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Valuing Employment: Transaction Benefit Economics and the Future of Work Law

Diana S. Reddy*

In debates about the future of work, scholars and policymakers often treat economic efficiency and distributive justice as the principal values at stake. Those who argue for the end of the employment relationship appeal to economic efficiency. They extend law and economics scholar Ronald Coase's classic theorization of "transaction costs," arguing that technological innovation has dramatically reduced the transaction costs of economic coordination. As a result, they argue, work today can be more efficiently performed through independent contracting and automation than through the institution of employment.

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In response, those who defend the legal form of employment invoke distributive justice and equality. They argue that employers should not be able to circumvent the social safety net constructed around employment simply by reorganizing production. Yet, in emphasizing the benefits of that social safety net, rather than benefits inherent to employment as a form of economic production, some concede the potential acceptability of a world without employment—so long as the social safety net lives on independently of it, whether through universal basic income, portable benefits, or other policy innovations.

In this Article, I argue that neither a transaction cost-centric analysis of employment nor one focused only on distributive justice or equality fully conceptualizes all that is at stake in the institutional design and legal regulation of how we work. This is because there are transaction benefits, not just transaction costs, associated with the organization of work. While transaction cost economics has tended to treat the social activity attendant to economic transactions as inherently costly, this social activity can have benefits too. Foremost among these are relational benefits like social trust, belonging, cooperation, and social solidarity, which accrue to individuals, groups, firms, and socio-political systems via economic interaction, coordination, and co-production. And unlike distributive justice, these benefits are inexorably tied to work's organization; there is no quick and easy substitution for them through redistributive public policy. Transaction benefits arise, or not, at the point of production, from specific organizational forms and institutional practices, and from the legal rules that structure them.

Here, I provide the first in-depth theorization of work as a site of relational transaction benefits, with a specific focus on law's role in shaping them. In a moment of crisis-level political polarization and social mistrust, we can no longer afford the illusion that work was ever, or should ever be, solely about material production. From Adam Smith to Émile Durkheim, scholars have long insisted that how we work shapes the quality and character of our social solidarity—the extent to which we are, sociologically speaking, a society at all. The future of work will shape the future of our society, whether we plan for it or not. It would be wiser to plan for it by proactively incentivizing the kind of work that produces social connectedness, rather than isolation and fracture. Just as the law has been used to minimize transaction costs, so too can it be used to promote transaction benefits.

Contemporary debates about work's future largely overlook the transaction benefits of employment. Independent contracting and automation may at times reduce transaction costs relative to employment, but they are likely to sacrifice transaction benefits in the process. This is because employment as a socio-legal institution—defined not as an employer's formal right to control or even employment's statutory protections, but as an ongoing, cooperative relationship—has meaningful benefits for social trust, cohesion, productivity, and solidarity. Independent contracting is unlikely to cultivate these same benefits, and automation certainly cannot. The future of work law must do more than facilitate transactions in human labor. Work law should build productive and connective human relationships.

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INTRODUCTION

We live in a moment of great anxiety, and at least some hope, about “the future of work.” For more than a decade now, various business leaders and policymakers have proclaimed the inevitability of radical changes in the organization of work and its role in our society.¹ Over this period, most major magazines have devoted at least one issue, and one provocative cover, to work’s imagined future.² Almost all platform companies have an official vision statement for it.³ Governments and governmental organizations, from the State of California to the Office of Personnel Management to the World Bank, have issued lengthy reports on it.⁴ And most of us, if we are honest, expect our lives to be upended by it.⁵

The phrase “the future of work” began circulating in the early 2010s as a floating signifier,⁶ suggesting a multitude of foreordained yet underspecified changes in working life.⁷ This was when companies like Uber and Lyft first burst

1. See, e.g., Jeff Schwartz, *What’s the Future of Work?*, YALE SCH. OF MGMT.: YALE INSIGHTS (Nov. 8, 2017), <https://insights.som.yale.edu/insights/what-s-the-future-of-work> [<https://perma.cc/L9NF-4BVX>].

2. See, e.g., *The Future of Work*, TIME, <https://time.com/collection/future-of-work/> [<https://perma.cc/RXB7-N6Q2>]; *Future of Work*, FORBES, <https://www.forbes.com/future-of-work/?sh=72efca7926cd> [<https://perma.cc/CV67-EDN2>]; *The 2.20.22 Issue — The Future of Work*, N.Y. TIMES MAG., Feb. 20, 2022, <https://www.nytimes.com/issue/magazine/2022/02/18/the-22022-issue> [<https://perma.cc/UT57-YDVL>]; *The Future of Work*, ECONOMIST (Apr. 10, 2021), <https://www.economist.com/special-report/2021-04-10> [<https://perma.cc/6AU6-BCXE>]; Rx: *AI*, NEWSWEEK MAG., Mar. 15, 2024, <https://www.newsweek.com/2024/03/15/issue.html> [<https://perma.cc/X64M-XGSW>]; *The Smart Job Boom*, NEWSWEEK MAG., Jan. 26, 2018, <https://www.newsweek.com/2018/01/26/issue.html> [<https://perma.cc/CX7T-7EYU>]; *Hi, Robot*, FOREIGN AFFS., July/Aug. 2015, <https://www.foreignaffairs.com/issues/2015/94/4> [<https://perma.cc/K4P2-MAX2>].

3. See generally, e.g., DOORDASH, OUR VISION FOR THE FUTURE OF WORK: ACCESS CHOICE, AND SECURITY, https://assets.ctfassets.net/trvmqu12jq2l/2arS7Vk1FDCCyYJMaqda4z/ab316b999f69f651efada43ce23cb992/DoorDash-Future_of_Work.pdf [<https://perma.cc/QJU4-Z5M9>]; *A Better Way of Working*, UBER IMPACT, <https://www.uber.com/us/en/impact/a-better-way-of-working/> [<https://perma.cc/6QSR-J646>]; *Lyft’s Vision for the Future of Work*, LYFT, <https://www.lyft.com/impact/future-of-work> [<https://perma.cc/78LL-WV56>].

4. See generally WORLD BANK GRP., WORLD DEVELOPMENT REPORT 2019: THE CHANGING NATURE OF WORK (2019), <https://documents1.worldbank.org/curated/en/816281518818814423/pdf/2019-WDR-Report.pdf> [<https://perma.cc/QGY2-AXCE>]; *The Future of the Workforce*, U.S. OFF. OF PERS. MGMT., <https://www.opm.gov/policy-data-oversight/future-of-the-workforce/> [<https://perma.cc/J2NJ-6ZRL>]; INST. FOR THE FUTURE, CAL. FUTURE OF WORK COMM’N, A NEW SOCIAL COMPACT FOR WORK AND WORKERS (2021), <https://www.labor.ca.gov/wp-content/uploads/sites/338/2021/02/ca-future-of-work-report.pdf> [<https://perma.cc/6B2Z-WUL4>].

5. See AARON SMITH & MONICA ANDERSON, PEW RSCH. CTR., AUTOMATION IN EVERYDAY LIFE 17 (2017), https://www.pewresearch.org/internet/wp-content/uploads/sites/9/2017/10/PI_2017.10.04_Automation_FINAL.pdf [<https://perma.cc/55NP-4EBE>]; KIM PARKER, RICH MORIN & JULIANA HOROWITZ, PEW RSCH. CTR., LOOKING TO THE FUTURE, PUBLIC SEES AN AMERICA IN DECLINE ON MANY FRONTS 48 (2019), https://www.pewresearch.org/wp-content/uploads/sites/20/2019/03/US-2050_full_report-FINAL.pdf [<https://perma.cc/PYW4-5NSD>].

6. Lukas Schlogl, Elias Weiss & Barbara Prainsack, *Constructing the ‘Future of Work’: An Analysis of the Policy Discourse*, 36 NEW TECH., WORK & EMP. 307, 308 (2021).

7. See GOOGLE BOOKS NGRAM VIEWER, “future of work,” (Apr. 21, 2025) https://books.google.com/ngrams/graph?content=future+of+work&year_start=1928&year_end=2019

onto the scene with a seemingly new way of organizing economic production: platform-mediated “gig” work.⁸ While various forms of non-standard work—contract work, temp work, moonlighting, and more—have been proliferating for years, platform work augured a radical new option: work allocated conveniently and costlessly by task, not by relationship.

Since then, use of the phrase “the future of work” has grown alongside advances in artificial intelligence (AI), with all that AI has intimated about human replaceability. The meaning of the phrase has expanded over time to hint at long-unresolved structural issues in the organization of work, chief among them the ever-elusive struggle for work-life balance.⁹ During the pandemic, the phrase became weightier still. Work and consumption could be organized differently. Professionals could work from home more often, be it across the city or across the globe, and rapid delivery could replace brick-and-mortar sales and services. But the pandemic’s socioeconomic dislocations equally emphasized the structural inequalities in how we work—there were likely to be winners and losers in the changes ahead.¹⁰

Because of work’s centrality to American life, disagreements about the future of work—how to feel about it, what to do about it, what is at stake—are fierce, capacious, and often tied to our differing views about what is right or wrong about work now. Are workers today underpaid for their productivity, or are they instead

&corpus=en-2019&smoothing=3 [https://perma.cc/C292-YN4L] (filtered by years “1928” to “2019,” “English”).

8. See, e.g., Jenna Wortham, *With a Start-Up Company, a Ride Is Just a Tap of an App Away*, N.Y. TIMES (May 3, 2011), <https://www.nytimes.com/2011/05/04/technology/04ride.html> [https://perma.cc/7Q3N-WJBB]; *What is a Gig Worker?*, GIG ECON. DATA HUB, <https://gigeconomydata.org/basics/what-gig-worker.html> [https://perma.cc/V2LH-SQTA].

