG IDEAS FOR A FUTURE OF LESS WORK AND A THREE- DIMENSIONAL ALTERNATIVE

CYNTHIA ESTLUND*

I.

INTRODUCTION

Automation is destroying jobs. About that there is no doubt. Robots and algorithms can perform a growing range of job tasks faster, more cheaply, and or just plain better than humans, and are bound to replace them in many existing jobs. But technology has been replacing human labor and destroying jobs throughout the history of capitalism. The question that engages and divides economists and technology experts is whether automation will also generate enough new wealth, new consumer demand, *and new jobs* to offset the inevitable job losses. If so—and that remains the betting line among economists—then automation may yield higher productivity, stronger economic growth, and broadly shared gains. But if this time is different—as many observers and a growing number of economists believe—then we might face a future of much less work, or at least much less work for those with merely ordinary human skills. In that case, absent major policy interventions of some kind, many workers will face wage-depressing competition both from machines and from other displaced workers, while economic gains from automation will be sharply skewed toward those at the top who make or own the technology or who have scarce skills that are complemented by technology.¹

While recognizing those conflicting predictions about the future, this article takes seriously the claim that this time may be different. The current wave of innovation—as suggested by the terms artificial intelligence (AI) and machine learning (ML)—is producing hard and soft technologies that increasingly rival or surpass human performance on tasks that were long thought to require uniquely human capabilities. In short, “the functional capabilities of machines appear to be rising much faster and with fewer apparent natural limits than those of

Copyright © 2019 by Cynthia Estlund.

This article is also available online at <http://lcp.law.duke.edu/>.

* Catherine A. Rein Professor of Law, New York University School of Law. I would like to thank Catherine Fisk and the other symposium participants for their comments on an earlier draft. I would also like to thank Matt Stolz for outstanding research assistance, and Alexander Arnold, Jess Issacharoff, and Molly Jacobs-Meyer for many illuminating conversations.

1. I review the conflicting predictions about both job destruction and job creation in an earlier article. Cynthia Estlund, *What Should We Do After Work? Automation and Employment Law*, 128 YALE L.J. 254, 263–75 (2018).

humans,”² while their costs are falling. That makes it plausible that automation in the near future will destroy more jobs than it creates and drive down wages in the low- and medium-skill jobs that remain. That trajectory, though far from certain or inevitable, is likely enough that we should be thinking hard about how to respond.

In earlier work, I proposed that employment law should “first, do no harm.”³ Some features of existing employment law tend to spur the automation of work (as well as the fissured organization of work) by artificially and unnecessarily taxing the use of human labor. In order to reduce the employment law tax on labor while protecting workers’ rights and working conditions, we should first separate the question of what workers’ entitlements should be from the question of where their economic burdens should fall. Some worker entitlements necessarily entail employer duties and burdens—that is how the law induces employers to change their behavior. But for other entitlements that do not have this feature—health insurance or paid leave mandates, for example—we should look for ways to shift the costs off of employer payrolls and onto a broader funding base, or to detach the entitlements from employment altogether. Either way, we should seek funding mechanisms that do not tax the employment of human labor and that redistribute wealth from the winners to the losers in the increasingly polarized economy that automation is helping to create.⁴

The point of shifting the costs of some benefits and entitlements from the employment platform to a broader foundation would be to incrementally slow the replacement of people with technology, and to make a modest start on the larger project of reconstructing the foundations of economic security in a future of less work. But there remains a serious (though still uncertain and hotly debated) risks of job displacement, net job destruction, and severe economic polarization as a consequence of automation. That prospect calls for a more profound reckoning with the shape of our social and economic institutions. We should be looking over the horizon and developing policies and institutions that can more equitably spread the gains and mitigate the losses from the accelerating automation of work.

Those questions of policy and institutional arrangements are complicated by some basic normative disagreements. The most basic is whether we should welcome or resist a future in which paid work recedes from the center of our lives. Some find that vision deeply unsettling given our collective and individual reliance on work not only for its economic returns but also as a crucial source of social cohesion, solidarity, and self-realization. Those observers would have us strive as a society to ensure that there will be decent full-time jobs for all who are able to work. Others would welcome a future of much less work and more time

2. *Id.* at 293.

3. *See generally id.* at 291–95. In the earlier article, I did not use that phrase, which evokes the Hippocratic Oath of the medical profession; but it seems apt.

4. The argument is elaborated in *id.* at 301–19.

for the rest of life—*provided* that we can also draw on the very large gains from automation to ensure a decent livelihood for all.⁵

For now, that normative and policy debate mainly engages those on the left of the political spectrum—both those who see impending job losses and their political fallout as the beginning of the end of capitalism, and those in the center left who believe that capitalism in some form is here to stay but that government should play a larger role in managing and mitigating its dislocations. Those on the right largely resist the latter notion, out of some combination of beliefs in small government and individual self-reliance and in the capacity of markets on their own to produce enough prosperity and opportunities for all those who are willing to work hard to seize them. Yet even those who now resist a larger government role in the economy—whether to create jobs or to redistribute income, for example—may find their beliefs unsettled if job losses do begin to mount, and especially if civil and political unrest or deepening social dysfunction follow.

When we turn to the daunting question of how to fairly spread the gains and mitigate the losses from automation-related job destruction, we find some big ideas contending for public favor and gaining some currency within American political discourse: Both the idea of a universal basic income (UBI) and the idea of a federal job guarantee (FJG) offer bold strategies for rebalancing the economy in favor of those at the bottom of the labor market; and both offer prescriptions for a future of less (market-generated) work. Those two ideas are in competition with each other, and only partly because each would require a level of public expenditures that, practically speaking, would largely foreclose the other.⁶ In the meantime, some scholars and advocates are pressing a different big idea that echoes an abiding aspiration of organized labor in the first century of industrial capitalism: reducing hours of work below the forty-hour week that has held steady since the New Deal, thereby both increasing leisure and spreading work.⁷

Each of those three big ideas has surfaced before in the United States and beyond, and each is touted by some as the single best response to the medium-term prospect of technological unemployment. Yet each of those big ideas—apart from facing serious practical and political hurdles—falls short on one of the three dimensions of socioeconomic well-being that we should be looking to achieve: decent remunerative work; a decent income or livelihood; and more time for pursuits other than work.

At the same time, each of those three big ideas holds within it an essential component of a sound *three dimensional response* to the uncertain but real prospect of job losses. In lieu of UBI, we should expand universal social benefits—starting with health care and higher education—and income support

5. *Id.* at 275–83.

6. See *infra* text at notes 43–47 and 83–85.

7. See generally Matthew Dimick, *Better Than Basic Income? Liberty, Equality, and the Regulation of Working Time*, 50 IND. L. REV. 473 (2017).

for the working and non-working poor. In lieu of a federal job guarantee, we should ramp up public investments in infrastructure, social and community services, and early education, all of which would address unmet societal needs while creating decent jobs. And in lieu of (or at least before) reducing weekly hours of work across the board, we should expand access to paid leaves, holidays, and vacations, as well as voluntary part-time work and retirement security; we could thereby spread work and meet varied individual needs and preferences through days, weeks, months, and years of time off.

In combination, these three interventions—expanded universal social benefits and income support, public investments in physical and social infrastructure and the job creation those will entail, and wider access to paid leaves and respites from work—would advance core objectives of each of the three big ideas while muting their disadvantages. Together they would both cushion and offset automation-related job losses, while spreading the work that remains and maintaining or boosting incomes. This trio of policies could and should also be funded in a way that helps to redistribute income from the top to the bottom of an egregiously and increasingly lopsided income distribution.

Moreover—and this is crucial as long as the impact of automation on jobs remains uncertain—these three policies together and separately would inure to the greater societal good even if the evangelists of creative destruction are right, and private sector job creation does, or could, keep pace with job destruction. Indeed, even some of those who preach creative destruction maintain that policies like these will be necessary to fuel the job creation side of the equation this time around.⁸

Another virtue of this three-dimensional strategy over any one of the three big ideas writ large is that it would better promote liberty and freedom of choice in a world of divergent preferences. Thoughtful people disagree about whether to welcome or resist a future that is less centered on paid work. That disagreement reflects not only varying views of the good life and the good society, but also varying individual needs and preferences with respect to the best mix of work, income, and leisure, and the best balance of autonomy and security. Individuals face different tradeoffs, and they evaluate the tradeoffs differently. Public policies should aim to accommodate those varying preferences and to expand individuals' freedom to make the choices that suit them and their families. That is not to say that there are no social spillovers from individuals' choices, or that public policy should be indifferent among those choices. But choice and freedom are among the values we should be promoting. That should temper our enthusiasm for any big idea that is premised on the superiority of one

8. *Jobs Lost, Jobs Gained: Workforce Transitions in a Time of Automation*, MCKINSEY GLOBAL INST., 55–64 (2017) <https://www.mckinsey.com/~/media/mckinsey/featured%20insights/future%20of%20organizations/what%20the%20future%20of%20work%20will%20mean%20for%20jobs%20kills%20and%20wages/mgi-jobs-lost-jobs-gained-report-december-6-2017.ashx> [https://perma.cc/EML4-YY9J].

choice over others—for example, full-time employment for all, or a shorter work week for all—or that would practically foreclose other solutions.

In what follows, I will fill in the outlines of this argument. Part II will briefly set out some normative priors about the multiple ends we should be pursuing as we face a future of less work. A long Part III will take up each of the Three Big Ideas, briefly tracing their genealogy and identifying some strengths and weaknesses of each. Part IV will return to the core aspirations of the Three Big Ideas, and sketch a combination of the three – a three-dimensional strategy – that can preserve much of the good while avoiding much that is problematic in the more single-minded Three Big Ideas.

II.

THREE COMPLEMENTARY GOALS, AND THE ABIDING VALUE OF WORK IN A FUTURE WITH LESS OF IT

The premise of all that follows is that a prosperous, productive, and technologically advanced economy should be organized and regulated so as to ensure wide access to three economic goods: a decent material standard of living, meaningful and productive work, and time for a variety of non-work pursuits. To oversimplify the point, income, work, and leisure are three dimensions of a good livelihood, and policy proposals for a future of less work should be judged against their ability to deliver on all three of those dimensions.

The intrinsic value of income, or a decent material standard of living, and of leisure, or time for life outside of paid work, is fairly self-evident (though I will have more to say about both in Parts II and III). To be sure, above some minimum level of both income and leisure, people vary—both among themselves and across their lifespans—in their preferred balance of those two dimensions. But I think it is fair to assume that both income and leisure are intrinsically and universally valuable: everyone needs and wants a modicum of each. (Even workaholics need to sleep.) That is not to say that everyone agrees that the government should ensure that modicum of income and leisure for all; but among those who do believe that public policy should aim to improve people's lives, there should be little controversy that basic material security and adequate time for oneself and one's family outside of work are two goals against which to assess public policy proposals.

The more contestable claim is that work itself—specifically, productive and remunerative work—is among the three dimensions of a good life and livelihood, wide access to which a society should aim to ensure. In traditional economic analysis, work is regarded as a disutility—a means of gaining income but not a good in itself.⁹ And surely many workers with boring, arduous, dangerous, or demeaning jobs would agree.

9. See Robert E. Lane, *Work as "disutility" and money as "happiness": Cultural origins of a basic market error*, 21 J. SOCIO-ECON. 43, 48–51 (1992).

Therein lies a serious objection to putting work on the same plane with income and leisure: The latter two are intrinsically valuable in part because they can be spent in varied ways as individuals choose. They are resources that have an almost endless variety of uses, and that obviously enhance individuals' real freedom to live as they wish. Different people have different quantities of income and leisure, of course; and people with more income can enjoy their leisure in ways that poorer people cannot. Still, everybody needs and wants a decent minimum level of each, however they might choose to spend their allotment.

Paid work is obviously different. A life without paid work is not only possible but also potentially satisfying (though only for those with some other source of income or material support). Moreover, work comes in the shape of distinct and infinitely varied jobs, some which are more intrinsically rewarding than others. Work is not a resource that can be spent as one wishes, and most jobs entail far more subordination than freedom. Work is not a necessity for human thriving in the same sense as are material security and time away from work. Still, I want to make the case that paid work for those who can work is one of the dimensions against which we should judge public policy proposals for a future of less work. Obviously, one can have too much of a good thing, including work; and nothing in the case for work here requires adhering to our current norm of full-time work. We will turn to the case for less work below. My claim is that work should remain a central organizing feature of people's economic and social lives, and that should be one goal of public policy even in a future in which there is less work to go around.

The case for work combines several strands—moral, psychological, sociological, and political—that are not easy to disentangle. Some of those strands can fairly be described, and perhaps debunked, as religious or ideological in nature. The idea of work as a moral imperative (for those who are able) does indeed run deep in Western religious, and especially Protestant, thought, though its religious foundations would bear little weight for many citizens today. As capitalism eventually displaced independent artisanal production, and work became virtually synonymous with selling one's labor in exchange for a wage, the supposed moral imperative to work took on an ideological hue.

For some critics of capitalism, the social imperative to work is an ideological construct that legitimizes the commodification of labor and stands in the way of a more humanistic and humane future.¹⁰ On this view, a society that produces enough wealth to enable its citizens to devote their lives to play, making music and art and literature for pleasure, and enjoying family, friends, and communities—to leisure in whatever form each chooses—should set its sights on making that possible. Something like this utopian post-capitalist vision underlies enthusiasm for a UBI among some on the left, and we will return to it.¹¹ That

10. See, e.g., KATHI WEEKS, *THE PROBLEM WITH WORK: FEMINISM, MARXISM, ANTIWORK POLITICS, AND POSTWORK IMAGINARIES* (2011); NICK SRNICEK & ALEX WILLIAMS, *INVENTING THE FUTURE: POSTCAPITALISM AND A WORLD WITHOUT WORK* (2015).

11. See, e.g., PHILIPPE VAN PARIJS & YANNICK VANDERBORGH, *BASIC INCOME: A RADICAL*

vision might serve as a kind of thought experiment that challenges the pro-work camp to shed some deeply rooted but normatively dubious grounds for the attachment to work. If work is a virtue—even if it ceases to be an economic necessity—then its virtues should be rationally defensible without recourse to religion or ideology.

The value of work is often said to lie partly in its psychic returns to individuals—in feelings of self-worth, self-realization, and social standing that are associated with work.¹² The psychic returns to work tend to be greatest for those who have meaningful and high-status jobs, many of which are also quite well-paid. But there is ample evidence of psychic returns even to relatively low-paid and low-status work and of psychic harms beyond the loss of income from being out of work.¹³ In short, many people would be better off with a job than an unconditional grant of money, even at the same income level, because of the psychic returns to the former.