9. See Amanda Lenhart, Haley Swenson & Brigid Schulte, *Struggling to Balance Work and Care*, NEW AM.: NAVIGATING WORK & CARE (Dec. 12, 2019), <https://www.newamerica.org/better-life-lab/reports/navigating-work-and-care/struggling-to-balance-work-and-care> [https://perma.cc/Q8QB-6DFR] (finding that people, and women in particular, are struggling to balance work and care, which the author calls the “work-care squeeze”); Ellen Ernst Kossek, Patricia Gettings & Kaumudi Misra, *The Future of Flexibility at Work*, HARV. BUS. REV. (Sep. 28, 2021), <https://hbr.org/2021/09/the-future-of-flexibility-at-work> [https://perma.cc/EV7N-9YV5]; Kyle Shaner, *The Future of Work: How Should We View Work-Life Balance?*, UC CIN.: UC NEWS (Feb. 7, 2023), <https://www.uc.edu/news/articles/2023/02/the-future-of-work--how-should-we-view-work-life-balance.html> [https://perma.cc/83X3-2WL7].

10. Joe Piacentini, Harley Frazis, Peter B. Meyer, Michael Schultz & Leo Sveikauskas, *The Impact of COVID-19 on Labor Markets and Inequality* 28 (U.S. Bureau of Lab. Stat., Working Paper No. 551, 2022), <https://www.bls.gov/osmr/research-papers/2022/pdf/ec220060.pdf> [https://perma.cc/299D-RBMM] (predicting permanent increase in wage inequality following the pandemic due to changes in work patterns and consumer demands; also explaining that low-income workers were disproportionately impacted by the pandemic because of reduced demand for services, the inability to telework, and school disruptions).

“quiet quitting”?¹¹ Do workers need more flexibility, more security, or both?¹² Is it too hard to fire people or not hard enough?¹³ These background beliefs about the *now* of work often shape policy conversations about its future.

Positions in this debate often track the country’s political divisions—often, but not always. Traditional business conservatives and their advocates are more likely to celebrate this imagined future of work, to emphasize the efficiency of technological innovations, and to call for greater freedom from intrusive government regulation.¹⁴ In turn, economic progressives are somewhat more likely to be skeptical about the future of work, to question who profits from these changes, and to push for stronger laws to protect workers in the transitions to come.¹⁵ Given the complexity of the issues, however, there are unexpected convergences. Whatever their broader differences, conservatives sick of business-killing regulation *and* progressives sick of employer tyranny are sometimes united by an underlying skepticism about the institution of employment and a deep curiosity about what it might mean to chuck the whole thing.

This Article reappraises the socio-legal institution of employment, its costs and its benefits, what it has been, and what it could be. Derived from master–servant law but then affixed with the protections of the New Deal and the Great Society, employment is a complex and contradictory legal form—subordination and

11. *Compare Quiet Quitting: What’s Causing Employees to ‘Act Their Wage’?*, ROBERT WALTERS: BLOG (Nov. 10, 2022), <https://www.robertwalters.us/insights/news/blog/Quiet-Quitting-in-the-workplace-whats-causing-employees-to-act-their-wage.html> [https://perma.cc/KZ8V-V3DH] (arguing that workers have long been underpaid relative to their productivity), *with* Jim Harter, *Is Quiet Quitting Real?*, GALLUP: WORKPLACE (May 17, 2023), <https://www.gallup.com/workplace/398306/quiet-quitting-real.aspx> [https://perma.cc/A47J-SL4T] (emphasizing real declines in employee engagement).

12. John W. Mitchell, Author Post, *The Future of Job Security Is Flexibility*, FORBES (Sep. 6, 2023), <https://www.forbes.com/sites/forbesbooksauthors/2023/09/06/the-future-of-job-security-is-flexibility/?sh=761342ae7a5f> [https://perma.cc/4VF4-FCMH].

13. *Compare* KATE ANDRIAS & ALEXANDER HERTEL-FERNANDEZ, ROOSEVELT INST., ENDING AT-WILL EMPLOYMENT: A GUIDE FOR JUST CAUSE REFORM (2021), https://rooseveltinstitute.org/wp-content/uploads/2021/01/RI_AtWill_Report_202101.pdf [https://perma.cc/5265-77SN] (arguing that American workers lack sufficient job security due to “at will” employment), *with* Liz Ryan, Letter to the Editor, *Why Is It So Hard to Fire Lousy Employees?*, FORBES (Aug. 25, 2015), <https://www.forbes.com/sites/lizryan/2015/08/25/why-is-it-so-hard-to-fire-lousy-employees/?sh=33c198fa5dd2> [https://perma.cc/3TGG-QWFL] (emphasizing the reasons why managers struggle to terminate low-performing workers).

14. For examples of such perspectives, see Seth Oranburg & Liya Palagashvili, *Transaction Cost Economics, Labor Law, and the Gig Economy*, 50 J. LEGAL STUD. S219, S233–34 (2021); Emily C. Atmore, Note, *Killing the Goose that Laid the Golden Egg: Outdated Employment Laws Are Destroying the Gig Economy*, 102 MINN. L. REV. 887, 890 (2017) (“[C]urrent employment laws do not adequately embrace gig economy workers, and create dangerous obstacles to needed economic growth.”).

15. For examples of such perspectives, see Cynthia Estlund, *Three Big Ideas for a Future of Less Work and a Three-Dimensional Alternative*, 82 LAW & CONTEMP. PROBS. 1, 3 (2019) [hereinafter Estlund, *Three Big Ideas*]; Cynthia Estlund, *What Should We Do After Work?: Automation and Employment Law*, 128 YALE L.J. 254, 275–83 (2018) [hereinafter Estlund, *Automation and Employment Law*].

protection, status and contract, all in one.¹⁶ Defined as such, it is no wonder that employment ambivalence sometimes transcends party lines.

For those who seek a brave new future of work, employment is often treated as an anachronism, a legal form that once served important economic purposes but now largely inhibits efficiency and productivity. To support this claim, they turn to economist Ronald Coase's theorization of "transaction costs."¹⁷ In Coase's original articulation of the theory in his 1937 classic *The Nature of the Firm*, his object of inquiry was employment.¹⁸ Coase argued that the employment relationship—as opposed to contracting for labor as needed—could best be explained by transaction costs.¹⁹ Finding someone to contract with, negotiating the terms of that contract, and enforcing that contract all had costs.²⁰ But employment law gave employers an ongoing right to control their workers, without the necessity of perpetual contracting. Under certain circumstances, then, Coase argued that securing labor through employment, rather than through market-based contracts, could be the cheaper and thus more efficient choice.²¹

In the almost ninety years since Coase wrote, however, many of the background circumstances he emphasized have changed. As such, many who invoke Coase's ideas today argue that his original transaction cost calculus has been flipped, rendering employment *less* efficient than contracting.²² Through technologically-mediated coordination, it is easier than ever to "spot" contract for labor; that is, to procure work in discrete units, as needed and on an ad hoc basis.²³ As for automation, it is plainly more efficient: Robots do not drive a hard bargain, and they never file lawsuits.²⁴ In a digital era, so the argument goes, more can be

16. See ROBERT J. STEINFELD, *THE INVENTION OF FREE LABOR* 1–9, 27 (1991).

17. Oranburg & Palagashvili, *supra* note 14, at S222 ("The relevance of transaction costs for the gig economy is as follows: [I]f technological advancements can reduce the costs of transacting outside the firm (in the market) rather than inside the firm, this cost reduction can help explain the rise of contractor work.").

18. R.H. Coase, *The Nature of the Firm*, 4 *ECONOMICA* 386, 403 (1937) ("We can best approach the question of what constitutes a firm in practice by considering the legal relationship normally called that of 'master and servant' or 'employer and employee.'").

19. *Id.* at 390–91, 393 ("The main reason why it is profitable to establish a firm would seem to be that there is a cost of using the price mechanism.").

20. *Id.*

21. *Id.*

22. For an explanation of how certain firms invoke Coase today and move toward a gig-work model because of reduced transaction costs, see, for example, NAMITA DATTA, RONG CHEN, SUNAMIKA SINGH, CLARA STINSHOFF, NADINA IACOB, NATNAEL SIMACHEW NIGATU, MPUMELELO NXUMALO & LUKA KLIMAVICIUTE ET AL., WORLD BANK GRP., *WORKING WITHOUT BORDERS: THE PROMISE AND PERIL OF ONLINE GIG WORK* 12–13 (2023), <https://openknowledge.worldbank.org/bitstreams/81a1bf93-26b7-41e9-903f-4542687ad5db/download> [<https://perma.cc/F2BZ-377N>].

23. See Alex J Wood, Mark Graham, Vili Lehdonvirta & Isis Hjorth, *Good Gig, Bad Gig: Autonomy and Algorithmic Control in the Global Gig Economy*, 33 *WORK, EMP. & SOC'Y* 56, 64–66 (2019) (explaining that algorithms can be used to control workers outside of an employment relationship).

24. See Pascual Restrepo, *Automation: Theory, Evidence, and Outlook* 1–2 (Nat'l Bureau of Econ. Rsch., Working Paper No. 31910, 2023).

produced for less without employment.²⁵ As such, we might all be better off without it. And this is true, many would insist, even without considering the additional policy-based costs of employment discussed below.

In response, those who value the hard-fought statutory protections built around the edifice of the employment relationship—things like employer contributions to Social Security and Medicare, minimum wage, rights to collective bargaining, and anti-discrimination protections—argue that employers are hiding the ball. What employers actually want, they say, is to avoid the legal obligations attached to employment. As such, they are redesigning production to avoid those liabilities.²⁶ This, employment’s defenders insist, is not a legitimate way to reduce costs or pursue efficiency. Employers should not be able to avoid legal mandates designed to promote equality and distributive justice by strategically reorganizing production. This side’s vision for the future of work accordingly emphasizes more effective line-drawing and better enforcement: a more capacious test for employee status that would disincentivize regulatory arbitrage, and a crackdown on employee misclassification.²⁷

25. *Id.*

26. See Avi Asher-Schapiro, Opinion, *Against Sharing*, JACOBIN (Sep. 19, 2014), <https://www.jacobinmag.com/2014/09/against-sharing> [<https://perma.cc/4HTB-RECE>] (arguing that “companies like Uber shift risk from corporations to workers, weaken labor protections, and drive down wages”); Elizabeth Pollman, *Tech, Regulatory Arbitrage, and Limits*, 20 EUR. BUS. ORG. L. REV. 567, 573–74 (2019); Dean Baker, Opinion, *Don’t Buy the ‘Sharing Economy’ Hype: Airbnb and Uber Are Facilitating Rip-Offs*, GUARDIAN (May 27, 2014), <http://www.theguardian.com/commentisfree/2014/may/27/airbnb-uber-taxes-regulation> [<https://perma.cc/6DK6-UU96>].

27. As discussed further below, there is an increasingly fervent debate over how to draw the legal line between employee and independent contractor. The “right to control” test is considered the common law test for employee status, and the U.S. Supreme Court has held that it should be presumed under federal statutes too, absent clear congressional preference for a different test. See *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 323 (1992). Under the right to control test, employee status turns on whether the putative employer controls the “manner and means” of how work is performed. *Id.* The idea here is that while both contractors and employees may agree to engage in work towards a specific outcome, the hallmark of a contractor is their ability to decide how, when, and where to do that work. In contrast, for employees, employer control extends to the work process itself. This test, however, has been criticized for both its historical and analytical incompatibility with the policy role it now plays, as well as for its easy manipulability. Historically, the right to control test originated in the law of agency, as a basis for ascertaining employer liability for the actions of a worker; in this context, it made sense to evaluate employer liability based on their control over the worker. In contrast with its current usage, the test was not fashioned to define employment writ large; neither was it intended to provide a normative basis for specifying which workers deserved inclusion within an economic community and the public policy protections that follow. Moreover, because the test is tied to a historically-specific kind of control, the direct domination masters exercised over servants, rather than the forms of economic, technological, and psychological control (and/or co-production) that tend to characterize work today, many argue that the test encourages arbitrage, allowing businesses who seek to decrease labor costs to restructure work tasks for the purpose of evading labor and employment laws. Through minor changes in economic organization, employers are able to enjoy the benefits of an effectively dependent workforce without incurring the costs attached to that relationship via public policy over the past ninety years. Other important tests currently used or promoted by scholars and policy-makers include the economic realities test used under the Fair Labor Standards Act, the “ABC” test currently used by many states for the purposes of their unemployment or workers’ compensation schemes (as well as in California more

These two takes on the institution of employment have the trappings of deep-seated disagreement. But again, they are not necessarily antithetical. Rather, the two sides often talk past each other when debating what they like and dislike about employment. The anti-employment argument emphasizes problems of the legal form: It no longer makes sense to hire long-term employees when jobs can be subdivided into component tasks and contracted out at the touch of a screen.²⁸ Those who defend employment emphasize its statutory protections. It is the distributive and dignitary rights attached to employment—not necessarily anything intrinsic to the legal form—that matter most.²⁹ As such, these two positions, superficially in opposition, are reconcilable: efficiency through the reorganization of work and distributive justice, dignity, and equality through universalization of the welfare state previously linked to employment. But is there anything left to defend about the employment relationship itself?

This Article is also, then, about the values at stake in economic organization, and why the form, the processes, and the *how* of human labor matter too. I argue that neither a transaction cost-centric analysis of employment nor one focused only on broader redistribution and equitable concerns fully conceptualizes all that is at stake in the institutional design and legal regulation of how we work. This is because, to adapt the Coasean framing of the issue, there are transaction *benefits*, not just transaction costs, associated with the organization of work. And because these benefits occur, or not, at the point of transaction, there is no simple substitution for them.

The transaction costs framework, so foundational to modern law and economics, has tended to categorize the human interactions that may or may not lead to exchange as inefficiencies. And if the sole goal of these interactions were to increase material welfare, this might be a colorable argument (although, as I argue in Part III, transaction benefits include increased productivity and accrue to firms, as well). From a historical and sociological perspective, however, it is impossible to sever the economic and the social, even at the point of production. Throughout human history, exchange processes have been as much about sociopolitical

broadly), and the Restatement's "entrepreneurial control" test. See, e.g., Miriam A. Cherry, *The Work of the Future: Ending Employment Misclassification*, HUM. RTS. MAG., Oct. 2023, at 12 <https://www.americanbar.org/content/dam/aba/administrative/crsj/human-rights-magazine/vol--49,-no--1-2/human-rights-magazine-labor-and-employment-rights.pdf> [<https://perma.cc/7ZH6-ML4L>]. See generally LYNN RHINEHART, CELINE MCNICHOLAS, MARGARET POYDOCK & IHNA MANGUNDAYAO, ECON. POL'Y INST., MISCLASSIFICATION, THE ABC TEST, AND EMPLOYEE STATUS (2021), <https://files.epi.org/uploads/229045.pdf> [<https://perma.cc/XT7G-Q5KV>]. These tests are all more capacious in their understanding of what makes someone an employee than the right to control test.

28. See, e.g., John O. McGinnis, *The Sharing Economy as an Equalizing Economy*, 94 NOTRE DAME L. REV. 329, 360 (2018).

29. See, e.g., Veena Dubal, *On Algorithmic Wage Discrimination*, 123 COLUM. L. REV. 1929, 1937 (2023) (explaining that many companies now actively evade employment and the minimum-wage and antidiscrimination laws attached to it, laws which form "a core moral foundation for most work regulation in the United States").

solidarity as about immediate, material benefit.³⁰ As societies have grown to rely more on market exchanges, the “market” too has evolved from simply being embedded in existing social relationships to constituting many of them in the first place.³¹ In a society in which market transactions predominate, the market will necessarily be a leading source of social connection and meaning. In a society in which most adults work for a living, work will necessarily be a leading source of the same.

To put a finer point on it, how we work matters beyond what we produce and what we consume. Working together is a social endeavor, with the potential to produce social connection, trust, and solidarity—or not. Increasingly sophisticated empirical research confirms that work relationships are full of meaning to workers, to consumers, and to society more broadly.³² Of course, work and its relationships can also be a source of disconnection, alienation, and gross exploitation; *the conditions under which* work is performed matter a great deal. But even under less than perfect conditions, workers’ personal relationships, with each other and with the people they serve, increase well-being.³³ Workplace friendships are essential to mental health; they make us more productive too.³⁴ A short conversation with a cashier or a taxi driver makes customers happier.³⁵ The experience of social embeddedness in economic relationships helps stitch together our social fabric.

Whatever its shortcomings, I argue that employment can have much to offer when it comes to transaction benefits. This is because employment embeds work within human relationships, facilitating co-production, not just coordination. The inherently relational character of employment is often obscured by legalistic debates about the dividing line between employees and independent contractors.³⁶ The leading legal test for employee status remains whether the putative employer retains the “right to control” the manner and means of the work performed.³⁷ This

30. See, e.g., BRONISLAW MALINOWSKI, ARGONAUTS OF THE WESTERN PACIFIC 167 (1922) (observing “that wealth, given and taken, is one of the main instruments of social organisation” in some cultures).

31. Mark S. Granovetter, *The Strength of Weak Ties*, 78 AM. J. SOCIO. 1360, 1372 (1973); Neil Fligstein, *Markets as Politics: A Political-Cultural Approach to Market Institutions*, 61 AM. SOCIO. REV. 656, 670 (1996) (explaining that “[m]arkets are social constructions that reflect the unique political-cultural construction of their firms and nations”).

32. See *infra* Part III, notes 212–240 (these footnotes cite multiple empirical studies measuring the value of interactions and relationships facilitated by economic transactions).

33. Lydia Craig & Lauren Kuykendall, *Examining the Role of Friendship for Employee Well-Being*, 115 J. VOCATIONAL BEHAV. 1, 12 (2019).

34. See, e.g., Jon Clifton, *The Power of Work Friends*, HARV. BUS. REV. (Oct. 7, 2022), <https://hbr.org/2022/10/the-power-of-work-friends> [<https://perma.cc/32ER-JNEF>].

35. Nicholas Epley & Juliana Schroeder, *Mistakenly Seeking Solitude*, 143 J. EXP. PSYCH.: GEN. 1980, 1993 (2014) (finding that people who had conversations with strangers on trains, buses, and taxicabs “had a more positive commute” than “when they sat in solitude”).

36. See *infra* Part IV.B and accompanying notes (discussing tests for employee status and their limitations).

37. See, e.g., *How to Apply the Common Law Control Test in Determining an Employer/Employee Relationship*, SOC. SEC. ADMIN., https://www.ssa.gov/section218training/advanced_course_10.htm [<https://perma.cc/2QLL-PD2V>].

is an unsatisfying definition for a number of reasons. It fails to factually distinguish employment from contracting because strategic contracting, combined with significant economic power, can also grant an effective right to control.³⁸ But it is also unsatisfying because it fails to reflect the full socio-legal experience of employment, for employees and employers alike. The dominant characteristic of employment as a real-world institution is that of inclusion within a socio-economic community, of relationships characterized by joint effort and shared goals that transcend the transaction.³⁹ Work's future, as currently imagined, is far less social. Automation in the workplace is often used to displace human interaction, and independent contracting, by definition, undermines relational co-production.