To be sure, those psychic rewards might merely reflect the pervasive societal drumbeat in favor of work, which might reflect those same questionable moralistic and ideological underpinnings rather than any intrinsic value of work. That is possible, and in any case is almost impossible to refute. But even if individuals have been socialized to experience psychic rewards from paid work, and could eventually be socialized out of that attachment, that begs the question whether a society should undertake such a reprogramming project. There might be sound reasons for a society to cultivate an association between paid work and self-worth, self-realization, and social status—and to do so even if it became possible to release individuals from the sheer economic necessity to work. I believe that is the case, for reasons that require some elaboration.

First, even those who reject the valorization of paid work would probably agree that a good and sustainable society is one in which most people are engaged in some kind of regular, purposeful, and cooperative associations and activities. A functioning, self-governing society requires a thick substrate of social ties among citizens—not just ephemeral ties among those who happen to live in proximity, and not just intimate ties among close family and friends, but the looser connections and connectedness that come from cooperating toward shared ends. Paid work has long been the primary locus of purposeful cooperative

PROPOSAL FOR A FREE SOCIETY AND A SANE ECONOMY, 100–32 (2017); SRNICEK & WILLIAMS, *supra* note 10; WEEKS, *supra* note 10, at 155–71.

12. See generally ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (2000); see Matthew Modini et al., *The Mental Health Benefits of Employment: Results of a Systemic Meta-Review*, 24 AUSTRALASIAN PSYCHIATRY 331 (2016); Anthony Winefield & Marika Tiggermann, *Employment Status and Psychological Well-Being: A Longitudinal Study*, 75 J. APP. PSYCHOL. 455 (1990).

13. See Jennie E. Brand, *The Far-Reaching Impact of Job Loss and Unemployment*, 41 ANN. REV. OF SOC. 359 (2015); Frances McKee-Ryan et al., *Psychological and Physical Well-Being During Unemployment: A Meta-Analytic Study*, 90 APP. PSYCHOL. 53 (2005). For a vehement dissenting view, see David Graeber, *On the Phenomenon of Bullshit Jobs: A Work Rant*, STRIKE! MAGAZINE (2013), <https://strikemag.org/bullshit-jobs/> [<https://perma.cc/CZX6-MGD4>].

activity in our society, and generates social ties that are part of the glue that holds a complex society together.¹⁴

Of course, work is not the only locus of purposeful cooperation. Voluntary associations formed around charitable, political, religious, cultural, or recreational aims can also foster cooperation, sociability, solidarity, and connectedness; and those associations are less tainted by the economic compulsion and hierarchical control that is characteristic of workplace organizations. Many political theorists thus locate voluntary associations at the core of civil society, and discount the value of workplace ties in supporting collective self-governance.¹⁵ Professor Robert Putnam has famously argued that it is chiefly through voluntary associations that citizens develop social capital, or the relationships and norms of reciprocity that enable people to cooperate in pursuit of shared objectives, including shared governance.¹⁶ As citizens devote less time and energy to voluntary associations, he says, the store of social capital in American society is eroding.¹⁷ On that view, it would be a worthy goal to enable people to opt out of paid work so that they can spend more time in voluntary, non-remunerative activities and associations. But those arguments overlook the distinctive social value in the ties formed through shared work.¹⁸

The distinctive importance of workplace ties stems partly from their sheer density and duration. Working adults spend much of their waking life interacting with co-workers—in the course of the job, before and after work, during breaks, around the proverbial water cooler. They talk about shared working conditions—a speed-up of production, a rumor of layoffs, a new supervisor—and about family, politics, popular culture, sports, and other stuff of daily life. Over weeks, months, or even years of working together, co-workers develop ties of affection, empathy, loyalty, solidarity, and friendship. To be sure, some of those ties may be fraught and tainted by conflict and resentment (not to mention abuse or humiliation from above). But given all that is at stake in a job, people often find ways to work through or around conflicts and to get along, or at least get the job done, despite personal differences. Outside the bonds of family and close friendship, bonds among co-workers have a resilience that is unlikely to be replicated through voluntary associations.

14. See generally CYNTHIA ESTLUND, *WORKING TOGETHER: HOW WORKPLACE BONDS STRENGTHEN A DIVERSE DEMOCRACY* (2003).

15. See, e.g., JÜRGEN HABERMAS, *BETWEEN FACTS AND NORMS* 366–67 (1996); JEAN L. COHEN & ANDREW ARATO, *CIVIL SOCIETY AND POLITICAL THEORY* ix (1992); JOHN EHRENBERG, *CIVIL SOCIETY: THE CRITICAL HISTORY OF AN IDEA* 235 (1999).

16. PUTNAM, *supra* note 12. That does not mean that all forms of “social capital” are to the greater good of either society or individuals. See E. Villalonga-Olives & I. Kawachi, *The dark side of social capital: A systematic review of the negative health effects of social capital*, 194 *SOC. SCI. & MED.* 105 (2017); Alejandro Portes, *Social Capital: Its Origins and Applications in Modern Sociology*, 24 *ANN. REV. SOC.* 1 (1998).

17. PUTNAM, *supra* note 12. Indeed, as an empirical matter, Putnam finds that the decline in voluntary associations stems partly from the rise in time spent in paid work—especially by women; stay-at-home mothers were a mainstay of community and neighborhood associations in the post-WWII era.

18. For further elaboration, see generally, ESTLUND, *supra* note 14.

For all these reasons, common work, and the bonds that form among co-workers and within trades or occupations, have long provided a rich medium for solidarity and collective self-help and a platform for organizing among ordinary people. That is partly because common work has often been a source of shared grievances—hardly an unambiguous argument for holding onto the centrality of work. But common work has also been a source of shared pride and identity, mutual sacrifice, fellowship, and a foundation for collective action.

The resilience and robustness of workplace ties is especially important because co-workers are comparatively likely to come from different cultural, religious, racial, and ethnic backgrounds; they are more heterogeneous than the people one meets within families, neighborhoods, religious congregations, or clubs and voluntary associations.¹⁹ The workplace is the most prolific site of sustained interaction, and the most frequent source of friendships, among adults of different racial and ethnic identities.²⁰ Daily cooperation, informal sociability, and shared interests and concerns among comparatively diverse co-workers generate interpersonal connections that tend to render the unfamiliar more familiar and to break down stereotypes and biases.²¹

Clearly, out-group biases and in-group affinities persist at work as elsewhere; and their burdens fall most heavily on groups that are still underrepresented in good jobs, and especially in management.²² Still, it is widely accepted—and studies continue to show—that sustained cooperative interaction across group lines tends to produce more positive and egalitarian intergroup relations and attitudes.²³ In the real world it is in the workplace, and often only there, where citizens of different racial and ethnic groups must find ways of getting along over sustained periods.

The daily experience of working together, multiplied across legions of adult citizens, strengthens the social foundations for collective self-governance in a complex and heterogeneous society. Personal connections that span different backgrounds and communities provide a medium for the exchange of experiences and opinions, for the discovery of commonalities and differences, and for the cultivation of diffuse qualities of empathy and broad-mindedness that shape political preferences, enable compromise, and enrich public discourse.

Paradoxically, the integrative potential of workplace ties stems partly from the very features that, for some theorists, disqualify them from the exalted realm

19. See *id.* at 7–10, 61–69. See also Donald Tomaskovic-Deney et al., *Documenting Desegregation: Segregation in American Workplaces by Race, Ethnicity, and Sex, 1966-2003*, 71 AM. SOC. REV. 565 (2006).

20. See ESTLUND, *supra* note 14, at 9–10, 60–69.

21. A recent empirical study confirms that White individuals who work with at least one Black co-worker manifest significantly less racial bias, and it finds strong indicator that the former is a cause and not merely a correlate of the latter. See Sean Darling-Hammond, Rodolfo Mendoza-Denton & Randy Lee, *Interracial Contact at Work: Can Workplace Diversity Reduce Bias?* (April 27, 2019), available at SSRN: <https://ssrn.com/abstract=3379069> [<https://perma.cc/L2ZY-XZHZ>].

22. See ESTLUND, *supra* note 14, at 77–83.

23. *Id.* at 74–76.

of civil society: the presence of instrumental motives and economic power and hierarchy, and of state regulatory power.²⁴ The crucial convergence of diversity and intense cooperation among co-workers is possible partly *because* of the economic hold that the workplace has on individuals and *because* of the hold that the law has on the workplace. The economic compulsion to sell one's labor and the managerial compulsion to cooperate in production are at the heart of enduring critiques of capitalism. But those elements of compulsion also give workers a powerful motivation to find ways to deal with conflict and friction rather than simply walking away. The civil rights laws, for their part, help to make workplaces more integrated than religious or other voluntary associations, most of which are not subject to antidiscrimination laws, and more integrated than most neighborhoods and schools, which are subject to antidiscrimination laws but are much harder to regulate for complex reasons.²⁵ To be clear, the law has clearly not eliminated discrimination, stratification, and intergroup conflict at work. In particular, many good jobs and workplaces are far from diverse. But a crucial question is: compared to what?

Work is neither as unambiguously necessary nor as universally valued by individuals as is some modicum of both income and leisure. And yet there is social and individual value in work and working relationships that cannot be wholly replaced by either income or leisure, nor wholly replicated in other forms of associational life. The question is whether and how the economy of the future will perform along these three dimensions if "this time is different," and job destruction increasingly outstrips job creation in a more automated economy.

III.

THREE BIG IDEAS (AND SOME BIG CONCERNS)

The catchphrase "this time is different" signifies that this is not the first time there has been widespread discussion, along with both fears and fantasies, about machines largely replacing human labor. Historically, the prevailing response to the prospect of technological unemployment in the United States was one of work spreading through shorter hours. That idea seems destined to return if we begin to see significant net job losses, and I will turn to it below. Thus far, however, that idea has been overshadowed by the splashier ideas of a UBI and a federal jobs guarantee (FJG), which have burst onto the American political stage—albeit mainly "stage left"—in recent years. Surging interest in those ideas stems partly from growing anxiety about automation-related job losses, uncertain though that prospect is, and partly from less debatable developments: growing economic inequality and declining economic security for most workers.

Indeed, it seems likely that, whenever and for whatever reason we face a shrinking pool of jobs relative to the supply of workers, variations on those three ideas are likely to surface: spreading or sharing jobs through reduced hours per

24. *Id.* at 23–34.

25. *Id.* at 64–69.

worker; creating jobs, mainly through public investments; and replacing jobs or cushioning their loss with income. In the current context of anxiety about automation, then, there is something inevitable about a three-way tug-of-war between job sharing, job creation, and job replacement.

Versions of those three strategies are not incompatible. But each of the three strategies has a strong form—a full, subsistence-level UBI, a federal job guarantee, and an across-the-board reduction of the work week—that some adherents hold up as the best strategy for responding to declining demand for human labor (among other social problems). There is a distinct tendency to line up behind one of these ideas, sometimes explicitly in contrast to one or both of the others. We will see that versions of the latter two—the goal of “full-time, full employment” and the thirty-hour work week—battled it out during the Great Depression, based on contrasting visions of the good society, the good life, and the future of capitalism. And the first two—the UBI and the FJG—are in sharp tension on both normative and practical grounds. The point here is that each of the Three Big Ideas in its strong form has both real virtues and real flaws, including a tendency to foreclose one or more of the other ideas.

I cannot pretend here to assess these proposals in anything like a comprehensive way. Subtleties and variations will be lost in the broad and selective strokes of this account. But I try to focus here on essential features of each of the Big Ideas and on what is right and what is problematic about each, especially in relation to the others.

A. Universal Basic Income and the Perils of Decentering Work

The idea of a basic guaranteed income for all has a very long history that runs through utopian thought as well as radical and progressive political programs.²⁶ The basic income idea draws from the same well as proposals for a negative income tax (once embraced by Richard Nixon), an idea to which we will return. But the idea has drawn wider interest in recent years, in part because of rising automation anxiety. Heads turned in the labor community in 2016 when Andy Stern, former head of the Service Employees International Union, emerged from a deep dive into the future of work as a strong proponent of a UBI.²⁷ He came to that view in part through discussions with experts and entrepreneurs in Silicon Valley who are immersed in creating automation technologies, and who are convinced that, in the foreseeable future, a shrinking share of the population will be able to find decent and steady paid work. If that is so, then universal basic income, however utopian its ring, may soon become a social and political imperative.

There is much to be said for the UBI, and much of it has been said brilliantly and recently by its leading contemporary expositor, Philip Van Parijs.²⁸ Although

26. See VAN PARIJS & VANDERBORGHT, *supra* note 11, at 51–98.

27. See ANDY STERN WITH LEE KRAVITZ, *RAISING THE FLOOR: HOW A UNIVERSAL BASIC INCOME CAN RENEW OUR ECONOMY AND REBUILD THE AMERICAN DREAM* (2016).

28. VAN PARIJS & VANDERBORGHT, *supra* note 11.

I raise concerns here about the UBI, what follows here owes much to Van Parijs and his co-author's detailed defense of the UBI, its history, its normative underpinnings and likely consequences, and its economic and political feasibility, all in comparison to its leading rivals in the policy domain.

To begin with, the UBI in its ideal form has many compelling virtues: It would effectively abolish poverty and its debilitating physical, psychic, and cognitive burdens on adults and especially children.²⁹ For those who lack other savings or family resources, a UBI would provide a reliable safety net, a meaningful exit option from a bad job, time to search and hold out for a better job, a firmer floor from which to launch a new venture or develop new skills, and support for the choice to work shorter hours or to take time off work for parenting or volunteering or other valuable but unremunerative activities. Unlike most existing means-tested benefit programs, a UBI would not actively discourage work or marriage because benefits would not be reduced to reflect earned income or spousal income.³⁰ Moreover, by underwriting workers' ability to quit a job without falling into poverty, a UBI would do much to curb employer abuse and improve labor practices at the low end of the labor market.³¹ At the same time, a UBI that was adequate to live on (a qualification explored further below) would presumably eliminate the need for a legally-mandated minimum wage or a "living wage."³² Employers might create some lower wage jobs that are not otherwise worth filling, and some individuals might accept them; but it would not be out of the bare economic compulsion to work and would be hard to label as exploitative.

It is revealing that support for a UBI runs from the far left—where it is seen as ushering in a post-capitalist future by freeing individuals from the need to sell their labor³³—to the libertarian right, where it is seen as an antidote to the bloated welfare state bureaucracy.³⁴ Not surprisingly, the UBI concept also meets harsh

29. For an overview of recent academic research on the psychological effects of poverty, see BEN FELL & MILES HEWSTONE, JOSEPH ROWNTREE FOUND, *PSYCHOLOGICAL PERSPECTIVES ON POVERTY* (2015).

30. VAN PARIJS & VANDERBORGHT, *supra* note 11, at 41, 159–160. For a thorough theoretical and empirical overview of the work incentive controversy, see generally Ed Dolan, *A Universal Basic Income and Work Incentives. Part 1: Theory*, *ECONOMONITOR* (Aug. 18, 2014), <https://moneymaven.io/economonitor/emerging-markets/a-universal-basic-income-and-work-incentives-part-1-theory-W3yJ6kRFek6eugtwwZMzxQ/> [<https://perma.cc/Q7WF-FFZN>]; Ed Dolan, *A Universal Basic Income and Work Incentives. Part 2: Evidence*, *ECONOMONITOR* (Aug. 25, 2014), <http://archive.economonitor.com/dolanecon/2014/08/25/a-universal-basic-income-and-work-incentives-part-2-evidence/> [<https://perma.cc/MP5L-AEKR>].

31. See ROBERT S. TAYLOR, *EXIT LEFT: MARKETS AND MOBILITY IN REPUBLICAN THOUGHT*, 12–25 (2017).

32. See VAN PARIJS & VANDERBORGHT, *supra* note 11, at 30–50.

33. See *id.* at 4–28.

34. See *id.* at 84–87 (discussing Chicago titans Milton Friedman and Friedrich Hayek's support for basic income schemes); see also Matt Zwolinski, *Property Rights, Coercion, and the Welfare State: The Libertarian Case for a Basic Income for All*, 19 *THE INDEPENDENT REV.* 515 (2015); e.g., David Frum, *A Rule for Conservative Anti-Poverty Plans: Keep It Simple*, *THE ATLANTIC* (July 31, 2014), <https://www.theatlantic.com/politics/archive/2014/07/the-key-for-conservative-anti-poverty-plans-keep-it-simple/375392/> [<https://perma.cc/5PLR-LNMP>]; Matt Zwolinski, *The Pragmatic Libertarian Case for a Basic Income Guarantee*, *CATO UNBOUND* (Aug. 4, 2014), <https://www.cato-unbound.org/>

criticism across the entire political spectrum.³⁵ On the left, some see the UBI as propping up rather than undermining late capitalism,³⁶ or as sapping solidarity at its source in shared work,³⁷ or as a Trojan horse that would lead to dismantling social welfare programs and leaving the poor worse off.³⁸ On the right, many strongly resist the idea of giving “handouts” to able-bodied people, as well as the forced redistribution of income it would entail.³⁹ Across the whole political spectrum, the idea of sending cash to Jeff Bezos (and millions of others who simply don’t need it) provokes puzzlement or ridicule.⁴⁰

The extraordinary political diversity among both proponents and critics of the UBI is partly a reflection of the diversity of proposals that travel under the UBI rubric. I aim here not to survey all those proposals, or all of the arguments for and against the UBI, but to focus in on a particular set of objections foreshadowed in Part I. To that end, I will flag a few basic design issues.

Two major points of divergence among UBI proposals are intertwined, and together they largely determine the cost of a UBI: how large would the basic grants be, and would they replace or supplement existing social programs? The questions are intertwined because a uniform and universal cash grant that is large enough to replace all existing means-tested programs for the poor (without reducing anyone’s benefits) would be fantastically costly.⁴¹ Many critics from the left thus fear that a smaller UBI-only scheme would be or become a vehicle for decimating social welfare benefits, leaving many people worse off.⁴² On the other hand, a UBI that was layered atop all of those existing programs could be smaller,

2014/08/04/matt-zwolinski/pragmatic-libertarian-case-basic-income-guarantee [https://perma.cc/8H9W-DLRQ].

35. For a thoughtful analysis of the varied political views on UBI, see Peter Frase, *On the Politics of Basic Income*, PETER FRASE, July 16, 2018, available at <http://www.peterfrase.com/2018/07/on-the-politics-of-basic-income/> [https://perma.cc/6CCA-UGCB].

36. See Alyssa Battistoni, *The False Promise of Universal Basic Income*, DISSENT (2017), <https://www.dissentmagazine.org/article/false-promise-universal-basic-income-andy-stern-ruger-bregman> [https://perma.cc/6AE6-FCKG]; Daniel Zamora, *The Case Against a Basic Income*, JACOBIN (Dec. 28, 2017), <https://www.jacobinmag.com/2017/12/universal-basic-income-inequality-work> [https://perma.cc/T7DT-SRQJ].

37. See Alex Gourevitch, *The Limits of a Basic Income: Means and Ends of Workplace Democracy*, 11 BASIC INCOME STUD. 17 (2017).

38. See Battistoni, *supra* note 36.

39. George Zarkadakis, *The Case Against Universal Basic Income*, HUFFPOST (Feb. 27, 2017, 6:34 AM), https://www.huffingtonpost.com/entry/the-case-against-universal-basic-income_us_58b0178-ee4b02f3f81e44612 [https://perma.cc/CWV3-ZQLT]; Editorial, *Chicago’s Next Really Bad Idea: A Guaranteed Basic Income*, INV. BUS. DAILY (July 20, 2018), <https://www.investors.com/politics/editorials/guaranteed-basic-income/> [https://perma.cc/ZFK4-TDDU].

40. Of course, a more steeply progressive income tax would more than tax away the UBI for those at higher incomes and would help fund the UBI for those who do need it.

41. See Zamora, *supra* note 36, for a canvas of the potential costs of different iterations of UBI in different countries. A British plan with a monthly basic income of £284 would cost 6.5% of that country’s annual GDP. A French plan with a monthly basic income of €1,100 would cost 35% of that country’s annual GDP. And Van Parijs’ plan for Belgium, with a monthly basic income of €600, would cost 6% of that country’s annual GDP. Note, though, that any UBI program could be partially paid for by replacing other social services and welfare benefits. See VAN PARIJS & VANDERBORGH *supra* note 11.

42. See Zamora, *supra* note 36.

but would sacrifice both a major source of funding—the savings from replacing existing programs—and a major selling point: the simplicity, low administrative costs, and less intrusive nature of a UBI-only system. In between a UBI-only and a UBI-plus lie several alternatives, such as replacing some but not all existing benefits or counting the UBI as part of the means for existing means-tested programs so that many fewer people would qualify for the latter but nobody would end up worse off.⁴³

These basic design issues are tied up with the question of how to finance a UBI (beyond whatever savings are realized from replacing existing entitlements). Among the proposals are a higher and more steeply redistributive income tax, higher taxes on capital (including the hotly debated concept of a “robot tax”), a wealth tax, or a financial transactions tax (FTT).⁴⁴ All have strengths and weaknesses.⁴⁵ Some combination of revenue sources would likely be needed.

These crucial design and funding issues are well rehearsed by Van Parijs and others.⁴⁶ For present purposes, let us hypothesize a full, subsistence-level UBI—one that is large enough for an individual to live on. That is currently just over \$1000 per month,⁴⁷ which is about the level suggested by many UBI proponents.⁴⁸ That is what would be required to secure the benefits cited by many UBI proponents—to allow individuals who lack other resources to reject or quit degrading or oppressive jobs, or to take time off of work for training and education. And that is what would be required for a UBI by itself to stave off mass immiseration in the event of large-scale job destruction due to automation. Let us further posit that this amount would be counted as part of an individuals’ means for purposes of any existing means-tested programs. That would drastically shrink the size and overall cost of those programs, and perhaps wholly

43. See VAN PARIJS & VANDERBORGHT, *supra* note 11.

44. I briefly review potential sources of revenue for large redistributive programs in Estlund, *What Should We Do?*, *supra* note 1, at 315–19.

45. The FTT, for example, has a surface appeal that is undercut by the fact that taxing the often-tiny percentage gains from financial transactions would inevitably discourage those transactions and reduce tax revenue. (For a harsh critique of the FTT, sometimes called a Tobin tax or a Robin Hood tax, see Tim Worstall, *The Monstrous Idiocy of the Robin Hood Tax Rears Its Ugly Head Again*, FORBES (Mar. 20, 2015), <https://www.forbes.com/sites/timworstall/2015/03/20/the-monstrous-idiocy-of-the-robin-hood-tax-rears-its-ugly-head-again/#2902584576aa> [<https://perma.cc/D9T5-CKFQ>]. To be sure, it might independently make sense to discourage those transactions, but it is misleading to calculate expected revenues from the existing volume of financial transactions. See, Zamora, *supra* note 36.

46. See, e.g., VAN PARIJS & VANDERBORGHT, *supra* note 11, at 133–69; Benjamin M. Friedman, *Born to Be Free*, THE NEW YORK REVIEW OF BOOKS, Oct. 12 2017, at 39, <https://www.nybooks.com/articles/2017/10/12/basic-income-born-to-be-free/> [<https://perma.cc/FV3Z-MJGC>]; Jordi Alcarons et al., *Feasibility of Financing a Basic Income*, 9 BASIC INCOME STUD. 79 (2014); FELIX FITZROY & JIM JIN, IZA INST. OF LABOR ECON., BASIC INCOME AND A PUBLIC JOB OFFER: COMPLEMENTARY POLICIES TO REDUCE POVERTY AND UNEMPLOYMENT 6–11 (2017).

47. U.S. DEP’T OF HEALTH & HUMAN SERVS., *HHS Poverty Guidelines for 2019* (Jan. 11, 2019), <https://aspe.hhs.gov/poverty-guidelines> [perma.cc/JLK9-L5DY]. This ignores wide variations in the cost of living.

48. See, e.g., MICHALIS NIKIFOROS ET AL., THE ROOSEVELT INST., MODELING THE MACROECONOMIC EFFECTS OF A UNIVERSAL BASIC INCOME 9 (Aug. 2017). The UBI might include a lesser monthly grant for children. VAN PARIJS & VANDERBORGHT, *supra* note 11, at 9.

replace some of them; and it would provide an initial source of funds for the UBI. Even so, the additional cost of a full UBI would run into the trillions of dollars.⁴⁹

Whether or how it might be possible to fund a UBI at that level is not a question I will delve into here.⁵⁰ It is noteworthy, however, that even Van Parijs and Vanderborght conclude that a full-scale UBI is too costly to be feasible in the United States or other developed countries in the near or medium term.⁵¹ They propose instead a more modest partial UBI—one that falls far short of poverty-level subsistence, but that they hope will pave the way eventually for a full UBI.⁵² Unfortunately, that presents a dilemma. As one UBI critic argues, “to deliver the benefits its supporters hold out for it, the income must be substantial” and probably “too great for a society like ours to afford”; on the other hand, a smaller partial UBI “would deliver few of the promised benefits yet still cost enough to present a serious hurdle.”⁵³

If the full UBI is the right long-term aspiration, it could still make sense to start down that road with a partial UBI. After all, given the outrageous fortunes that are already flowing to those who create or own the automating technology, there should be some combination of taxes on income, capital, wealth, consumption, and other sources that could eventually finance a full UBI.⁵⁴ But it is clear that a full UBI would absorb a sizable share of national wealth.⁵⁵

A full UBI would also foreclose other policy options. In particular, UBI should be evaluated as a rival, not a complement, to a large-scale jobs program such as the federal job guarantee.⁵⁶ First, the direct revenues and budgetary

49. See Friedman, *supra* note 46; Zamora, *supra* note 36; Robert Greenstein, *Commentary: Universal Basic Income May Sound Attractive but, if It Occurred, Would Likelier Increase Poverty than Reduce It*, CTR. ON BUDGET AND POL’Y PRIORITIES: POL’Y FUTURES (Sept. 18, 2017), <https://www.cbpp.org/poverty-and-opportunity/commentary-universal-basic-income-may-sound-attractive-but-if-it-occurred> [<https://perma.cc/A7MD-58KQ>]; see also Jessica Wiederspan et al., *Expanding the Discourse on Antipoverty Policy: Reconsidering a Negative Income Tax*, 19 J. OF POVERTY 218, 227–30 (2015) (discussing the potential costs of a negative income tax version of UBI in the US).

50. VAN PARIJS & VANDERBORGHT, *supra* note 11, at 130–170; See also Dylan Matthews, *The 2 Most Popular Critiques of Basic Income are Both Wrong*, VOX, July 20, 2017, <https://www.vox.com/policy-and-politics/2017/7/20/15821560/basic-income-critiques-cost-work-negative-income-tax> [<https://perma.cc/S22W-CD7H>]; Greenstein, *supra* note 49; Wiederspan et al., *supra* note 49.

51. See VAN PARIJS & VANDERBORGHT, *supra* note 11, at 138–47.

52. *Id.* See also Guy Standing, *Basic Income as Common Dividends: Piloting a Transformative Policy: A Report for the Shadow Chancellor of the Exchequer*, PROGRESSIVE ECONOMY FORUM (May 7, 2019), https://www.progressiveeconomyforum.com/wp-content/uploads/2019/05/PEF_Piloting_Basic_Income_Guy_Standing.pdf [<https://perma.cc/3K44-GZVF>].

53. See Friedman, *supra* note 46, at 41.

54. See VAN PARIJS & VANDERBORGHT, *supra* note 11, at 147–58.

55. Skeptics argue that a UBI would also cause massive inflation, eating up most of the added purchasing power it is designed to supply; but UBI proponents demur. See, e.g., Dylan Matthews, *A new study debunks one of the biggest arguments against basic income*, Vox, Sept. 20, 2017 (<https://www.vox.com/policy-and-politics/2017/9/20/16256240/mexico-cash-transfer-inflation-basic-income> [<https://perma.cc/N3CC-J9CX>]); Scott Santens, *Wouldn’t Unconditional Basic Income Just Cause Massive Inflation?*, Basic Income, <https://medium.com/basic-income/wouldnt-unconditional-basic-income-just-cause-massive-inflation-fe71d69f15e7> [<https://perma.cc/Z5WP-ETUY>].

56. See Zamora, *supra* note 36.

outlays required for either a UBI or a FJG (explored more fully below) would almost certainly foreclose the other. Second, on the political plane, I think there would be insurmountable (and understandable) resistance to the idea of granting an unconditional basic income to individuals who had the option of a guaranteed job at a living wage but failed to take it up. Third, the two ideas sharply diverge as a normative matter, specifically in their conceptions of how people should be expected to earn a living.

That brings us to a more basic critique of a full subsistence-level UBI: By design, it would replace paid work, including for some who are fully able to work. The point is often overstated, and should be qualified. First, most people with marketable skills will still seek paid work to supplement a subsistence-level income. Second, a UBI would enable some people to develop those skills, to wait for a work opportunity that better fits their skills and interests, or to launch or join in a new independent enterprise. Third, unlike many existing means-tested programs, at least a UBI would not actively discourage poor beneficiaries from working, for benefits would not drop off as earned income rose.⁵⁷ All in all, the effect of a UBI on beneficiaries' activities is a contingent empirical question, and one that is exceptionally difficult to study, for it depends on many design issues as well as the availability of paid work in a more automated future.⁵⁸ Not surprisingly, none of the existing studies of how a UBI might affect beneficiaries' activities replicates the conditions of a subsistence-level UBI in a wealthy post-industrial society.⁵⁹

On the face of it, there is no getting away from the fact that a subsistence-level UBI would subsidize individuals' choice to forego work. The work-replacing nature of the UBI is a feature that leading proponents defend, even as they argue that it is overstated.⁶⁰ To be sure, a UBI avoids the pitfalls of most existing means-tested programs, which actively discourage work at some income levels.⁶¹ On the other hand, the UBI would deliver a check to some people who would not qualify for benefits, and would otherwise seek work. Perhaps the bigger problem is that a UBI is incompatible—fiscally, politically, and normatively—with proposals for large-scale public job creation.⁶² At least in that sense, the UBI effectively gives up on the social norm of paid work as the presumptive and primary basis for individuals' economic security, and on a societal commitment to sustain that norm. Unless and until that surrender becomes inescapable, we should avoid it.