At a moment when scholars across the political spectrum are seriously considering the possibility of a future without employment, this Article is the first to fully theorize the relational transaction benefits of economic activity, to define employment in terms of these benefits, and to critique future of work innovations for the ways in which they sacrifice those benefits. This is not, of course, the first Article to argue that working, or other types of economic behavior, have benefits that extend beyond the market. Cynthia Estlund, one of the most powerful voices in this vein within legal scholarship, has long argued that workplace bonds are essential to American democracy.⁴⁰ And within economic sociology and anthropology, these insights are foundational.⁴¹ But to translate these arguments into the language of transaction benefits takes a further step towards specifying the mutually constitutive relationship between the economic and the social and problematizing the dichotomy that remains so prominent in American law, politics, and culture. The argument here is accordingly different from the one that says we should care about more than economics when drafting social policy. Instead, it insists that it is a mistake to think of economic activity as asocial, or of social bonds as noneconomic in the first place. When it comes to how we work together, it insists that productivity is more than a matter of human capital; it relies upon, and creates, social capital too. This approach does *not* mean a refusal to acknowledge trade-offs, or a refusal to think seriously about which goals should be prioritized when they conflict or when resources are limited. But it is to acknowledge the inescapable reality that human behavior always transcends singular dimensions and to insist that institutional design, policy, and law engage with that multidimensionality and multi-causality.

38. See Dubal, *supra* note 29, at 1966 (noting that employers can use “algorithmic levers of control” over aspects of work like time and location while avoiding “the risk of being legally considered employers”).

39. See *Louisville, Evansville & St. Louis Ry. Co. v. Wilson*, 138 U.S. 501, 505 (1891) (explaining that the term employee implies “continuity of service” beyond any discrete transaction).

40. See, e.g., CYNTHIA ESTLUND, *WORKING TOGETHER: HOW WORKPLACE BONDS STRENGTHEN A DIVERSE DEMOCRACY* (2003).

41. See *infra* Part III.A; MAUSS, *supra* note 30; see also generally VIVIANA A. ZELIZER, *ECONOMIC LIVES: HOW CULTURE SHAPES THE ECONOMY* (2010).

To make this more concrete, the concept of transaction benefits (along with its analytical importance and complexity) can be illustrated for members of the legal academy through the case study of faculty hiring. As readers may know, law faculty hiring is arguably not the most efficient process. These inefficiencies arise for a number of reasons—the pressure on candidates to conduct nationwide searches and on schools to interview and fly out candidates unlikely to receive or to accept an offer; the intensity of the workload on all sides; the personalization of what might otherwise be a highly standardized process. Faculty hiring often involves extremely high transaction costs, including the time, travel, and missed opportunities borne by hiring committees, recommenders, and candidates alike. Yet, there is also shared recognition that this costly process has relational value, and that it is beneficial for our collegiality and our productivity when candidates and faculties interact with a much broader range of people than strict efficiency might recommend. The “meat market”—whether in person or virtual—is a “meet market.” It is a chance for established scholars to learn about emerging scholars, and for emerging scholars, in turn, to learn about the breadth and diversity of the community they are entering. In this way, its high transaction costs may be justified by its high transaction benefits.⁴² And yet, there are complicated trade-offs involved. When technological and social changes enable a reduction in those transaction costs, careful decisions must be made about how best to strike a balance between maximizing benefits and minimizing costs.

This Article proceeds as follows. In Part I, I summarize current conversations about the future of work to situate the reader and contextualize this Article’s contribution. The future of work, according to extant literature, will be characterized by a significant reduction in employment relationships, to be supplanted by automation and labor contracting. The most analytically sophisticated argument for why work should change in this way relies on Coase’s theorization of transaction costs, and there has been virtually no rebuttal to this neo-Coasean justification for decentering employment. Similarly, arguments for the value of employment as a socio-legal form, independent of the statutory benefits attached to it, have been few and far between.

In Part II, I describe and critique Coase’s theorization of employment as a transaction cost-reducing institution. In 1937, Coase rationalized employment as a way to reduce transaction costs, arguing that the “right to control” provided a cheaper way to procure and manage labor than contract. Notwithstanding its theoretical brilliance, Coase’s account is limited by his superficial analysis of employment law and employment’s attendant social realities. Coase’s theorization fails to reckon with either the historical origins of employment as both domination

42. This example also illustrates the analytical complexities of a transaction benefits framework. Like transaction costs, transaction benefits can accrue to individuals, firms, and the broader community and polity. Moreover, since the costs and benefits may not be evenly allocated across parties, public policy to encourage forms of economic organization with higher levels of transaction benefits may sometimes be essential.

and relationship or the social complexities of its evolution. In part because of these empirical shortcomings, traditional Coasean analysis tends to overlook the possibility that the social interactions in which transactions are embedded may have benefits, in addition to costs. To fully effectuate Coase's purpose, however, requires a more comprehensive account of the relationship between the social and the economic.

In Part III, I introduce my theorization of relational transaction benefits. By relational transaction benefits, I mean the ways in which economic interaction, under the right circumstances, may facilitate greater social trust, cohesion, and solidarity, in addition to individual well-being and increased productivity. To support this claim, I synthesize classical sociological theory, political economic theory, evolutionary biology, and innovative social science research to show that work has always had the potential to be a profound source of transaction benefits. I detail what these relational transaction benefits look like for society, firms, workers, and consumers, and I also offer some hypotheses about why work may be particularly important when it comes to relational transaction benefits.

Finally, in Part IV, I apply the insights of Part III to the debates introduced in Parts I and II. First, I analyze future of work innovations from a transaction benefits perspective. Automation and independent contracting may, at times, reduce transaction costs (although some of this reduction is more likely a transfer of costs, from businesses to workers and society, and from one set of intermediaries to another), but they are likely to reduce transaction benefits at the same time, absent significant circumscription via purposeful public policy. Second, I return to Coase's account of the competitive advantage of employment and argue that the value of employment is better measured by its capacity to maximize transaction benefits, rather than minimize transaction costs. I also argue that employment's relational character lends itself to a more coherent definition of employment and test for employee status than "the right to control." Third, I juxtapose employment's potential relational benefits with its often-degraded state today, following the decline of the twentieth century standard employment relationship and the ongoing failure of contemporary politics to construct a new one, consistent with the needs of twenty-first-century workers and families. Finally, I offer some tentative thoughts about the broader importance of transaction benefit economics.

I.

WHAT WE TALK ABOUT WHEN WE TALK ABOUT THE FUTURE OF WORK

In Part I, I summarize current conversations about the future of work to uncover the theoretical gap addressed by the rest of the Article. The vast policy, industry, and academic literature on work's future tends to focus on three main lines of inquiry: (1) describing and forecasting likely material changes in the nature and organization of work; (2) explaining the cause of those changes and debating whether they are a good or bad thing; and in turn, (3) proposing an appropriate policy response.

While there are many disagreements within these conversations, there are also threads left hanging; one of the most important is how to think about the role of transaction costs. Amidst the technological determinism that characterizes much of this literature, it is the concept of “transaction costs” that is most convincingly used as an analytical justification for why technological changes not just can but *should* alter the socio-legal institution of employment. And while scholars and policymakers have challenged many of the claims of future-of-work adherents and insisted that policymakers must consider distributional justice too, there has largely been no direct response to the Coasean justification for the end of work as we know it.

A. *The Then and Now of Work*

Before turning to work’s future, however, I briefly discuss work’s present and past. Today, most people over the age of sixteen in the United States work for a living, and most of those workers are employees.⁴³ This paradigm for market work—wage labor via the socio-legal relationship of employment—has predominated for close to one hundred and fifty years.⁴⁴

A full history of the employment form is beyond the scope of this Article. But there are several key historical developments worth emphasizing. First, as employment rapidly displaced other ways of organizing work in the latter half of the 1800s, the form itself was in flux. The master and servant relationship of English law was evolving with industrial demands and modern sensibilities. In the United States, this meant a push to further contractualize what had once been a largely

43. News Release, U.S. Bureau of Lab. Stat., The Employment Situation — July 2025 (Aug. 1, 2025), https://www.bls.gov/news.release/archives/empst_08012025.pdf [<https://perma.cc/D8S9-4HPT>] (stating that the current labor force participation rate is 62.2 percent, meaning 62.2 percent of the American population sixteen years or older and not confined to an institution participate in the labor force, whether as employees, contractors, or currently unemployed people actively searching for work, and the current employment-population ratio is 59.6 percent, meaning that 59.6 percent of the American population sixteen years old or older and not confined to an institution are currently working as employees or as contractors); see also *Concepts and Definitions (CPS)*, U.S. BUREAU OF LAB. STAT. (Sep. 15, 2025), <https://www.bls.gov/cps/definitions.htm> [<https://perma.cc/U9Q6-FVYC>] (specifying that the category of wage and salary workers generally refers to those “who receive wages, salaries, commissions, tips, or payments in kind,” i.e., who are employed; also noting that the definition of wage and salary workers for earnings purposes is slightly narrower than the definition of wage and salary workers for labor force participation purposes, because the former excludes all independent contractors, whether incorporated or not, while the latter excludes the unincorporated self-employed but includes the incorporated self-employed).

44. See Katherine V.W. Stone, *The New Psychological Contract: Implications of the Changing Workplace for Labor and Employment Law*, 48 UCLA L. REV. 519, 526–35 (2001) (describing the late-nineteenth-century shift toward “scientific management” of work by centralizing information and control in the employer rather than skilled employees and their organizations).

status-based relationship.⁴⁵ The American employment relationship thus became defined as “at will”; that is, terminable by either party for any reason.⁴⁶

During the first several decades of the 1900s, the customs and practices of employment also evolved. Large corporations, in need of a more stable source of labor, increasingly adopted “internal labor markets.”⁴⁷ Under this system, employers generally filled positions via promotion or transfer from within the company. Internal rules and procedures, rather than market dynamics, began to characterize the experience of employment.⁴⁸

In the 1930s, New Deal legislation effected major changes in the legal form of employment by attaching a host of social welfare benefits to the institution. The Fair Labor Standards Act promised covered employees a minimum wage and overtime pay.⁴⁹ The National Labor Relations Act offered covered employees the right to organize and collectively bargain, and labor unions used their economic power to improve working conditions through contract, providing represented workers health insurance, seniority protections, regular raises and promotions, disability pay, pensions, and more.⁵⁰ Later, mid-century movements for social change similarly mobilized to affix protections to the employment relationship. Title VII of the Civil Rights Act and other anti-discrimination laws assured employees freedom from status-based discrimination.⁵¹

For much of the 1900s, this complex mix of law, internal rules and practices, contractual obligations, social norms, and psychological expectations came to define the social meaning of employment. This “standard employment relationship,” as scholars have named it, became the norm for professionals, white collar workers, and many working-class White men.⁵² Men of color and women, particularly women of color and poor women, were less likely to have access to

45. Katherine V.W. Stone, *Dismissal Law in the United States: The Past and Present of At-Will Employment* 1, 3 (UCLA Sch. of L., Research Paper No. 09-03, 2009), <https://ssrn.com/abstract=1342667> [<https://perma.cc/NLG6-ZP46>] (“In the latter half of the 19th century, employment contracts for an indefinite term became commonplace.”).

46. *Id.* at 1.

47. Stone, *supra* note 44, at 526–35 (describing the growth of internal labor markets as part of a larger effort to “redesign[] the production process” to enhance management control).

48. *Id.* at 533.

49. See Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201–219.

50. See National Labor Relations Act of 1935 (Wagner Act), 29 U.S.C. §§ 151–169.

51. See Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e–2000e-17 (prohibiting discrimination on the basis of race, color, religion, sex, or national origin); Equal Pay Act of 1963, 29 U.S.C. § 206(d) (prohibiting sex-based wage discrimination between coworkers who perform jobs that require substantially equal skill, effort, and responsibility); Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621–634 (prohibiting discrimination against persons age forty and older).

52. Stone, *supra* note 44, at 573; see Judy Fudge, *The Future of the Standard Employment Relationship: Labour Law, New Institutional Economics and Old Power Resource Theory*, 59 J. INDUS. RELS. 374, 379 (2017) (“Gender and racial ideologies . . . give rise to labour institutions such as job labelling, labour market segments, internal labour markets and glass ceilings that perpetuate discrimination against women and certain racial groups.”); Jeffrey Helgeson, *American Labor and Working Class History, 1900–1945*, OXFORD RSCH. ENCYCLOPEDIAS: AM. HIST. (Aug. 31, 2016), <https://doi.org/10.1093/acrefore/9780199329175.013.330> [<https://perma.cc/N5VJ-N37X>].

these types of jobs, and the inequitable distribution of them was a major source of racialized and gendered economic inequality.⁵³ Yet, on the whole, this way of organizing work had powerful equalizing effects. During this period, as long as one person in a household had this kind of job, that alone was often sufficient to ensure the family economic stability over the life course.⁵⁴ Working in a standard employment relationship meant an expectation of lifetime employment, regular raises and promotions, health and welfare benefits, economic security, and social citizenship.⁵⁵

Beginning in the late 1970s and early 1980s, however, this standard employment relationship began to falter. For a host of reasons—a lengthy recession, changed political economic commitments, deunionization, international competition, and more—corporations began insisting that employment was too expensive.⁵⁶ Massive waves of layoffs, union busting, regressive bargaining, deskilling, and offshoring of work followed.⁵⁷

As the standard employment relationship declined, a range of non-standard arrangements began to fill the vacuum. Staffing agencies emerged, promoting temp work.⁵⁸ Part-time, on-call, and just-in-time scheduling became more common.⁵⁹ Large companies increasingly subcontracted their peripheral operations. This “fissuring” of corporate and worker relationships meant that more workers were employed by undercapitalized operations in which unfair and illegal labor practices tended to flourish.⁶⁰

While some of these changes have simply resulted in less employee-friendly employment, others challenge the centrality of the form entirely. Independent contracting has long existed as distinct from employment, but historically, its use was relatively circumscribed by law, practice, and cultural sensibility.⁶¹

53. *Id.*

54. Steven Ruggles, *Patriarchy, Power, and Pay: The Transformation of American Families, 1800–2015*, 52 DEMOGRAPHY 1797, 1801–03 (2015) (describing how the growth in economic opportunity for men in the 1900s led to the rise of male-breadwinner families and economically independent households).

55. Stone, *supra* note 44, at 532–35 (describing efforts to encourage employee-firm attachment during the early-to-mid-twentieth century).

56. ERIN HATTON, *THE TEMP ECONOMY: FROM KELLY GIRLS TO PERMATEMPs IN POSTWAR AMERICA* 5–6, 49–81 (2011).

57. *See id.* at 81–105; Stone, *supra* note 44, at 532, 539–49.

58. *See* HATTON, *supra* note 56, at 49–81 (describing early efforts by staffing agencies to influence management perceptions about the value of permanent employees).

59. KATHERINE V.W. STONE, *FROM WIDGETS TO DIGITS: EMPLOYMENT REGULATION FOR THE CHANGING WORKPLACE* 69 (2004); Stone, *supra* note 44, at 540, 549; DAVID WEIL, *THE FISSURED WORKPLACE* 271–72 (2014).

60. WEIL, *supra* note 59, at 8–26 (explaining that franchising, subcontracting, and supply chains have created a “fissured” workplace where, rather than having a clearly defined employer-employee relationship, terms of employment for workers are often dictated by multiple organizations using opaque processes).

61. *See* John A. Pearce II & Jonathan P. Silva, *The Future of Independent Contractors and Their Status as Non-Employees: Moving on from a Common Law Standard*, 14 HASTINGS BUS. L.J. 1, 5–6 (2018); WEIL, *supra* note 59, at 24 (describing why the employment relationship was thought to confer

Employment was presumed for most workers.⁶² Today, though, independent contracting (also referred to as freelance work, 1099 work, or gig work) proliferates in new and unexpected ways. In other words, while employment still remains the dominant form of organizing market work today, its future is contested and uncertain.

B. Automation and Labor Contracts

As noted above, the phrase the “the future of work”—much like “the labor question” of a century prior⁶³—contains multitudes. Across conversations, however, the future of work is consistently imagined to include two major material changes in how we perform market work: (1) a dramatic increase in the automation of work tasks currently performed by human beings; and (2) a radical reduction in formal employment relationships, to be replaced by various forms of labor contracting, whether traditional independent contracting or platform-mediated “gig” work.⁶⁴ Here, I briefly describe how these two innovations are often conceptualized as potentially working together to displace longer-term employment relationships, for better or for worse.

Automation—particularly through advances in robotics and artificial intelligence—is expected to displace human labor across a host of industries and occupations. While previous waves of technological change largely affected manual labor, this wave augurs a displacement of white-collar jobs too, from journalism to legal practice.⁶⁵

Work automation is expected to increase efficiency and potentially to improve job quality, at least for some, by automating more rote, unpleasant, and time-consuming tasks.⁶⁶ At the same time, it is also expected to produce major increases in “technological unemployment.”⁶⁷ Predictions range from optimistic to dire. The

competitive advantage by enabling companies to reach economies of scale until the mid-to-late-twentieth century).

62. See WEIL, *supra* note 59, at 3–4 (in the mid-1900s, the largest companies in the United States directly employed vast workforces). Prior to the passage of legislation tying social welfare benefits to employment status, the issue of classification of workers as independent contractors rather than employees was generally much less socially relevant. See Pearce & Silva, *supra* note 61, at 5–7.

63. See Diana S. Reddy, “*There Is No Such Thing as an Illegal Strike*”: *Reconceptualizing the Strike in Law and Political Economy*, 130 YALE L.J.F. 421, 429–30 (2021).

64. See Schlogl, Weiss & Prainsack, *supra* note 6, at 315–16.

65. See, e.g., *Robots Stole Blue Collar Jobs, Now AI Is Coming for White Collar Workers*, VOA (Jan. 2, 2020), https://www.voanews.com/a/usa_all-about-america_robots-stole-blue-collar-jobs-now-ai-coming-white-collar-workers/6182004.html [<https://perma.cc/ZMU3-EZT5>].

66. See, e.g., Louis Hyman, Opinion, *It’s Not the End of Work. It’s the End of Boring Work.*, N.Y. TIMES (Apr. 22, 2023), <https://www.nytimes.com/2023/04/22/opinion/jobs-ai-chatgpt.html> [<https://perma.cc/YN8M-TV9D>] (“Instead of eliminating many white-collar jobs altogether, as people are understandably worried it will do, [artificial intelligence] has the ability to do something much more powerful: to eliminate what’s boring about those jobs, freeing us up to be more stimulated, more creative and more human in our work.”).