57. For a thorough theoretical and empirical overview of the work incentive controversy, especially as compared to means-tested benefits, *see generally* Dolan, *supra* note 30.

58. *See* Dolan, Part 2, *supra* note 30; KARL WILDERQUIST, A CRITICAL ANALYSIS OF BASIC INCOME EXPERIMENTS FOR RESEARCHERS, POLICYMAKERS, AND CITIZENS 43–70 (2018).

59. *See id.* at 43–70. Guy Standing proposes a pilot program to address that empirical gap. *See* Standing, *supra* note 52.

60. *See* VAN PARIJS & VANDERBORGH, *supra* note 11, at 100–32; Philippe Van Parijs, *Why Surfers Should Be Fed: The Liberal Case for an Unconditional Basic Income*, 20 *Phil. & Publ. Affairs* 101 (1991).

61. *See supra* note 30 and accompanying text.

62. *See supra* notes 44–52 and accompanying text.

I have already shown my hand in Part I: I believe that individuals, communities, and the society will be stronger and healthier if work (albeit perhaps less of it) is presumptively central to most people's economic livelihoods. Both by inducing some individuals to drop out of the workforce *and* by soaking up social resources that might otherwise go into job creation, a UBI is likely to contribute to long term disengagement from the paid workforce, and the attendant social alienation and anomie that would entail, for some significant share of the beneficiaries.⁶³ But there is a bit more to say about the pro-work objection to the UBI.

One pro-work argument against the UBI—and one with particular political resonance in the United States—invokes fairness concerns. As Jon Elster put it, it is “unfair for able-bodied people to live off the labour of others.”⁶⁴ Van Parijs calls this the “Malibu Surfer” problem, and he has put forward a solution within liberal theory.⁶⁵ To brutally condense his sophisticated argument: In modern economies, labor markets do not clear—that is, some people who are willing and able to work remain unemployed because wages do not fall to the level at which some employer is willing to hire them. Under those conditions, those who are employed realize greater income and other rewards to work than they would in a market-clearing economy. Where all that is true, Van Parijs argues, it is fair to tax part of that surplus to fund a basic income for those who are left without a job.⁶⁶ The argument has greater traction in “affluent societies with high rates of unemployment”⁶⁷—that is, not today's society but one that automation might bring about in the foreseeable future.

Van Parijs's argument, however persuasive in principle, is unlikely to defuse the political objections to taxing those who work to subsidize “slackers.” That is just part of what is likely to doom the UBI as a political matter, at least in the US, and at least until and unless we are clearly facing an automation apocalypse. But here I want to set aside both the fairness objection and the challenging politics of the UBI in the US, and emphasize instead more consequentialist strands of the pro-work case against the UBI.

The heart of that case is set out in Part II: There is psychic, social, and economic value to engaging most adults for much of their lives in productive work and working relationships, and to keeping work at the center of people's economic and social lives. Meaningful and productive work is worth much more to individuals and society than the income it generates. In particular, shared work and workplace associations help to hold a diverse society together. That argument underscores the critical importance of workplace diversity, and of breaking down racial and ethnic barriers to good jobs.

63. See Zamora, *supra* note 36; LUKE MARTINELLI, INST. FOR POL'Y RES., ASSESSING THE CASE FOR UNIVERSAL BASIC INCOME IN THE UK 50–63 (2017).

64. Jon Elster, *Comment on Van der Veen and Van Parijs*, 15 THEORY AND SOC'Y 709 (1986).

65. See Van Parijs, *supra* note 60; VAN PARIJS & VANDERBORGHT, *supra* note 11, at 100–32.

66. See Van Parijs, *supra* note 60, at 121–24.

67. *Id.* at 124.

The historical role of shared work as a source of solidarity and bottom-up political engagement should also unsettle the progressive case for a UBI. Unless the UBI itself is seen as some kind of endpoint to the need for political mobilization among ordinary people, it is important to consider where the seeds of solidarity and mobilization can be successfully cultivated.

It would be nice to believe that individuals, if freed from the bare compulsion to work as a UBI aims to do, would enjoy a richer mix of voluntary associations that would cultivate social solidarity and connections across persistent lines of social division. Some people would surely choose to associate with diverse others, and might do so on a more egalitarian basis, outside of work. But we see all around us the evidence that many people would choose instead—because they often do choose when they can—to live and associate with others from similar backgrounds and racial and ethnic identities. It is easier, both for individuals and for societies, to build bonds of trust and reciprocity among individuals from similar backgrounds and identities. But a diverse society simply has to find ways to cultivate bonds across group lines—what Putnam calls “bridging social capital”—and that may require the kinds of legal, economic, and organizational compulsion that shape the experience of working together.

The social and political case made here for work, and against the UBI, stands apart from fairness concerns; even if it were entirely fair to tax some to subsidize others’ choice not to work through a UBI, it would not serve society’s profound interest in promoting social integration among citizens, especially across social divisions. This case for work also stands up against individual preferences for leisure over work; even if many people would genuinely prefer to receive a UBI rather than work for a living, the society has good reasons to favor work at least to the point of favoring job creation over unconditional income.

The case for paid work as a site of social integration weighs in favor of directing public policy and resources toward creating and maintaining decent jobs rather than simply substituting basic income through a UBI. But there is no doubt that people at the bottom of the income distribution do need more money (and other basic material entitlements like health coverage), for many of the reasons offered by UBI advocates. Moreover, a work-centered strategy would become much harder to sustain, and a full-scale UBI much more appealing, or even imperative, if we eventually do face the tsunami of job destruction that some in the tech world foresee. I see the UBI as more of a last resort than as an ideal. For the foreseeable future, we can and should strive to maintain work as the presumptive basis for individuals’ livelihoods, and as the main mechanism through which most people derive most of their income.

B. A Federal Job Guarantee: Entrenching “Full-time, Full-employment”

The pro-work case against the UBI might seem to point squarely toward the competing idea of a job guarantee, which would afford both a decent income and the non-material individual and social benefits of work as a matter of right. The idea of a “right to work” has resonated throughout the industrialized world in

protean form at least since the French Revolution, especially in times of high unemployment.⁶⁸ In the Depression-era United States, the goal of “full-time, full employment” became a central plank of the New Deal (winning out over the goal of shorter hours and work spreading, to which I will return below). That goal generated New Deal programs like the Civilian Conservation Corps and the Works Progress Administration (WPA), but not a true job guarantee. World War II brought about full-time, full employment as a collateral consequence; but in its wake, and with the rise of a new conservative coalition in Congress, the full-employment cause lost ground. It suffered a more-than-symbolic defeat when the so-called “Full Employment Act” of 1945 was pointedly renamed the “Employment Act,” and all of its binding provisions were stripped out.⁶⁹

Over the next two decades both the political commitment to full employment and its Keynesian underpinnings increasingly gave way to a new macroeconomic orthodoxy that prioritized fighting inflation. In the late 1960s, civil rights leaders, notably including Coretta Scott King, spearheaded a burst of support for a federal commitment to full employment, eventually embodied in the Humphrey-Hawkins Full Employment Act of 1978.⁷⁰ The original Humphrey-Hawkins bill would have granted an enforceable statutory right to a job; but the bill was stripped of its substance before enactment, as with its post-war predecessor. For the next four decades we heard barely a whisper in the United States of a “right to work” in the strong form of a job guarantee.

That would change if leading Democrats, including several likely 2020 presidential aspirants, were to succeed in their recent call for a federal job guarantee (FJG). As Senator Bernie Sanders defines it in his draft proposal: “Under a federal jobs guarantee program, the U.S. government would guarantee a job with a living wage and good benefits to any resident who wants or needs one.”⁷¹ A job guarantee would in principle bring about a state of permanent full employment, with numerous benefits. As outlined by the Center on Budget and Policy Priorities (CBPP) in connection with its proposal, beyond “the elimination of involuntary unemployment,” a FJG would bring about “a true floor in the labor market”; “the elimination of working poverty”; “the restoration of local and state tax bases”; “macroeconomic stabilization”⁷²; and “the provision of

68. Philip Harvey, *Wage Policies and Funding Strategies for Job Guarantee Programs*, in *THE JOB GUARANTEE: TOWARD FULL EMPLOYMENT* 39, 40 (Michael J. Murray & Mathew Forstater eds. 2013); see also Peter-Christian Aigner & Michael Brenes, *The Long, Tortured History of the Job Guarantee*, *THE NEW REPUBLIC*, May 11, 2018, <https://newrepublic.com/article/148388/long-tortured-history-job-guarantee> [<https://perma.cc/DV6T-G2GR>].

69. See Margaret Weir, *Full Employment as a Political Issue in the United States*, 54 *SOC. RES.* 377, 383–91 (1987).

70. See generally DEAN BAKER ET AL., *CTR. FOR POPULAR DEMOCRACY, THE FULL EMPLOYMENT MANDATE OF THE FEDERAL RESERVE: ITS ORIGINS AND IMPORTANCE* (2017).

71. Gregory Krieg, *Why a “Federal Jobs Guarantee” is Gaining Steam with Democrats*, *CNN.COM*, (April 26, 2018, 8:30 AM), <https://www.cnn.com/2018/04/26/politics/federal-jobs-guarantee-gaining-steam-democrats/index.html> [<https://perma.cc/SMS7-G2BZ>].

72. The FJG would provide an automatic countercyclical stimulus that ebbed and flowed in inverse relation to private sector employment levels.

socially useful goods and services” by FJG workers.⁷³ We should read into that impressive list of benefits the more intangible social and psychic benefits that flow from citizens’ widespread engagement in shared work.

It is no wonder that the idea of a job guarantee has caught the American political imagination as the idea of basic guaranteed income has not. And if the menu of policy options miraculously came to include both (and only) the UBI and the FJG, I would vote for the latter. But I do want to emphasize this point: Even in a future political climate that favored big transformative policies like the UBI or the FJG, we would be forced to choose between them. The FJG is in direct competition with proposals for a full-scale UBI in at least three ways: They are mutually incompatible as a matter of sheer cost, political salability, and normative foundations.⁷⁴ Among other things, backers of a UBI would be seeking to reduce the stigma that attaches to unemployment, while backers of a job guarantee would be actively burnishing the social valorization of paid work. Indeed, a job guarantee itself would likely contribute to the stigmatization of unemployment by rendering it more plainly a matter of individual volition.

For all these reasons, it is fair to assume that a federal job guarantee is an alternative, not a complement, to a UBI that is enough to live on. For those who strongly favor a UBI, that might be reason enough to resist calls for a job guarantee. On the other hand, for those (like me) who are skeptical of the UBI precisely because of its displacement and decentering of paid work, the job guarantee has an obvious corresponding appeal.

If super-capable machines do sharply reduce the demand for human labor while greatly increasing output, job creation is unlikely to be the whole answer to the problem of less work. Nor should it be. In that eventuality, entrenching a 20th century goal of full-time, full-employment would not only require climbing an ever-steeper slope of job creation; it would also bypass a historic opportunity to reduce (without zeroing out) the portion of people’s lives that must be devoted to work. Work itself has social value; but many people—especially those whose work is not as intrinsically rewarding as that of the writer and readers of this article—might wish for less work rather than guaranteed full-time work, putting aside the income trade-off.⁷⁵ In short, the big idea of a FJG would address two crucial dimensions of a balanced life and an equitable society—adequate work and adequate income—but would fall short on the third dimension by failing to reap and distribute the benefits of leisure, or time for family, friends, avocational

73. MARK PAUL ET AL., *CTR. ON BUDGET AND POLICY PRIORITIES, THE FEDERAL JOB GUARANTEE—A POLICY TO ACHIEVE PERMANENT FULL EMPLOYMENT* (2018).

74. *See supra* at note 55.

75. The FJG could allow for part time jobs at the option of the applicant (as does the LEI proposal explored here, *infra*). Still, a FJG norm of 40 hours per week would tend to shore up that norm across the economy. Moreover, for reasons explained below, unless the part-time option is coupled with some form of income support, most low-income workers will not be able to afford it. By contrast, a FJG program that guaranteed, e.g., a thirty-hour per week job could help to reset the norm for working hours (while reducing the cost of the program and the number of expected participants). That is one possible version of what I call a “three-dimensional” strategy for a future of less work. *See infra*, part III.

pursuits, volunteer work, and everything else that makes up a good life outside of work. I will return to that point below.

As with the UBI, crucial design issues would affect the outcomes of a FJG as well as its political and economic viability. Let us dig into a few of the details by way of a proposal by the Levy Economics Institute (LEI).⁷⁶ The structure of the LEI proposal is simpler than that of the CBPP; in particular, its uniform wage and benefit package makes it easier to analyze.⁷⁷ The LEI program would be federally funded but locally administered; projects would be proposed and managed by state and local governments and non-profit organizations, which would serve as the direct employers. Jobs would be located in applicants' own communities, and would require little education or prior training. Each would pay a uniform wage of \$15 per hour plus benefits, including fully-funded health benefits, child care, and paid family leave, and would come with for-cause job security. For present purposes, we can adopt the LEI's own estimate of the total wage-benefit cost at \$18 per hour (though that estimate appears quite conservative).⁷⁸

One problem with the LEI version of the job guarantee is that it would double down on the increasingly problematic U.S. strategy of attaching basic social benefits like health insurance to employment. As I have argued elsewhere, that linkage contributes counterproductively to employers' incentive to replace employees with independent contractors, outside suppliers, or machines.⁷⁹ And it contributes to the stratification of society into insiders employed by reputable employers and outsiders who are employed by marginal organizations or not employed at all. The linkage between basic benefits and employment is not necessarily inherent in the concept of a FJG, but it is not a purely contingent feature either. Both that linkage and the FJG concept are closely tied to what I call elsewhere the "fortress of employment."