67. See JOHN MAYNARD KEYNES, *Economic Possibilities for Our Grandchildren*, in ESSAYS IN PERSUASION 358, 364 (1963) (using the term “technological unemployment” to refer to the job losses

optimistic view suggests that, as in technological revolutions prior, jobs in certain industries will be lost, but jobs in other industries will be created.⁶⁸ The dire view suggests that automation will displace 50 percent of American jobs and as many as two-thirds of jobs in developing countries within the next few decades.⁶⁹

When it comes to how human labor will be organized in the future, the most common prediction is a major decline in juridical employment relationships, supplanted by various forms of non-standard labor.⁷⁰ To some extent, these expected changes in the organization of work are associated with the rise of the “gig” (or sharing, or platform) economy. Platforms allow large, complex projects to be broken down into subcomponents, by task over space and time. These subcomponents tasks can be distributed among many different people, arguably increasing productivity and flexibility.⁷¹ This shift in labor practices is not solely a result of platforms, though—it also builds on practices developed over the past several decades. As noted above, many workers today have increasingly attenuated relationships with the organizations that structure their lives.⁷² In that way, too, work has become less of a relationship and more of a brief networked connection.

that result from the development of technology that can perform tasks previously performed by humans (emphasis removed)).

68. ROLAND BERGER, THINK ACT: THE INDUSTRIE 4.0 TRANSITION QUANTIFIED 15 (2016), https://www.rolandberger.com/publications/publication_pdf/roland_berger_industry_40_20160609.pdf [<https://perma.cc/RDV4-LAMC>] (predicting a loss of 8.3 million jobs in industry, but the growth of ten million jobs in services within Western Europe by 2035); *see also* JOHN HAWKSWORTH, RICHARD BERRIMAN & SALONI GOEL, PWC, WILL ROBOTS REALLY STEAL OUR JOBS? AN INTERNATIONAL ANALYSIS OF THE POTENTIAL LONG TERM IMPACT OF AUTOMATION 2 (2018) <https://www.pwc.co.uk/economic-services/assets/international-impact-of-automation-feb-2018.pdf> [<https://perma.cc/J8H9-735Z>] (“[A]ny job losses from automation are likely to be broadly offset in the long run by new jobs created as a result of the larger and wealthier economy made possible by these new technologies.”); DAVID KUCERA, INT’L LABOUR OFF., NEW AUTOMATION TECHNOLOGIES AND JOB CREATION AND DESTRUCTION DYNAMICS 2 (2017), https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_emp/documents/publication/wcms_553682.pdf [<https://perma.cc/EU6D-TQVR>] (noting that job loss due to automation is “considerably overestimated”).

69. *Compare* Carl Benedikt Frey & Michael A. Osborne, *The Future of Employment: How Susceptible Are Jobs to Computerisation?*, 114 TECH. FORECASTING & SOC. CHANGE 254 (2017) (noting range of predictions), *and* WORLD BANK GRP., WORLD DEVELOPMENT REPORT 2016: DIGITAL DIVIDENDS (2016), <https://documents1.worldbank.org/curated/en/896971468194972881/pdf/102725-PUB-Replacement-PUBLIC.pdf> [<https://perma.cc/VL9T-MEG5>] (same), *with* Thereza Balliester & Adam Elsheikhi, *The Future of Work: A Literature Review* (Int’l Labour Off., Working Paper No. 29, 2018), <https://www.ilo.org/publications/future-work-literature-review> [<https://perma.cc/6X9H-VGHW>] (same).

70. Balliester & Elsheikhi, *supra* note 69, at 19.

71. *See generally* RAVIN JESUTHASAN & JOHN W. BOUDREAU, WORK WITHOUT JOBS: HOW TO REBOOT YOUR ORGANIZATION’S WORK OPERATING SYSTEM (2022) (arguing that organizations need to move beyond rigid job descriptions to create more flexible, adaptable work arrangements based on skills and tasks, rather than pre-defined roles).

72. WEIL, *supra* note 59, at 8–26 (explaining that franchising, subcontracting, and supply chains have created a “fissured” workplace where, rather than having a clearly-defined employer-employee relationship, terms of employment for workers are often dictated by multiple organizations using opaque processes).

Just as with automation, empirical predictions vary as to the magnitude of expected changes in work's organization. Exemplifying one end of this continuum, one article concludes: "[T]he concept of employment itself might be at risk."⁷³ Globally, this already appears to be true. Non-standard employment predominates in much of the Global South.⁷⁴ In many developing countries, 70 percent of the workforce labors in non-standard jobs.⁷⁵

In the United States, reliable data on the scale of these changes can be hard to come by, due both to the private nature of most work agreements and the wide variability of work arrangements, which can make direct comparisons over time difficult.⁷⁶ Currently, many reports suggest that approximately 10 percent of the American labor force is engaged in non-standard work as their sole or primary source of income—a number that some say has held relatively steady since the early 2000s.⁷⁷ But this estimate likely belies a much greater increase in the number of people engaging in *some form* of non-traditional employment. Today, many reports suggest that up to 25 percent of workers engage in *some* amount of non-standard work, even if only to supplement their incomes from more traditional employment.⁷⁸ Moving forward, some scholars expect the proportion of work performed outside of formal employment relationships to grow rapidly. Others think that non-standard work arrangements may have already peaked, intimating that employers may have been unduly optimistic about their ability to coordinate work without the benefit of an employment relationship.⁷⁹

C. Technology, Transaction Costs, and Economic Organization

Why, then, is work changing? What is suddenly producing this upheaval in the way that we have organized production, distribution, and social benefits for over a century?

When it comes to explanations, the literature has long been thin, often criticized for its "technological determinism"—the idea that technological change inevitably leads to social and legal change.⁸⁰ White papers often start and end with

73. Balliester & Elsheikhi, *supra* note 69, at 18–19.

74. *Id.* at 21.

75. Norman V. Loayza, *Informality in the Process of Development and Growth*, 39 WORLD ECON. 1856, 1857 (2016); *see also* Andres Cadena, Susan Lund, Jacques Bughin & James Manyika, *The Productivity Leap*, in ROBOTLUTION: THE FUTURE OF WORK IN LATIN AMERICAN INTEGRATION 4.0, at 104, 110 (2017).

76. *See, e.g.*, Marcela Escobari & Sandy Fernandez, Commentary, *Measuring American Gig Workers Is Difficult, but Essential*, BROOKINGS (July 19, 2018), <https://www.brookings.edu/articles/measuring-american-gig-workers-is-difficult-but-essential/> [<https://perma.cc/NQJ2-UF33>].

77. *How Many Gig Workers Are There?*, GIG ECON. DATA HUB, <https://www.gigeconomydata.org/basics/how-many-gig-workers-are-there> [<https://perma.cc/VZ7R-2HGR>].

78. *Id.*

79. Balliester & Elsheikhi, *supra* note 69, at 18 (noting that “employers may underestimate the magnitude of the managerial demands that comes with [non-standard employment]”).

80. Schlogl, Weiss & Prainsack, *supra* note 6, at 321–22.

the mere fact of new technologies, assuming that technological innovation must inexorably “dictate the structure, contents, and requirements of work,” leaving people with no choice but to adapt.⁸¹ Employers are expected to rapidly adopt efficiency-increasing technologies; workers are expected to accept work as it is offered to them. There is little human agency in this story.

The international development literature broadens the conversation some to discuss labor supply in addition to labor demand. Researchers emphasize that there are reasons why people’s availability for work and interest in work may also be changing: an aging population, variations in birth rates, international migration, climate change, and work-family conflict.⁸² Yet, even these discussions often presume a relatively linear throughline from what is technologically possible to what will eventually occur.

As such, the case for the future of work often remains underdetermined, relying on technological possibility to establish both inevitability and desirability. Within this gap, however, it is the Coasean theorizing of transaction costs that has increasingly come to serve as the analytical glue, linking technological change, economic organization, and the role of law. This is true in academic literature, and it is increasingly true in more public-facing literature as well.

In legal scholarship, scholars across the political divide discuss the changes associated with the future of work as an instantiation of Coasean economics. From the more conservative perspective, law and economics scholars Seth Oranburg and Liya Palagashvili argue that technologies of the sharing economy have reduced transaction costs and have therefore enabled a return to labor markets and away from institutional employment.⁸³ As they put it: “With the reduction in transaction costs, it is becoming more common for firms to rent workers rather than create long-term contracts with them (in a sense, to buy them).”⁸⁴ Employment laws, they argue, now get in the way of a functional labor market. They impose too many costs and encourage regulatory arbitrage.⁸⁵ As for solutions, Oranburg and Palagashvili recommend a radical change in work law to help workers adjust to a future of short-term, flexible work, rather than employment.⁸⁶

It is not just law and economics scholars that invoke Coase, though. Scholars across disciplinary and political divides turn to Coase to fill in the analytical gap, to make sense of the connection between technology and economic organization. Work law scholar Orly Lobel, for instance, has described the socio-legal importance

81. *Id.* at 320.

82. *See* Balliester & Elsheikhi, *supra* note 69, at 4–8.

83. *See* Oranburg & Palagashvili, *supra* note 14, at S220; *see also* MICHAEL C. MUNGER, TOMORROW 3.0: TRANSACTION COSTS AND THE SHARING ECONOMY 71–106 (2018) (arguing that platforms are selling reductions in transaction costs).

84. Oranburg & Palagashvili, *supra* note 14, at S227.

85. *Id.* at S234.