The main point of the FJG lies in the creation of decent jobs for those who are now unemployed, underemployed, or discouraged by the lack of job opportunities. No less important, however, would be the dramatic effects—intended and unintended—on jobs outside the FJG program. Because any eligible individual could get a job with the prescribed FJG package of pay and benefits,⁸⁰ that package would effectively become the floor on wages and benefits

76. L. RANDALL WRAY ET AL., LEVY ECON. INST. OF BARD COLL., PUBLIC SERVICE EMPLOYMENT: A PATH TO FULL EMPLOYMENT (2018), http://www.levyinstitute.org/pubs/rpr_4_18.pdf [hereinafter, LEI REPORT] [<https://perma.cc/2QZQ-GVXR>]. The LEI calls its program Public Service Employment; they put it forward as one version of a FJG.

77. Both the LEI and CBPP proposals are dissected and comprehensively critiqued in MAX GULKER, AM. INST. FOR ECON. RESEARCH, THE JOB GUARANTEE: A CRITICAL ANALYSIS 14–15 (2018), albeit from a perspective that is more sanguine about existing labor market dynamics and more hostile to big government interventions in the economy than mine.

78. I question that assumption below, *see infra* Part III.

79. *See* Estlund, *What Should We Do After Work?*, *supra* note 1.

80. Presumably that would be any adult citizen or permanent resident with work authorization. Others have explored the practical and political challenges that immigration poses for either a UBI or a FJG – or, for that matter, for any serious effort to expand social support for those at the bottom of the

in the private sector.⁸¹ Employers wishing to hire or retain workers would have to meet the new higher floor, which would be enforced—far more effectively than any system of official sanctions or litigation—by workers’ exit from lower-wage jobs into FJG jobs. In other words, the FJG would effectively raise the federal minimum wage to the FJG floor. That would amount to more than a doubling of the minimum wage in the large parts of the country currently governed by the federal minimum wage of \$7.25 per hour, and a very large increase in all but a handful of high-wage, high-cost cities.

For FJG proponents, the dramatic improvement in wages and benefits at the bottom of the labor market—both within and outside the program—is one of its most appealing features. Unfortunately, some lower-wage private-sector jobs, instead of being upgraded, would disappear because employers were not willing or able to meet the new floor—or because the much higher cost of labor tipped the scales toward automation.⁸² And the growing capabilities and falling cost of technology vis-a-vis labor will almost certainly increase the magnitude of non-FJG job losses. In the case of the FJG, private sector job losses would not yield unemployment; the FJG program would simply expand to absorb displaced individuals. But it would yield a large-scale displacement of private sector jobs by federally guaranteed jobs that might raise other concerns. It also raises questions about the expected size of the program.

It is inherent in the concept of a FJG that the size of the program would be determined not *ex ante*, based on policymakers’ willingness to appropriate some particular level of funds, but by how many eligible individuals chose to take up the FJG option. That is the point of a public job *guarantee* versus a public job creation policy. It is also the program’s greatest source of vulnerability.

Obviously and by design, an FJG would draw in a large share of the unemployed, of “discouraged workers” who have given up looking for a job, and of part-time workers who would prefer full-time work but cannot get it on the existing market. The LEI estimates that this would include 12.6 million to 17.4 million individuals as of 2018.⁸³

The FJG would also draw in some workers who are currently employed full-time but whose wages and benefits fell short of the new FJG floor. The question is how many of those lower-wage jobs would be upgraded and how many would instead disappear in the face of what amounts to a very large minimum wage

income distribution. *See generally*, James Davis, Opinion, *Reconciling UBI with Immigration Concerns*, BASIC INCOME EARTH NETWORK (Sept. 21, 2016), <https://basicincome.org/news/2016/09/reconciling-ubi-immigration-concerns/> [<https://perma.cc/845B-54YP>]; Kevin D. Williamson, *The UBI and Immigration*, NAT’L REV. (June 10, 2016, 7:59 PM), <https://www.nationalreview.com/corner/how-immigration-concerns-undermined-ubi/> [<https://perma.cc/N4JG-GLNS>]. I do not attempt to take on that challenging set of issues here.

81. That is apart from undocumented workers, who would be ineligible for any politically imaginable rendition of a job guarantee, and would presumably work for less than the guaranteed wage and benefit package. The implications of this exception is not addressed by the LEI analysis, nor do I address it here.

82. *See* Appendix.

83. LEI REPORT, *supra* note 76, at 17–18.

hike.⁸⁴ The LEI, for its part, takes a polar position in the vigorous debate among labor economists over the extent to which minimum wage hikes destroy jobs: It assumes that virtually no jobs—and *none* of those paying more than the current federal minimum wage—would disappear in response to more than a doubling of the effective minimum wage. On that assumption, virtually no current full-time employees would enter the FJG program because nearly all of those jobs would be raised to the FJG threshold.⁸⁵ That seems like a heroic assumption, and a very consequential one. If, say, ten percent (or twenty-five percent) of jobs currently paying below the FJG threshold disappeared through offshoring, automation, or otherwise, instead of being upgraded, then another seven million (or seventeen million) more workers would be expected to enter the FJG program from among the currently employed.⁸⁶

All told, a FJG program along the lines outlined here might draw in twenty to thirty million participants in today's labor market, at an annual cost far in excess of the LEI's estimate of \$409 to \$543 billion.⁸⁷ And that is at a time of historically low unemployment; both participation levels and budgetary outlays would balloon (by design) in a recession—or in the event of escalating job losses due to automation.⁸⁸ The sheer magnitude of a FJG program also raises doubts—from the labor-friendly Economic Policy Institute, no less—as to whether there is enough “public sector managerial capacity” to administer such a program.⁸⁹

I will set aside here the obvious question of how to finance such a program, and simply assume it would be possible to foot the very large bill that a FJG would entail through some combination of new revenue sources—taxes on

84. I discuss this hotly debated question in Estlund, *What Should We Do?*, *supra* note 1, at 295–97.

85. Specifically, just 25 percent of those now employed at or below *the federal minimum wage*, or another 160,000 participants. LEI REPORT, *supra* note 76, at 16. As for the large share of the national labor force that is currently employed above the federal minimum wage (\$7.25) but below the FJG threshold, the LEI assumes that *none* would enter the program because *all* of their employers would raise wages and benefits at least to the FJG threshold (or that any minor job losses would be offset by new jobs due to the economic stimulus inherent in the program). *Id.* at 1, 6. The proposal thus counts no expected participants from that group of low-but-above-minimum wage workers. *Id.* at 16. I report my own “back-of-the-envelope” estimates of likely FJG participants in the Appendix.

86. See Appendix.

87. LEI REPORT, *supra* note 76, at 29. By way of comparison, the Center on Budget and Policy Priorities puts a \$543 billion annual price tag on its proposal, and the Center for American Progress estimates \$158 billion annual outlays for its program. CTR. ON BUDGET, *supra* note 49, at 11–12; Neera Tanden et al., *Toward a Marshall Plan for America: Rebuilding Our Towns, Cities, and the Middle Class*, CTR. FOR AMERICAN PROGRESS (May 16, 2017), <https://www.americanprogress.org/issues/economy/reports/2017/05/16/432499/toward-marshall-plan-america/> [<https://perma.cc/C847-ZUMF>].

88. It would obviously be possible to shrink that large bill by tweaking the program. In particular, reducing the wage and benefit level—either across the board or in lower-cost localities—would lower both the cost per participant and the number of expected participants.

89. Josh Bivens, *How Do Our Job Creation Recommendations Stack up against a Federal Jobs Guarantee?*, ECON. POLICY INST.: WORKING ECON. BLOG (April 12, 2018, 10:00 AM), <https://www.epi.org/blog/how-do-our-job-creation-recommendations-stack-up-against-a-job-guarantee/> [<https://perma.cc/8UM4-G9WA>].

income, capital, wealth, consumption, or financial transactions.⁹⁰ Would it be worth it, assuming it were somehow possible?

FJG proponents rightly point out that its costs would be partly offset by large savings on existing programs that serve the working poor and the unemployed—Medicaid, food stamps, unemployment benefits, Earned Income Tax Credits, among others.⁹¹ Moreover, the FJG would have a wide range of tangible and intangible benefits. Tens of millions of non-FJG workers would get a sizable raise. The additional purchasing power of FJG participants not only would raise living standards for them and their families, but would inject an economic stimulus into poor communities where job opportunities have been scarce, and might yield private sector job gains.⁹² FJG jobs would also deliver some services and address community needs (as judged by the local governments and non-profit entities that created the jobs) in those same needy communities. As important, though impossible to quantify, would be the gains in public health, crime reduction, and overall social well-being in a society in which everyone who wants a decent job has one.

I make no effort here to tally up the overall costs and gains from a FJG, if that is even possible to do. But it is worth noting that most of the FJG's benefits accumulate job by job, and do not hinge on the *guarantee* dimension of the FJG. Any sizable public investments that create low-skilled or semi-skilled jobs would boost incomes, psychic well-being, and social engagement of previously non-working individuals, reduce other social welfare expenditures, and deliver needed services. To be sure, a large public jobs program alone would not automatically reset the floor on wages and benefits in the rest of the economy as a FJG would do; but it would put upward pressure on those wages.

Some of the costs of the FJG—especially the sheer budgetary outlays—are similarly cumulative as opposed to hinging on the guarantee. But the daunting open-endedness of the cost and size of the program is directly traceable to the guarantee feature. The guarantee feature also creates some of the practical challenges of the FJG: What does it mean for the federal government to guarantee a job to anybody who seeks one? The LEI version of the FJG avoids massively inflating the size of the federal workforce by delegating job creation and the role of employer to local governments and private organizations. But how is the guarantee to function in that model? Who would ensure that the least skilled or most scarred applicants are not ignored by sponsoring organizations?

90. Or we could dispense with the conventional demand to identify revenue sources and just spend the money, pursuant to the unorthodox precepts of “modern monetary theory” to which some FJG proponents adhere. See Cullen O. Roche, *Understanding the Modern Monetary System* (Aug. 5, 2011), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1905625 [<https://perma.cc/HWJ5-GCP2>]. For a concise critique of that school of thought, see Paul Krugman, Opinion, *MMT, Again*, N.Y. TIMES (Aug. 15, 2011), <https://krugman.blogs.nytimes.com/2011/08/15/mmt-again/> [<https://perma.cc/M5YU-QZD8>].

91. Though we will return to the question whether all those programs would survive in a FJG world.

92. As with the UBI, some critics predict inflation due to the massive infusion of purchasing power into the economy. The LEI's modeling predicts only a temporary and manageable inflationary effect, see LEI REPORT, *supra* note 76, at 6.

Or that jobs are real versus a scam on the federal fisc? Some kind of federal oversight, reaching down to the local level, would presumably be required.

The guarantee dimension of the FJG also raises questions about the quality of the public services that would be delivered through the program, for it pegs job creation to whatever skills applicants have rather than the skills required to deliver needed services.⁹³ There is undoubtedly a lot of work that needs doing in our society and that is undersupplied by market mechanisms—from physical infrastructure to green energy generation to health care, elder and child care, and early education. But much of that work requires vetting, training, experience, and dedication. Those demands are out of sync with the concept of a job guarantee.⁹⁴ I will return to this point in Part IV.

So, too, the guarantee feature of the FJG might elicit some troubling behavior on the part of participants. What happens when participants fail to perform? If they are fired, are they immediately eligible for another guaranteed job? What if it happens again? And what happens when the federal government announces to everyone, especially young people, that they will be guaranteed a job with good wages and benefits no matter how little they do to acquire useful skills or to perform well at whatever jobs they do get? Unsettling questions like this might be brushed aside on the theory that people are just better than that—better than most economists give them credit for being. But a job guarantee seems guaranteed to elicit some opportunism.⁹⁵

Consider, too, that a job guarantee might readily slide into an implicit job mandate, and condition or restrict access to other social welfare benefits. That is not what the proponents of a job guarantee have in mind.⁹⁶ But the step from job guarantee to job mandate might be politically irresistible. If the federal government were prepared to underwrite a decent job with benefits to everyone who is willing and able to work, would the public be willing to provide costly benefits to individuals who chose not to take up that offer of a job? The presumptive availability of a job for all would compete with and potentially undercut popular support for basic benefits like health coverage or housing or food aid for the poor (except for those judged strictly unable to work).

Another problem that plagues the concept of a job guarantee is that of “make-work”—work that produces little or nothing that is of actual social value.⁹⁷

93. See Jonathan Chait, *Democrats Are Rushing Into a Job Guarantee. It Could Be a Huge Mistake*, N.Y. MAGAZINE (Apr. 25, 2018), <http://nymag.com/intelligencer/2018/04/democrats-are-rushing-a-jobs-guarantee-its-a-huge-mistake.html> [<https://perma.cc/E5AY-DBSB>].

94. The CBPP Job Guarantee Proposal, *supra* note 73, would mitigate that problem by providing for a range of wage rates corresponding to skill level in lieu of a uniform wage level; that makes the program more complex but in other ways superior.

95. GULKER, *supra* note 77, at 14–15; Wendell Gordon, *The Job Guarantee Revisited*, 31 J. ECON. ISSUES 826, 832–33 (1997).

96. See L. Randall Wray et al., LEVY ECON. INST. OF BARD COLL., *Guaranteed Jobs Through a public Service Employment Program: Policy Note*, 2018, http://www.levyinstitute.org/pubs/pn_18_2.pdf [<https://perma.cc/U53P-6S4S>].

97. See *A jobs guarantee is a flawed idea*, THE ECONOMIST (May 10, 2018), <https://www.economist.com/united-states/2018/05/10/a-jobs-guarantee-is-a-flawed-idea>

Jobs that are perceived as make-work might not provide the array of psychic benefits that are ascribed to work (and might undercut public support for the program). And if make-work includes jobs that could be better or more cheaply done by machines, the problem would grow with galloping automation capabilities. The bigger the job gap that has to be filled by the federal guarantee—that is, the more that job creation lags behind job destruction in the private sector—the bigger the make-work problem. More FJG jobs will look and feel like make-work, and the cost of funding them will be greater.

Some of these problems are surmountable and, in any case, may seem minor alongside the extraordinary benefits of the job guarantee. But together they raise serious concerns about the practicality of a true job guarantee even apart from its very large and open-ended fiscal impact. Importantly, almost all of these problems stem from the guarantee feature rather than from *ersatz* public job creation itself.⁹⁸ And all of them would be magnified in the event that automation proves to be a net job destroyer.

At bottom, the FJG concept seems to rest on an assumption that the job deficit—as reflected in numbers of unemployed, underemployed, and discouraged workers—will remain within historical bounds, with a cyclical component and a fairly stable structural component. But if we are facing a future of declining overall demand for human labor (or for the kinds of labor that most humans can muster), then an open-ended job guarantee might be impossible both to afford and to implement. And if we do face a future of less work, does the answer really lie in a commitment to full-time, full employment? Better answers might begin in seeing an opportunity rather than only a threat in declining demand for human labor.

C. Reviving the Shorter Hours Movement?

If we do face a future of scarce job opportunities, one logical response would be to spread the work that remains, and increase leisure, by reducing hours per worker. If that could be done without reducing incomes at the bottom of the labor market, as with past reductions in working hours, it would largely defuse the problem of reduced demand for human labor. Beyond that, it would enable people to live lives less dominated by work and more congenial to other life pursuits. And it would do so without either sacrificing the socially integrative role of work (as the UBI risks doing) or massively expanding the federal share of the labor market (as the FJG would do). Some scholars and advocates tout this strategy as an overdue revival of labor's historic campaign for shorter hours and as “better than basic income.”⁹⁹ A recent UK report, “The Shorter Work Week:

[<https://perma.cc/F6VC-Z25F>]; Chait, *supra* note 94.

98. Josh Bivens at the Economic Policy Institute makes this same point in comparing the EPI's job creation policies to the job guarantee. See Josh Bivens, *How do our job creation recommendations stack up against a job guarantee?*, Economic Policy Institute, Working Economics Blog, (Apr. 12, 2018), <https://www.epi.org/blog/how-do-our-job-creation-recommendations-stack-up-against-a-job-guarantee/> [<https://perma.cc/J6BJ-ARKH>].

99. See generally, Dimick, *supra* note 7; BENJAMIN KLINE HUNNICUTT, *FREE TIME: THE*

A Radical and Pragmatic Proposal,” portrays shorter hours as the answer to a variety of ills, including the expected flood of job losses from automation.¹⁰⁰

Given the current wave of automation anxiety, it is surprising that the strategy of reducing working hours has thus far been overshadowed, at least in the US, by its two flashier rivals. The quest for progressively shorter working hours was a *raison d’être* of the US labor movement from its origins through the New Deal; and during that first century or so of organizing and agitation, the idea of work sharing through shorter hours rose to the fore, as in the Great Depression, whenever unemployment rose. That idea seems due for a revival if automation-related job losses begin to mount.¹⁰¹

The strengths and weaknesses of the “big idea” of spreading work by reducing hours are quite different than those of the UBI and the FJG and can best be appreciated in light of the historical rise and fall of the movement for shorter hours in the United States. Let us begin at what turns out to have been—at least up to now—the virtual end of that history: the Fair Labor Standards Act of 1938 (FLSA).¹⁰² The FLSA established a standard work week of forty hours for much of the private sector labor market. It was notoriously partial in its reach and excluded many workers at both the higher and lower ends of the labor market. The “white collar exceptions” for managers, administrators, and professionals—which reach well down the income scale—have contributed to the “long hours culture” that prevails in the United States.¹⁰³ The low-end exclusions for domestic and agricultural workers (later narrowed but not eliminated¹⁰⁴) relegated most African-Americans to near-feudal conditions of work in the Jim Crow South.¹⁰⁵

Even for those within its reach, the FLSA failed to actually cap hours of work, opting instead for a taxation strategy: time-and-a-half pay for hours beyond forty per week. That is a bit of a puzzle because, up to the New Deal, organized labor had long sought to regulate hours of work through maximum hours laws. The federal courts had blocked those laws (with some exceptions for “vulnerable” groups of workers like women, minors, and miners¹⁰⁶) on the ground that they

FORGOTTEN AMERICAN DREAM, 148–53 (2013) [hereinafter, FREE TIME];

100. *The Shorter Work Week: A Radical and Pragmatic Proposal* (Will Stronge & Aidan Harper, eds.) (2019), <http://autonomy.work/wp-content/uploads/2019/01/Shorter-working-week-final.pdf> [<https://perma.cc/QJF5-7U5E>].

101. See Dimick, *supra* note 7, at 497–99.

102. 29 U.S.C. § 201.

103. Deborah C. Malamud, *Engineering the Middle Classes: Class Line-Drawing in New Deal Hours Legislation*, 96 MICH. L. REV. 2212, 2318–19 (1998); *Hours Worked*, OECD DATA, <https://data.oecd.org/emp/hours-worked.htm> [<https://perma.cc/VL88-PYJG>] (2017).

104. Congress extended minimum wage guarantees to agricultural workers in 1966, though the agricultural minimum wage remains below the floor in other industries. See Phyllis Palmer, *Outside the Law: Agricultural and Domestic Workers under the Fair Labor Standards Act*, 7 J. POL’Y HIST., 416, 420–26 (1995).

105. See generally Marc Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 TEX. L. REV. 1335 (1987).

106. *Muller v. Oregon*, 208 U.S. 412 (1908); *Holden v. Hardy*, 169 U.S. 366 (1898); *Sturges & Burn Mfg. Co. v. Beauchamp*, 231 U.S. 320 (1913).

violated the constitutional “liberty of contract” of both employers and employees.¹⁰⁷ But after the Supreme Court’s about-face in 1937, the constitutional door was wide open for a federal maximum hours law.¹⁰⁸ And labor’s political clout was then at high tide. Yet New Dealers turned away from a cap on hours toward an overtime premium—a softer, more flexible form of regulation that encouraged workers to seek longer hours even as it discouraged employers from demanding longer hours. At that point the movement for shorter working hours, which had been in progress, and had made progress, for a century, basically stalled. Since then, the standard work week has remained stuck at forty hours; and actual working hours per person have increased, despite many more decades of growing productivity and prosperity.¹⁰⁹

Professor Benjamin Hunnicutt, in his wide-ranging study of the U.S. movement for shorter working hours,¹¹⁰ recounts that movement’s face-off in the midst of the Great Depression against the alternative goal of “full-time, full-employment.” Although the shorter hours camp came tantalizing close in 1933 to winning congressional enactment of a thirty-hour work week (despite then-formidable constitutional hurdles), the apostles of full-time, full employment won out.¹¹¹ The FLSA model of a forty-hour work week, with time-and-a-half for overtime, took hold, and shorter hours never again gained primacy, either within organized labor or among its leading political allies. We have taken brief notice above of the historical fate of the commitment to full-time, full employment. Consider now the rise and demise of its once-dominant rival, the movement for shorter hours of work.

Once capital and its managers won control of production through the factory system in the early 1800s and until the New Deal, the movement for shorter hours was the central cause of organized labor. For a good part of a century, the labor movement fought for its Ten-Hour System against managers’ efforts to exact twelve or more hours a day out of workers, and then for the eight-hour day under the slogan “Eight hours for work, eight hours for rest, and eight hours for what you will.”¹¹²

The case for shorter hours was multifaceted. Of course, workers sought relief from their exhausting physical labors and more time for the rest of what life offered. In particular, they sought time for self-improvement and civic education

107. *Adkins v. Children’s Hosp.*, 261 U.S. 525 (1923).

108. *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).

109. See generally FREE TIME, *supra* note 100, at 183–84; JULIET SCHOR, THE OVERWORKED AMERICAN: THE UNEXPECTED DECLINE OF LEISURE, 17–82 (1991). For analysis of the increased participation of women in the workforce and its effects on hours worked, see COUNCIL OF ECON. ADVISERS, FAMILIES AND THE LABOR MARKET, 1969-1999: ANALYZING THE “TIME CRUNCH” (1999).

110. BENJAMIN KLINE HUNNICUTT, WORK WITHOUT END: ABANDONING SHORTER HOURS FOR THE RIGHT TO WORK (1988) [hereinafter, HUNNICUTT, WORK WITHOUT END]; see also FREE TIME, *supra* note 100.

111. HUNNICUTT, WORK WITHOUT END, *supra* note 111, at 148–90; see also FREE TIME, *supra* note 100, at 109–21; see also Malamud, *supra* note 104, at 2233–36.

112. Scott D. Miller, *Revitalizing the FLSA*, 19 HOFSTRA LAB. & EMP. L.J. 1, 1 (2001); see WORK WITHOUT END, *supra* note 111, at 9–36.

so that they could be better, more active, and more informed citizens. They sought time for intellectual, cultural, and political pursuits once reserved to the propertied classes.¹¹³ The struggle for shorter hours was thus central to organized labor's effort to reconfigure the concept of "free labor" for the industrial age and to equip workers for participation in the republican project of self-governance.¹¹⁴

The case for shorter hours also drew support from the expectation that machines would gradually supplant human labor in the productive process. Many late 19th and early 20th century observers foresaw, as Marx had, the emergence of a technologically advanced economy that could meet all of the material needs of the citizenry with only a small fraction of the human labor that was currently employed.¹¹⁵ That prospect aroused both anxiety and optimism. On the one hand, it raised the specter of mass unemployment and immiseration, not just cyclical but chronic. Shorter hours would help to avert that risk and to spread scarce work opportunities and wages more fairly. Indeed, if both the remaining human work and the outputs of a highly automated and productive economy could be fairly distributed—in part through shorter hours—then humanity could transcend the economic preoccupations of scarcity, necessity, and competition, and democratize the pursuit of humanistic, artistic, and philosophical aims that some called "higher progress."¹¹⁶

The aspiration to more leisure and higher progress rather than ever greater abundance was linked to doubts about the future of capitalism. For some of its more radical proponents, the movement for progressively shorter hours indeed aimed toward a peaceful revolution—a gradual displacement of capitalism as humans spent an ever-shrinking part of their lives as workers under the domination of employers, and as the production of necessary goods and services occupied an ever-smaller share of human time and energy.¹¹⁷ That was hardly an argument calculated to win over capitalism's defenders to the cause of shorter hours. But some, like John Maynard Keynes, sought to square the circle by postponing the reckoning. He argued in 1930 that the problem of scarcity would be with us, and the prodigious growth machine of capitalism would still be needed, for many more decades. But he predicted that "our grandchildren" a century hence—that is, in 2030—would need to work no more than fifteen hours per week to meet their material needs. Then, "for the first time since his creation man will be faced with his real, his permanent problem—how to use his freedom from pressing economic cares, how to occupy the leisure, which science and

113. See William E. Forbath, *The Ambiguities of Free Labor: Labor and the Law in the Gilded Age*, 1985 WIS. L. REV., 767, 805–06; FREE TIME, *supra* note 100, at 70–71.

114. See Forbath, *supra* note 115, at 800–17.

115. See generally FREE TIME, *supra* note 100, at 1–12; see also John Maynard Keynes, *Possibilities for Our Grandchildren*, in ESSAYS IN PERSUASION 321, 327 (Palgrave Macmillan 2010); Sherman Gwinn, *Days of Drudgery Will Soon Be Over: An Interview with Walter S. Gifford*, AM. MAG., Nov. 1928, 25.

116. See generally FREE TIME, *supra* note 100, at 48–69; Robert T. Rhode, *Culture Followed the Plow, However Slowly*, 15 KY. PHILOLOGICAL REV. 49 (2001); David D. Anderson, *Walt Whitman: Nineteenth-Century Man*, WALT WHITMAN BIRTHPLACE BULLETIN (Apr. 1960), 3–5.

117. See FREE TIME, *supra* note 100, at 6–7.

compound interest will have won for him, to live wisely and agreeably and well.”¹¹⁸

Some arguments for shorter hours were more congenial to pragmatic early 20th century capitalists: Workers could be more productive, and could better reproduce their labor power, with a shorter work day. They might also be more avid consumers. As the consumer economy began to take shape, and seemingly to supersede the pursuit of “higher progress,” some commentators argued that workers needed leisure time in order to perform their increasingly important role as consumers.¹¹⁹ Then again, the consumerist case for shorter hours had a compelling counterpart on the side of full-time, full employment: A growing consumer economy required growing purchasing power. If workers were to draw their dividends from a more productive economy in the form of greater leisure versus fatter paychecks, would they buy enough stuff to fuel the perpetual growth that was coming to be seen as the mission of capitalism?

Through the New Deal, and until the standard forty-hour work week was an accomplished fact, the shorter hours movement was supported by an overlapping consensus, with support both among some who hoped to preserve capitalism in the face of growing skepticism about its future viability, and among the many skeptics themselves. The case for shorter hours was backed by a wide range of arguments and by both the fears and the hopes arising from the prospect of machines progressively replacing human labor. And working time did indeed decline—from an average of 68 hours per week in 1850 to forty hours per week in 1950 (in manufacturing).¹²⁰

By the time the shorter hours camp set its sights on a thirty-hour work week, however, the case for shorter hours began to lose some of its momentum and its support. The question became: How short was short enough? Some of the movement’s most broadly appealing arguments, such as those based on workers’ physical health, well-being, and productivity, began to lose traction with the decline in both working hours and the share of the workforce engaged in grueling physical labor. Others began to question the more idealized aspirations of the shorter hours movement, which came to the fore as the worst evils of long hours began to abate. Already in the New Deal, key opinion- and policymakers doubted that most people could, would, or even should replace productive work with salutary “higher” pursuits.¹²¹ They worried about the problem of too much leisure—of idle hands making mischief (or rebellion), or of dissipating energies that could better be employed in productive work.¹²² And they questioned whether American society—parts of which were only then gaining access to electricity—was indeed close to meeting the people’s legitimate material

118. See Keynes, *supra* note 115, at 327.

119. See SCHOR, *supra* note 109, at 107–38; see FREE TIME, *supra* note 100, at 114–15.

120. Robert Whaples, *Hours of Work in U.S. History*, ECON. HISTORY ASS’N, <https://eh.net/encyclopedia/hours-of-work-in-u-s-history/> [<https://perma.cc/SR7X-WSXM>].

121. See WORK WITHOUT END, *supra* note 111, at 251–65; FREE TIME, *supra* note 100, at 119–21.

122. See FREE TIME, *supra* note 100, at 114–15.

demands.¹²³ Those concerns led to calls both within the labor movement and among public intellectuals and policy makers for revving up the engines of production, for making full use of human capital, and for committing to the goal of full-time, full employment instead of shorter hours.¹²⁴

As the Depression gave way to the all-hands-on-deck preparations for war and then war itself, full employment became a national imperative, and the movement for shorter hours receded. With the end of the war, after a decade and a half of constrained purchasing power, pent-up consumer demand began to fuel a long period of economic growth. For the overwhelmingly white and male ranks of organized labor, which had always led the shorter hours movement, the goal of shorter hours and more leisure time succumbed to the allures of more money (partly through more overtime) and more stuff. Instead of more leisure for themselves, they sought a “family wage” that would support a stay-at-home wife.¹²⁵ At the same time, the vaguely anti-capitalist currents within the shorter hours movement became suspect in the postwar era. As anti-Communism took hold, the goal of progressively increasing leisure versus material prosperity—not to mention the goal of peacefully overturning capitalism—began to seem un-American, while capitalists’ own increasingly sophisticated efforts to tap into and fuel consumer appetites for greater comforts, luxuries, and status goods took on an almost patriotic tinge.¹²⁶

Some in organized labor, especially within its small female contingent, sought to keep the shorter hours movement alive in the national policy arena,¹²⁷ and some unions secured reduced hours through collective bargaining.¹²⁸ In the main, however, for several decades until the 1970s, ordinary workers secured their dividends from growing productivity in the form of higher wages rather than more leisure.¹²⁹ And then a slower but still growing economy ceased to pay those dividends to most workers in any form at all.¹³⁰ That happened for many intertwined reasons—deindustrialization, deregulation, declining union density, globalization of trade and production, and hypercharged financial markets, among others. As wages stagnated, workers and their families began to pile up debt, and the once-ascendant goal of shorter hours largely faded from memory.