86. *Id.* at S233; Atmore, *supra* note 14, at 890.

of the platform economy as Coasean.⁸⁷ “The current era of the digital platform is moving toward lower transaction costs by cutting out excessive bargaining time,” she writes.⁸⁸ “As efficiencies increase, transaction costs become smaller, and society begins to move closer to the marketplace Coase once envisioned.”⁸⁹

The Coasean framework is also used in many policy documents and public reports. In 2015, Anne-Marie Slaughter invoked Coase in a policy brief for New America on the future of work.⁹⁰ There, she claimed that the drivers of the “new” economy were “technological forces . . . standing Ronald Coase on his head. We used to need firms . . . because of the transaction costs Today, however, the equation is reversed. [T]he transaction costs . . . of having permanent employees are just too high. It is far cheaper just to connect customers and providers, and now we can.”⁹¹ Building on this theme, in 2017 Deloitte Consulting proclaimed a new era in transaction-cost economics.⁹² There, Deloitte Principal Jeff Schwartz opined:

Ronald Coase won his Nobel Prize for telling us in the late 1930s that firms were largely based on transaction costs. Our ability to transact and interact on internet-based platforms has blown away some of our concepts about transaction costs. Work and jobs are being separated from companies because there’s something competing with the traditional corporate organizational form[:] . . . platforms.⁹³

Even the World Bank agrees. In a 2018 report on *The Changing Nature of Work*, it too attributed economic reorganization to technology’s impact on transaction costs.⁹⁴ Coase, the report explained, observed that firms in Detroit grew only so long as it was cheaper for them to complete additional parts of the production process in-house rather than resort to the open market. But today, the report argued, “Free trade agreements and improved infrastructure have reduced the cost of cross-border trade, allowing transactions to take place wherever costs are lower. New technologies have lowered communication costs. As a result, firms are less vertically integrated—managers are outsourcing more tasks to the market.”⁹⁵

To be clear, there are competing explanations for the corporate enthusiasm for reorganizing work. Paramount among them is the liberal or leftist argument that employers are not, in fact, concerned about the transaction costs inherent to economic organization; rather, employers are attempting to shed the *legal* costs of

87. See Orly Lobel, *Coase and the Platform Economy*, in *THE CAMBRIDGE HANDBOOK OF THE LAW OF THE SHARING ECONOMY* 67 (Nestor M. Davidson, Michèle Finck & John J. Infranca eds., 2018).

88. *Id.* at 75.

89. *Id.*

90. Anne-Marie Slaughter, Opinion, *How the Future of Work May Make Many of Us Happier*, HUFFPOST (Mar. 23, 2015), https://www.huffpost.com/entry/future-of-work-happier_b_6453594 [<https://perma.cc/U9ED-5MRE>].

91. *Id.*

92. Schwartz, *supra* note 1.

93. *Id.*

94. WORLD BANK GRP., *supra* note 4, at 36.

95. *Id.*

pro-worker social policy.⁹⁶ This is the regulatory arbitrage argument. From this view, companies are not trying to reduce labor costs through increased economic efficiency. They are trying to reduce labor costs by strategically avoiding the rights, protections, and welfare benefits linked to employment over more than one hundred years of democratic public policymaking.⁹⁷ Proponents of this view also argue that many employers are misclassifying workers as independent contractors while continuing to exercise ongoing control over them, either through technology or more traditional forms of managerial control.⁹⁸ The cost savings come as a result of gaming the system, not economic efficiency.

D. Defining the Stakes

Given employment's centrality to American social, economic, and political organization—it remains the leading institution for obtaining labor, income, health insurance, and more—there is fierce disagreement about the normative implications of these proposed changes in the future of work, as well as the appropriate policy responses.

On one side of this debate are the economic conservatives, techno-optimists, and social mavericks.⁹⁹ For them, the growth of the platform economy and the expanding roles of automation and artificial intelligence are wonderful news. By increasing the efficiency of production, they will increase profitability and convenience, and they will relieve us of the drudgery of unnecessary work.

On the other side of the debate are economic progressives, working-class organizations, and technophobes who emphasize the distributive dangers of this reorganization of production.¹⁰⁰ Again, they contend that employers' enthusiasm for change is not about efficiency at all, but about short-circuiting the social safety net constructed around the institution of employment, through hard-fought political

96. See, e.g., CYNTHIA ESTLUND, *AUTOMATION ANXIETY: WHY AND HOW TO SAVE WORK* 45 (2021) (explaining that labor laws are costly for employers to adhere to, and that they factor into employers' decisions about how to structure their workforce). Other scholars argue that so-called transaction cost "minimization" often entails a shifting of such costs from employers to workers, rather than reducing them in the aggregate. See Martha T. McCluskey, *The Illusion of Efficiency in Workers' Compensation "Reform,"* 50 RUTGERS L. REV. 657, 723–26 (1998) (arguing that workers' compensation reforms presented as reducing transaction costs simply shift costs from employers to injured workers while obscuring this redistribution through efficiency rhetoric).

97. See, e.g., V.B. Dubal, *The Drive to Precarity: A Political History of Work, Regulation & Labor Advocacy in San Francisco's Taxi & Uber Economies*, 38 BERKELEY J. EMP. & LAB. L. 73, 120 (2017). Some of these laws include the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201–219; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e–2000e-17, and the National Labor Relations Act of 1935 (Wagner Act), 29 U.S.C. §§ 151–169.

98. See Jennifer Pinsof, *A New Take on an Old Problem: Employee Misclassification in the Modern Gig-Economy*, 22 MICH. TELECOMMS. & TECH. L. REV. 341, 352–57 (2016) (explaining that gig employers use "new forms of control and supervision").

99. See Alex de Ruyter, Martyn Brown & John Burgess, *Gig Work and the Fourth Industrial Revolution: Conceptual and Regulatory Challenges*, 72 J. INT'L AFFS. 37, 42 (2018).

100. See, e.g., Estlund, *supra* note 96; Dubal, *supra* note 97.

and legal battles over the course of the twentieth century.¹⁰¹ They argue that gig work is less remunerative and more precarious than traditional employment, particularly for low-wage workers and those who have no additional sources of income.¹⁰²

But even this defense is not full-throated. And this should not be surprising, given the fact that American progressives have deep ambivalence about employment as an institution. From this perspective, the inequalities of power built into the employment relationship permit structural economic and political domination. And its modal form—full-time, in person work—has always disadvantaged women, workers with disabilities, and many others.¹⁰³ For those who have ever championed labor republicanism, sought work-life balance, or simply wanted a slower pace of life, their defense of employment as a distributive matter is tempered by the hope that perhaps work could be organized more humanely.

Consistent with the bifurcation of thought about whether this future of work is a grim or hopeful one, recommendations about policy responses tend to be split along political economic lines. For those who believe that the future of work may increase productivity, efficiency, economic inclusion, and work-life balance, the policy emphasis is on liberating this new economy from laws that penalize innovation.¹⁰⁴ This means decentering employment as the default way of organizing human labor. Rather, laws should facilitate automation and labor contracting.¹⁰⁵ To the extent this literature acknowledges that the transitions ahead may impact existing workers, the policy response focuses on “upskilling.”¹⁰⁶ As in previous moments of rapid technological change, the idea here is that as jobs are lost due to efficiency-enhancing technological and economic changes, education and job

101. See, e.g., Pinsof, *supra* note 98, at 353.

102. See, e.g., ALEX LIAO, CASIE ADDISON, ROSIE MENDEZ, VERONICA AVEIS, BRANDON JORDAN, ELIZABETH KENNEDY, FABIOLA MENDIETA-CUAPIO, KIMBERLY PEREYRA MONERO, XAMAYLA ROSE & NICK E. SMITH, OFF. OF THE N.Y.C. PUB. ADVOC., *DISRUPTING THE EXPLOITATION ECONOMY* 7–8 (2022), <https://advocate.nyc.gov/resources/reports/disrupting-the-exploitation-economy-N-kVRbChaRiL.pdf> [<https://perma.cc/7QX6-448M>].

103. App-based transportation and delivery companies, like Uber and Lyft, drew heavily on such arguments when campaigning in support of their California ballot initiative, Proposition 22, in 2020. Proposition 22 was advanced by the companies to override California legislative and judicial attempts to ensure that app-based drivers were classified as employees rather than independent contractors and guaranteed the legal protections of employee status. Lyft, Uber, DoorDash, Instacart, and Postmates collectively spent more than \$205 million campaigning in favor of the Proposition, making it, at that time, the most expensive ballot measure in California history. In their advertisements, the companies argued that gig work enabled people whose lives were incompatible with traditional employment to still engage in profitable work. The Proposition ultimately passed with 59 percent of the vote. See Veena B. Dubal, *Economic Security & the Regulation of Gig Work in California: From AB5 to Proposition 22*, 13 EUR. LAB. L.J. 51 (2022).

104. See, e.g., Atmore, *supra* note 14.

105. See *id.*

106. See, e.g., Daphne Luchtenberg, *The Fourth Industrial Revolution Will Be People Powered*, MCKINSEY & CO. (Jan. 7, 2022), <https://www.mckinsey.com/capabilities/operations/our-insights/the-fourth-industrial-revolution-will-be-people-powered> [<https://perma.cc/E8WK-Y3MV>].

training for the future of work are the best way to protect working families in the long term.¹⁰⁷

In contrast, those who see the future of work as being constructed at the expense of working people focus their policy intervention on broadening and strengthening employment laws. This means updating the definition of “employees” covered by employment laws to be more capacious and cracking down on employers who try to shirk their responsibilities through misclassification.¹⁰⁸ In a partial overlap with more conservative scholars, some working in this vein also argue for decoupling employment from social welfare benefits and our social safety net.¹⁰⁹ But the difference here is in the details. Conservatives argue for portable benefits, for which working people would bear primary responsibility, with or without contribution from those for whom they labor as they are able to negotiate.¹¹⁰ Progressives argue for a reallocation of risk from individuals and companies to the government: universal benefits through the state rather than portable benefits through private contract.¹¹¹

Both sides of this debate frame its stakes in terms of big-picture policy goals. Conservatives champion efficiency and productivity, while progressives center equity and distributional justice. And at the intersection of this Venn diagram is a world in which production is reorganized in accordance with conservative goals, while equitable and distributional issues are addressed by the state in accordance with progressive goals. Only Lobel celebrates this potential interest convergence in her scholarship. “At its best,” she says, these changes in the world of work “will allow individuals to devote more time to social and recreational activities, and public policies can focus on alleviating distributional gaps due to labor market displacement.”¹¹²

Within this conversation, Cynthia Estlund stands out for arguing that market work itself can have value, independent of its rewards. She names three major policy goals for work’s future: “decent remunerative work; a decent income or

107. *Id.*

108. *See, e.g.,* RHINEHART, MCNICHOLAS, POYDOCK & MANGUNDAYAO, *supra* note 27, at 1.