123. See *id.* at 115; see also Constant Southworth, *Can There Be General Overproduction? No!*, 32 J. POL. ECON., 722–23 (1924).

124. See FREE TIME, *supra* note 100, at 119–21.

125. See *id.* at 156–61; see also Marion Crain, *Where Have All the Cowboys Gone?: Marriage and Breadwinning in Postindustrial Society*, 60 OHIO ST. L.J. 1877, 1917–21 (1999).

126. See FREE TIME, *supra* note 100, at 161–64.

127. See, e.g., *id.* at 156–57 (describing pushback from the female-dominated Communications Workers of America against the labor movement’s abandonment of the shorter hours cause).

128. See DAVID R. ROEDIGER & PHILIP S. FONER, *OUR OWN TIME: A HISTORY OF AMERICAN LABOR AND THE WORKING DAY*, 265–66 (1989) (describing collectively bargained reductions in hours across a range of trades and industries).

129. See *The Productivity-Pay Gap*, ECON. POLICY INST. (Aug. 2018), <https://www.epi.org/productivity-pay-gap/> [<https://perma.cc/EK7U-H87X>].

130. *Id.*

The onset of wage stagnation and growing debt helps to explain why, in the present climate, the kind of across-the-board reduction in working hours that workers won in the past looks like no kind of answer to the problems of ordinary workers and their families unless it comes with some assurance that incomes will not suffer. Nor will it look like a better answer in the future if automation proceeds to destroys more decent jobs than it creates and pits those with merely ordinary, widely-distributed human skills against each other in the competition for decent paid work. Unless workers can be confident that incomes will be at least maintained as working hours decline, those most at risk from automation are unlikely to coalesce around a goal of shorter hours and work-spreading. Unlike the UBI or the FJG, a program of shorter working hours by itself does not promise to boost incomes.

Then again, reductions in working hours were never seen as a whole answer to workers' economic struggles, neither by those struggling workers themselves nor by the visionaries of the shorter hours movement. The movement for shorter working hours in its heyday was always closely linked with struggles for higher hourly wages. Shorter hours were thus to be coupled with higher standards of living, and the productivity gains from technological progress were to be widely distributed in the form of both greater leisure and greater material prosperity. And indeed, in an era of mass industrialization and mass labor mobilization, incomes and living standards rose even as weekly working hours fell in the late 19th and early 20th centuries.¹³¹ That was how “creative destruction” worked in an expanding industrial economy with a vibrant labor movement. Since the 1970s, however, wage rates have become decoupled from economy-wide productivity gains as workers' bargaining power has eroded. If “this time is different” on the automation front, then the divergence between productivity gains and median wages is likely to grow, and workers' bargaining power is likely to decline further, as emerging technologies destroy decent jobs and depress wages for most workers.

The point here is that the idea of shorter working hours operates on a different plane than the big ideas of universal basic income and a job guarantee. The latter are proffered as comprehensive yet rival solutions to what ails us in today's highly polarized economy and perhaps especially in a future of job scarcity. By contrast, the idea of reducing working hours, standing alone, does not pretend to solve the present or future problems of workers. Far from foreclosing other strategies such as job creation or income support, the shorter hours strategy only works in tandem with some plan for increasing incomes at the bottom of the income distribution. Reducing working hours without supporting incomes at the bottom of the labor market will only deepen economic woes. Yet attempting to recouple wages and productivity gains by fiat—for example, by sharply increasing minimum wages—risks accelerating the replacement of human

131. See ROBERT GORDON, *THE RISE AND FALL OF AMERICAN GROWTH* 1–24 (2016).

labor with machines. That is a dilemma only if we shut our eyes to multi-dimensional responses to the socioeconomic problems and risks that we face.

IV.

A THREE-DIMENSIONAL STRATEGY FOR A FUTURE OF LESS WORK

Automation arouses both hopes and fears. Advanced technologies including AI, machine learning, 3-D printing, and robotics are likely to pay growing dividends in terms of productivity and economic growth. Those developments could usher in a long-awaited era of abundance, producing enough goods and services to meet human needs with ever less reliance on human labor. The returns to innovation could include both higher material living standards and more time for leisure, or pursuits other than paid work.

The question at hand is how to ensure that those returns are distributed widely rather than overwhelmingly to the creators and owners of the technology. Given a half-century of growing economic inequality and declining returns to labor versus capital, along with the growing capacity of machines to compete with or surpass humans at a wide range of job tasks, it is clear we cannot count on sheer economic growth and “creative destruction” to bring about a tolerable distribution of dividends through creation of new and better jobs. Without major and costly public interventions, we face a grave risk of growing immiseration and political alienation, polarization, and conflict.

The UBI and the FJG represent bold and sharply divergent strategies for averting that dystopic future. The UBI would replace work, at least for some, with cash and leisure, or the freedom to not work. But that prescription gives too little weight, I think, to the value of work itself, and the distinctive social embeddedness and social bonds that form at work. And at least for the foreseeable future, the UBI faces prohibitive political odds in the US, given a broad and deep cultural attachment to work and aversion to “government handouts” to able-bodied adults.

The FJG is more appealing both normatively and politically in its coupling of income and work, broadly accessible to all. But it risks swelling to unmanageable proportions if automation begins to yield net job losses. Indeed, the FJG’s built-in tendency to drive up wages and labor costs across the market is likely to accelerate those job losses, putting a growing number of people to work (at taxpayer expense) doing things that machines can do better and more cheaply. Besides, if that is where we are heading—if we can produce the goods and services that we need as a society with much less human labor—then will it really make sense to spend hundreds of billions of dollars or more annually to guarantee full-time, full-employment? That would seem to sell short the value of the increased leisure that could be among the dividends of large-scale automation.

For its part, the old idea of shorter working hours promises a better balance of work and leisure, and is potentially compatible with some version of either UBI or FJG. But a shorter-hours strategy standing alone falls short on another crucial dimension, for it portends a decline in living standards in case wages

continue to stagnate or worse—an eventuality that automation might make more likely.

Each of these three big ideas for a future of less work falls short on one of the three dimensions of a good life and a good society that are at stake: meaningful work for those who are able, ample time for other pursuits, and a decent material standard of living. All three of those dimensions are intrinsically valuable, compatible, and potentially achievable across the whole society if “this time is different.” But that will require a three-dimensional public policy strategy that combines job creation, non-work-based income and benefits, and expanding time for pursuits outside of work. What follows here is just a sketch of what a three-dimensional strategy for a future of less work might look like.

A. Job Creation versus a Job Guarantee

Creating jobs—and generating both work and income—for those who are able to work but unable to find a decent job is the worthy core objective of the FJG. And there is plenty of work that needs doing in our society that can still best be done by human beings—public goods and social and community services that neither the market economy nor the government is supplying. The difficulties—not insurmountable but still discouraging—stem from keying the volume and nature of job creation to the number and qualifications of job seekers, rather than to the work that needs doing. For one thing, as I have observed, the FJG dictates an emphasis on jobs requiring little or no training; yet much of the work that needs doing requires skill and training (though not necessarily traditional higher education). Although better job training programs will not by themselves solve the problem of automation-related job displacement, they are clearly necessary. Work that requires training is also more likely to be meaningful work. Yet significant training periods are at some odds with the FJG concept.¹³²

To be sure, creating jobs for those left out of a changing economy, and for those displaced by growing automation capabilities, should be one goal of any sensible program of public job creation. But the central focus should be on identifying the unmet needs of the society, creating programs to deliver those services, and hiring and training the best people available to do those jobs.

Job creation should be a priority of government and of public policy, but it is obviously not the sole province of government as opposed to the private sector. In an era of expanding automation capabilities (as well as financialization, fissuring, and global supply chains), public policy must be more deliberate and focused on promoting private sector job creation; the past several decades have taught us that jobs, and especially decent jobs, do not necessarily accompany economic growth. The federal government has macroeconomic and monetary tools that tilt more toward job and wage growth versus controlling inflation; and

132. The LEI version of a job guarantee would make some room for training, see LEI REPORT, *supra* note 76, at 5; but it is not an easy fit.

tax policies can tilt firms' incentives toward employment of labor versus capital (or at least undo the perversely opposite tilt of our current tax system).¹³³

What should be the terms and conditions of employment in new government-created jobs, and the minimum terms and conditions of private sector jobs? I will return below to one set of terms and conditions—those relating to reduced hours of work and paid vacations and leaves of various kinds. But what about wages and other benefits? In general, the prevailing strategy of worker advocates, building on the American social model that evolved in the mid-20th century, has been to build into the definition of a good job, and into the obligations of employers, virtually everything that a worker and perhaps her dependents need by way of material support for a decent life from cradle to grave. That includes employer-provided health insurance, parental leave, child care, disability insurance, and retirement income. The idea that employers should be required to bear not just the costs of reproducing their employees' labor day to day, but a share of the cost of sustaining workers and their families throughout their lives, is a persistent theme in progressive politics in the US.¹³⁴

Whatever sense that strategy made in an industrial era of long-term job tenures, manageable health care costs, and relatively short retirement periods, I do not think it can be sustained in a post-industrial and increasingly fissured, automated, and globalized economy of shorter job tenures, longer life-spans, and attenuated attachments to firms. In particular, that package of job-based entitlements taxes the employment of human labor versus capital, including technology, and accelerates the automation of work. Those job-related entitlements that can be uncoupled from employment should be, and their costs should be shifted from employers' payrolls to a more redistributive revenue base that does not discourage employment.¹³⁵ That strategy should also be reflected in the second dimension of a sensible strategy for facing a future of less work: spreading both work and leisure by reducing individuals' annual and lifetime hours of work.

B. Spreading Work and Leisure

Among the social dividends of automation will be the possibility of expanding leisure, or time for activities other than paid work. And among the challenges of automation will be maintaining enough paid work for all those who are willing and able to work. During past periods of job scarcity such as the Great Depression, the answer lay in shorter working hours for all. But reducing the work-week across the board to, say, thirty hours does not suit all workers and makes little sense for many of those with satisfying jobs that call for scarce skills.

133. See Ryan Abbott & Bret Bogenschneider, *Should Robots Pay Taxes? Tax Policy in the Age of Automation*, 12 HARV. L. & POL'Y REV. 145 (2018).

134. See Katherine V.W. Stone, *A Fatal Mismatch: Employer-Centric Benefits in a Boundaryless World*, 11 LEWIS & CLARK L. REV. 451 (2007); NELSON LICHTENSTEIN, WALTER REUTHER: THE MOST DANGEROUS MAN IN DETROIT (1995).

135. See Estlund, *supra* note 1, at 305–15.

We could introduce greater flexibility by using the existing FLSA template for a shorter work week—that is, an overtime premium versus a cap on hours—or by continuing to exclude some categories of skilled workers. Either might better accommodate different needs and preferences—though perhaps mainly those of employers. In a possible future of large net job losses, we will need to consider shorter hours across the board (and more generous income support). But we are not there yet.

So before calling for a revival of the New Deal movement for a thirty-hour work week, let us consider a set of modest but meaningful steps—steps that make sense now—toward spreading both work and time off of work. We should, first, catch up with virtually every developed country in the world by expanding access to paid leaves, vacations, or other respites from work; second, expand access to voluntary part-time schedules; and third, improve our system of retirement security. All of these measures would allow those who want to work less or retire from paid work to do so; they would spread work while distributing leisure through hours, weeks, or months off work as it suits the needs of individuals and their families.

First, we can reduce total working hours by providing access to paid leaves for family and medical reasons—caring for oneself or one’s children or elderly parents—and for annual paid vacations. Employers should be required to grant those designated vacations and leaves and to protect the employee’s job upon her return—much as the Family and Medical Leave Act now does, but for an expanded range of purposes. And employees should be paid (in whole or in part) during those leaves and vacations; that is part of how incomes can be maintained even with fewer hours of work. But instead of funding paid leaves through a payroll tax (as most extant proposals would do), they should be paid or at least subsidized through public funding that is detached from employers’ payrolls.

I have explained the logic of this approach elsewhere,¹³⁶ and it follows from what I have said above. The goal is three-fold: to (a) maintain workers’ incomes while both (b) reducing working time and (c) preserving work by reducing the tax on use of firms’ human labor and the incentive to replace workers with machines. If we compel employers to bear the full burden of maintaining workers’ incomes while reducing working time, that will either come out of employees’ own incomes or inexorably, if incrementally, tilt employers’ calculus toward reducing payrolls through automation.¹³⁷ A program of publicly funded leaves and vacation time would supply at least part of the income that would otherwise be lost in reducing working hours.

Beyond affording paid leaves and vacations, we should also require employers to accommodate employee requests for part-time work—with a pro-

136. See Estlund, *What Should We Do?*, *supra* note 1.

137. Economists vary as to who actually pays for payroll-funded benefits; the conventional wisdom is that employees pay through lower wages down to the minimum wage, at which point employees effectively bear the burden in the form of job losses. But the picture is more complex, as I briefly explore in Estlund, *supra* note 1, at 289–90.

rata reduction in salary—in all but exceptional cases.¹³⁸ That would tend to spread work while improving work-family or work-life balance for those who want to and can afford to work less. In the case of parents with young children, that option could be made more widely available, even for those who cannot afford the loss of pay, by coupling the mandatory accommodation of parents' requests for shorter hours with salary replacement.¹³⁹ But the salary replacement, whether full or partial, should be funded out of public revenues, not payroll taxes, for reasons explained above. Expanding access to part time work for those who choose it is a sensible step toward work-spreading and reducing total hours per employee in a way that is responsive to individuals' particular needs and preferences.¹⁴⁰

Another route toward work-spreading and greater leisure—still instead of or before pursuing the one-size-fits-all strategy of reducing the standard work week—is making earlier retirements feasible for those who want to retire. Our current patchwork system of retirement security is in tatters, as Professor Katherine Newman demonstrates in a recent book.¹⁴¹ That forces individuals to keep working long after they had hoped to retire, often in jobs for which they are overqualified as well as underpaid.¹⁴² This dynamic will become ever more perverse if “this time is different”; younger workers will need those jobs. But encouraging earlier retirements will require reforming our system of retirement security. For those at the bottom of the income distribution, that might be achieved through a negative income tax, or improvements to the Social Security system (with its modest “defined-benefit” pension system for all).

The harder question is whether deferred income for retirement should continue to be part of what employers are expected to provide to their workers. I am skeptical for reasons that should be evident: that funding strategy taxes and discourages employment in what might be an impending era of job scarcity due to automation. Yet the politics of turning retirement income from something that one *earns* over the course of one's working life to a government entitlement (supplemented by whatever one can save on one's own) gives me pause. I recognize that the challenge is not unique to retirement income; it meets other

138. That is, only in exceptional cases could the employer either refuse the request or condition approval on a reduction in pay or responsibility.

139. As Sweden has done for more than four decades. See Anna Amilon, *On the sharing of temporary parental leave: the case of Sweden*, 5 REV. ECON. HOUSEHOLD 385 (2007).

140. It is not without complications. For one, accommodating family responsibilities that fall disproportionately on women may be in tension with the pursuit of gender equity. Well-designed programs can minimize that tension. See Rebecca Ray, et al., *Parental Leave Policies in 21 Countries*, CENTER FOR ECON. & POLICY RESEARCH, June 2009, available at http://cepr.net/documents/publications/parental_2008_09.pdf [<https://perma.cc/ZXH5-LP66>]. See also Crain, *supra* note 127, at 1931–32.

141. See KATHERINE S. NEWMAN, *DOWNHILL FROM HERE: RETIREMENT INSECURITY IN AN AGE OF INEQUALITY* (2019), and my review of it, Cynthia Estlund, *Why retirement is no longer a time of relaxation and security*, WASH. POST, (Jan. 31, 2019), https://www.washingtonpost.com/outlook/why-retirement-is-no-longer-a-time-of-relaxation-and-security/2019/01/31/f5ae4082-1453-11e9-90a8-136fa44b80ba_story.html?utm_term=.0390e0987382 [<https://perma.cc/L6DH-WZPU>].

142. See NEWMAN, *supra* note 144, at 47–76.

aspects of my proposed three-dimensional strategy that would shift costs, benefits, and burdens off the platform of employment and onto a broader and richer funding base. But the challenge seems most acute in the case of retirement income, perhaps because the logic of earning retirement income through work is most compelling there. For now, it might make sense to retain that central principle and to focus reform efforts elsewhere. Beyond shoring up pensions for poorer retirees, we should reform the regulatory system on two fronts: enforcing existing promises of retirement security and nudging future retirees and plan sponsors back toward “defined benefit” pensions that deliver actual retirement security.¹⁴³ The massive shift in the past several decades toward “defined contribution” pension plans leaves retirees too exposed to financial downturns as well as their own lack of foresight and investment savvy.

In combination, all of these prescriptions for affording more time off work would not cast a heavy burden on employers, as employers would not bear the burden of salary replacement for the time not worked. Together these measures would tend to spread both work and leisure more widely without either significantly increasing the marginal cost of labor versus machines or significantly reducing workers’ incomes.

Down the road, if “this time is different,” and if public job creation fails to keep pace with mounting job losses, more aggressive work spreading measures might be in order. It might make sense in that case to subsidize earlier retirement, or to reduce the standard work week—either generally or initially in government-funded jobs—to thirty hours or even less. Shorter working hours would still not be the answer to job scarcity, but rather one dimension of a three-dimensional strategy that aims to balance and spread the benefits, individual and social, of engagement in paid work, time off of work, and decent standards of living. So shorter hours would have to be coupled with increases in non-work-based income sources.

C. Raising the Floor on Material Living Standards

Recent decades of growing inequality and wage stagnation make it clear that, even if automation yields big productivity gains, we cannot count on wage growth to maintain adequate incomes in a world of less work, as we mostly did in the past. Nor should we rely too heavily on minimum wage increases to boost incomes at the bottom; large minimum wage increases are likely to destroy jobs, especially for the least skilled workers and especially in an era of galloping automation capabilities.¹⁴⁴ Public job creation would help; an injection of new government-funded and decently-paid jobs for low- and medium-skilled workers

143. On top of that foundation, there is a role for “defined contribution” plans that give workers a share of equity—not just in their own companies, but in a swath of businesses that are poised to capture the lion’s share of gains from technological innovation. This notion is far beyond the scope of this article, but is explored in other works, including JOSEPH R. BLASI, ET AL., *THE CITIZEN’S SHARE: REDUCING INEQUALITY IN THE 21ST CENTURY* (2014).

144. I address the point in *What Should We Do?*, *supra* note 1, at 295.

would tend to raise wage levels at the bottom of the labor market. But there is clearly a need for some form of material support for those at the bottom of the income scale—especially if we aim to distribute some of the dividends from greater productivity in the form of leisure, or time off paid work.

Debates over the ideal shape of a social welfare system mainly break along two lines: between in-kind or cash benefits, and between universal and means-tested benefits. Those two dichotomies create four cells into which we could put just about every existing or proposed form of social provision. In-kind, means-tested programs include public housing and housing vouchers and food stamps; in-kind universal programs would include “Medicare for All” and free basic education. Cash benefits might be universal, like a partial or total UBI, or means-tested, like the earned income tax credit (EITC) or a negative income tax. Obviously, there are many possible paths forward, if we could summon the collective political will; and political considerations might weigh in favor of some paths over others.

One appealing model is sometimes called “universal basic services.”¹⁴⁵ It would provide basic services—such as “shelter, sustenance, health and care, education, local transport, information access, and legal & democracy support”—on a universal basis, separate from employment, while otherwise retaining the link between income and work.¹⁴⁶ That alternative approach, which has a kinship with European “flexicurity” policies,¹⁴⁷ would simultaneously promote job preservation and creation by reducing the tax on employment, and protect those who are stuck in precarious or patchy employment, in the growing gig economy, or with no paid work at all. A major step in that direction in the US context would be toward some form of universal, single-payer health coverage and away from our historic reliance on employer-provided health care benefits.

My aim here is not to redesign our entitlement system but to underscore three points: First, a large and growing part of the working population is likely to need material support apart from wages to maintain decent standards of living. Second, any program to do that should be work-friendly and compatible with substantial public investments in job creation. Third, insofar as those at the top of the economy are going to be drawing a growing share of the gains from a more automated economy, it is fair and even imperative that they also bear a much greater share of the cost of both kinds of public interventions.

145. See UNIVERSAL BASIC SERVICES, (April 2, 2019), available at: <https://universalbasicservices.org/> [<https://perma.cc/MKM8-R7NF>].

146. See Barbara R. Bergmann, *A Swedish-Style Welfare State or Basic Income: Which Should Have Priority?*, in Eric Olin Wright (ed.), *REDESIGNING DISTRIBUTION: BASIC INCOME AND STAKEHOLDER GRANTS AS CORNERSTONES FOR AN EGALITARIAN CAPITALISM* 130–142 (2006).

147. See Employment, Social Affairs & Inclusion, *Flexicurity*, EUROPEAN COMMISSION, <https://ec.europa.eu/social/main.jsp?catId=102&langId=en> [<https://perma.cc/CPZ2-457T>].

IV. CONCLUSION

Automation has been going on throughout the history of capitalism and has yielded extraordinary gains in the form of higher living standards, less grueling and dangerous work, longer life spans, and greater leisure.¹⁴⁸ But the current wave of labor-replacing technology might lead to net job losses, sharper labor market polarization, or both. We should be looking over the horizon, and devising strategies to ensure that the gains from super-smart machines flow not only to their owners and creators but to those who are likely to be displaced by those technologies, and who might otherwise be left behind. Big and bold ideas are now thinkable and speakable, and might even become politically feasible, as we begin to face up to a future of less work. But big and bold ideas need not come in a single neat package like the UBI or the FJG, or even the idea of shorter hours—nearly forgotten but due for a comeback. Each of those three big ideas falls short on one of the three desiderata of an inclusive and prosperous economy: meaningful productive work, a decent material standard of living, and adequate time for life outside of work – or jobs, income, and leisure, to put it too simply. We should be looking to balance all three of those desiderata, and to ensure broad access to all three, through a three-dimensional response to a future of less work.

148. See GORDON, *supra* note 131.

APPENDIX:
ESTIMATING THE SIZE AND COST OF A FJG

This appendix explains the two points on which my very rough estimation of the likely size and cost of a FJG along the lines proposed by the Levy Economics Institute (LEI) diverges from the LEI's own estimate:

Regarding the expected number of FJG participants from among currently employed full-time workers: By my reckoning, that number would depend on two other numbers—a denominator and a numerator: how many existing jobs now fall below the new FJG threshold?; and how many of those jobs would likely disappear or be vacated rather than being upgraded to the new floor?

The denominator is comparatively easy to estimate. The FJG wage and benefit package of \$18 per hour approximates the median US wage rate as of mid-2017.¹⁴⁹ (That median does not count benefit costs, which are substantial, see *infra* notes 157 through 158 and accompanying text). But given the LEI's low estimate of the FJG benefit costs (questioned below), it seems defensible for this very rough set of estimates, to discount benefit costs in existing jobs as well.) That suggests that close to half of all US workers, or some 70 million people, might be tempted to switch to a FJG job *unless* their employer raised wages and benefits to at least the FJG threshold. (Employers would also have to match or make up for the FJG's job security provision, currently rare in private sector jobs but highly valued by many workers.) That suggests an upper-bound denominator of 70 million existing jobs that would be *affected* by a FJG along the lines imagined here—that is, they would either disappear or be upgraded.

The much harder question concerns the numerator: what portion of those approximately 70 million lower-paid jobs would disappear? Some of those jobs, especially those closest to the new floor, would surely be upgraded to the FJG threshold; but some would disappear and their occupants would flow into the FJG program. This numerator question taps into the enduring controversy within labor economics over the impact of minimum wage increases on job creation and destruction.¹⁵⁰ Economic orthodoxy has it that minimum wage hikes inexorably destroy jobs, to the detriment of less productive workers; empirical research shows that it ain't necessarily so, at least as to moderate increases or gradual.¹⁵¹

149. BUREAU LAB. STAT., *May 2017 National Occupational Employment and Wage Estimates: United States* (May 2017), https://www.bls.gov/oes/current/oes_nat.htm#51-0000 [<https://perma.cc/45PP-3EBW>].

150. I briefly review the debate in Estlund, *What Should We Do?*, *supra* note 1, at 295–97. See generally Thomas C. Leonard, *The Very Idea of Applying Economics: The Modern Minimum-Wage Controversy and Its Antecedents*, 32 HISTORY OF POLITICAL ECON. 117 (2000). See, for example, the academic kerfluffle surrounding a large-scale empirical study of Seattle's minimum wage hike in 2016. The effects of a single wage increase targeting only some employers in one city proved so complex that the authors of the study, who initially concluded that the minimum wage increase on balance hurt low-wage workers, publicly reversed course two years later after further analysis. See Noam Scheiber, *They Said Seattle's Higher Base Pay Would Hurt Workers. Why Did They Flip?*, N.Y. TIMES (Oct. 22, 2018), <https://www.nytimes.com/2018/10/22/business/economy/seattle-minimum-wage-study.html> [<https://perma.cc/R3BK-XHQL>].

151. Estlund, *What Should We Do?*, *supra* note 1, at 295–96.

There is no simple way to cut through that debate or split it down the middle. For one thing, the large increases contemplated here fall outside our historical experience and outside the range of existing empirical studies.

Suffice it to say that even labor-friendly economists who support minimum wage increases generally agree that *large* increases, like a national \$15 minimum wage, are likely to produce significant job losses.¹⁵² And the LEI's version of the FJG amounts to a very large minimum wage increase indeed (though one that would occur in stages).¹⁵³ To the extent that a FJG triggered the loss of existing private *and* public sector jobs—those that employers deemed not worth upgrading to the FJG threshold, perhaps in view of emerging technological substitutes—it would swell the job deficit that the FJG would have to fill, and the size of the program.

That brings us back to the exceedingly difficult numerator question: How to estimate how many “affected” jobs would disappear? The LEI report assumes that, among very low-wage jobs (those paying the federal minimum wage or less), 75 percent would be upgraded to the FJG threshold and 25 percent would not, such that their occupants would flow into the FJG program. If we applied that same assumption to the much larger below-median-wage group of workers that would be affected (instead of the LEI's own assumption that no jobs in that group would disappear), that would produce another 17.5 million participants in the FJG program from among the currently employed, in addition to the 12.6 to 17.4 million entering from the ranks of the unemployed, underemployed, or discouraged workers. If instead just ten percent of those “affected” workers flowed into the program, that would yield 7 million more FJG participants.

Regarding the per-participant cost of the program: As noted above, the LEI calculates that mandatory benefits—fully-funded health insurance, child care, and paid leave—would add 20 percent of the wage rate, or \$3 per hour, for a total cost of \$18 per hour. That figure is hard to reconcile with the average cost of employer-provided health insurance in 2018 (\$5.73 per hour), and the average cost of all employee benefits (over \$18 per hour).¹⁵⁴ It seems a fair guess that the actual cost of FJG benefits would be a lot more than \$3 per hour, and probably

152. See Jared Bernstein, *Minimum Wages and Capital/Labor Substitution*, ON THE ECON.: JARED BERNSTEIN BLOG (Aug. 17, 2015, 3:43 PM), <https://jaredbernsteinblog.com/minimum-wages-and-capital-labor-substitution>; Alan B. Krueger, Opinion, *The Minimum Wage: How Much Is Too Much?*, N.Y. TIMES (Oct. 10, 2015), <https://www.nytimes.com/2015/10/11/opinion/sunday/the-minimum-wage-how-much-is-too-much.html> [<https://perma.cc/5VJQ-XZCC>].

153. See LEI, *supra* note 76, at 4–5.

154. See Bureau of Labor Statistics, EMPLOYER COSTS FOR EMPLOYEE COMPENSATION—SEPTEMBER 2018, <https://www.bls.gov/news.release/pdf/ecec.pdf> [<https://perma.cc/CA93-NS7N>]. Those average benefits include some items, e.g., retirement benefits, that are not included in the LEI proposal; but the latter includes some benefits—like fully-funded child care and fully-employer-funded health insurance—that most employers do not. The LEI estimate also assumes no employer costs associated with job security, though employers clearly act as though job security is costly. See Edward B. Rock & Michael L. Wachter, *The Enforceability of Norms and the Employment Relationship*, 144 U. PA. L. REV. 1914 (1996).

somewhere between \$5.73 and \$18 per hour.¹⁵⁵ That would push up both the expected cost of the FJG per worker and the expected number of participants and of private sector (and public sector but non-FJG) job losses. I have used what I think is a conservative number of \$20 per hour for wages and benefits, and left the estimate of participants as it is above. That would produce total annual wage and benefit costs of \$41,600 per year per full-time participant, for a total annual cost of up to \$1.25 to \$1.46 trillion.

155. GULKER, *supra* note 77, critiques the benefit cost estimates in the LEI proposal as “not defensible.” *Id.* at 8.