109. *See, e.g.,* Miranda Perry Fleischer & Daniel Hemel, *The Architecture of a Basic Income*, 87 U. CHI. L. REV. 625, 662–63 (2020).

110. *See generally* LIYA PALAGASHVILI & JONATHAN WOLFSON, MERCATUS CTR., FLEXIBLE AND PORTABLE BENEFITS FOR INDEPENDENT WORKERS: FEDERAL POLICY GUIDE 1–7 (2024), <https://www.mercatus.org/research/policy-briefs/flexible-and-portable-benefits-independent-workers-federal-policy-guide> [<https://perma.cc/2P9C-GQL9>] (outlining policy recommendations to create portable benefits for workers including tax-advantaged universal saving accounts, allowing self-employed workers to join association health plans, and allowing workers to use pre-tax dollars to purchase health insurance on the individual market).

111. *See* Fleischer & Hemel, *supra* note 109, at 634–35.

112. ORLY LOBEL, *THE EQUALITY MACHINE: HARNESSING DIGITAL TECHNOLOGY FOR A BRIGHTER, MORE INCLUSIVE FUTURE* 256 (2022); *see also* Orly Lobel, *The Gig Economy & The Future of Employment and Labor Law*, 51 U.S.F. L. REV. 51, 69–71 (2017).

livelihood; and more time for pursuits other than work.”¹¹³ Of these, she notes that her argument for decent work is the most commonly challenged.¹¹⁴ Still, she insists that human work has pro-social benefits, even when not materially necessary. Work has “profound psychic, social, and political benefits even apart from the goods and services it produces and the income it yields,” she argues.¹¹⁵ Yet, even Estlund is reluctant to defend the employment form. “Nineteenth-century artisans and early labor activists fought desperately to resist the wage-labor relationship—which they called ‘wage slavery’—and the subordination and dependency it entailed,” she notes.¹¹⁶ No matter how valuable work is, she concludes, “the fortress of employment is hardly an ideal to defend at all costs.”¹¹⁷

As such, for all the disagreements about the future of work, there is surprisingly little defense of the employment form itself. For conservatives, employment is inefficient. Meanwhile, progressives defend the legal protections attached to employment, but often not the relationship itself. Again, is there anything still to value about the employment relationship?

Given the centrality of the transaction cost framework to current arguments against employment, answering this question first requires revisiting Coase’s foundational depiction of employment as a cost-saving device.

II.

THE NATURE OF THE FIRM AS A THEORY OF EMPLOYMENT

In Part II, I revisit the empirical and analytical bases of Coase’s theory of transaction costs to summarize, historicize, and challenge them. Too often forgotten within both the law and economics and work law canons is the fact that Coase’s theory of transaction costs originated as a theory of work law, an attempt to explain the *employment* relationship itself. Yet Coase was not a work law scholar, and his empirical studies of work were limited in scope. For all the brilliance of Coase’s insights, then, his analysis of employment was superficial—it neither engaged with the complicated history of the legal form nor acknowledged the lived reality of what it was on its way to becoming during the twentieth century. Coase did not reckon with the philosophical question of how to distinguish legitimate economic innovation from problematic legal coercion, nor did he consider how the social realities of employment might differ from its technical legal definition. In other words, Coase mis-specified his object of inquiry, and as I show below, the analysis that followed was necessarily incomplete.

113. Estlund, *Three Big Ideas*, *supra* note 15, at 3; *see also* Estlund, *Automation and Employment Law*, *supra* note 15, at 275–83 (exploring the potential implications of a drastic decline in human labor for individuals and society).

114. *See* Estlund, *Three Big Ideas*, *supra* note 15, at 3.

115. ESTLUND, *supra* note 96, at 19.

116. *Id.* at 122.

117. *Id.*

A. Coase's Theory of the Firm

In 1937, Ronald Coase, a young British economist then only five years out of college, published an article entitled "The Nature of the Firm."¹¹⁸ Based on his undergraduate work and supplemented by research conducted in American factories in late 1931 and early 1932, the essay advanced an economic theory for why "firms" continued to exist within market society: transaction costs.¹¹⁹ It took time and effort, Coase argued, to find people to transact with, to negotiate the terms, and to enforce any resulting agreements. As a result, he claimed that economic actors were incentivized to structure their transactions in a way that minimized transaction costs. Twenty-three years later, in "The Problem of Social Cost," Coase extended his theorizing to the field of law. Here, he claimed that in a world without any transaction costs, how the law allocated rights and responsibilities, at least as to economic matters, would be largely irrelevant. This is because parties could costlessly bargain to whatever allocation of rights and responsibilities best served their purposes. But in the real world, he emphasized, there would always be transaction costs, and for that reason, the initial allocation of legal rights mattered a great deal.¹²⁰ Given this background reality, Coase proposed devising default legal rules that reduced transaction costs to make it easier for parties to negotiate as needed to the most efficient allocation.

Between these two pieces of scholarship, the importance of Coase's insights is hard to overstate. His theories prompted the development of two entirely new academic fields—institutional economics within sociology and economics departments, and law and economics within law schools.¹²¹ He went on to receive the Nobel Memorial Prize in Economic Sciences based on the contributions of those two essays.¹²² And he remains one of the most influential economic thinkers of all time.

Despite the broad influence of Coase's ideas, the original socio-legal context in which he first hypothesized and developed his theory is not well known. In a testament to the importance of titles, "The Nature of the Firm" is often assumed to be about the law and economic efficiency of business management and organization. But this is not the case; rather, Coase's article focused on employment. In Coase's own words, he treated "the employer-employee relationship as the archetype of the firm."¹²³ He wanted to understand why

118. STEVEN G. MEDEMA, RONALD H. COASE 3–4 (1994).

119. *Id.*

120. See R.H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1, 15, 17 (1960).

121. MEDEMA, *supra* note 118, at 9–12.

122. *Id.*

123. R.H. Coase, *The Nature of the Firm: Influence*, in THE NATURE OF THE FIRM: ORIGINS, EVOLUTION, AND DEVELOPMENT 61, 64 (Oliver E. Williamson & Sidney G. Winter eds., 1993). From a sociology of knowledge perspective, it is worth emphasizing that Coase, when writing in the 1930s, simply presumed that the most obvious and noteworthy feature of the firm was its use of collective labor power. By the 1960s to '70s, that choice seemed strange to Coase; he later called "the use of the employer-employee relationship as the archetype of the firm" one of the main weaknesses of the article.

employment—as a social, legal, and economic form—existed at all when labor could simply be procured by contract.¹²⁴

Coase's answer to this question was a functionalist one. Coase argued that employment exists because it serves an economic purpose. Namely, he argued, it helps reduce transaction costs. Here, he challenged standard economic assumptions about a costless market. "In order to carry out a market transaction," Coase argued, "it is necessary to discover who it is that one wishes to deal with, . . . to conduct negotiations leading up to a bargain, to draw up the contract, to undertake the inspection needed to make sure that the terms of the contract are being observed, and so on."¹²⁵ These costs might vary based on the type of transaction people wished to engage in. When a transaction is particularly complicated, uncertain, or ongoing, its costs will likely be higher. In such circumstances, Coase argued that a "firm"—that is, an employment relationship—would emerge.¹²⁶ This solution, he said, "would be adopted whenever the administrative costs of the firm were less than the costs of the market transactions . . . and the gains which would result from the rearrangement of activities greater than the firm's costs of organising them."¹²⁷

According to Coase, employment's efficiency arose from its legal structure. Based on a then-leading treatise on "The Law of Master and Servant,"¹²⁸ he concluded that the defining legal characteristic of employment was employers' "right to control" employees.¹²⁹ The "fact of direction," he said, "is the essence of the legal concept of 'employer and employee.'"¹³⁰ For Coase, the advantage of

Id.; see also HATTON, *supra* note 56, at 134–37 (arguing that the temp industry of the mid-twentieth century sought to shift beliefs about value-production within firms, from the view that labor created value to the view that management created value and labor was a cost to be minimized).

124. Coase, *supra* note 18, at 390–91. As discussed below, these two socio-legal forms for providing and compensating human labor—employment, on the one hand, and contract work on the other—remain the two leading ways in which work is structured today. Employment refers to a particular legal form that interfaces with contract law but is also separate from it. Whether or not someone is an employee depends on whether they meet the legal standard for "employee" status and not on the parties' intent. At common law, the test for whether someone was an employee was the "right to control" test; today, different legal regimes often use different tests. If a worker does not satisfy the test for employee status because of the worker's relative independence from the hiring party, they are considered an independent contractor. Independent contractors are excluded from the vast majority of the laws designed to protect employees: anti-discrimination laws, worker health and safety laws, labor laws, workers compensation laws, and more. Independent contractors receive 1099 tax forms, rather than W-2s. Independent contractors are sometimes referred to as freelancers or contract workers.

125. Coase, *supra* note 120, at 15.

126. *Id.* at 17.

127. *Id.*

128. Coase, *supra* note 18, at 404; see also FRANCIS RALEIGH BATT, *THE LAW OF MASTER AND SERVANT* (2d ed. 1933).

129. Coase, *supra* note 18, at 404. As discussed, *infra*, the "right of control" remains the legal definition of who constitutes an employee.

130. *Id.* at 403 ("We can best approach the question of what constitutes a firm . . . by considering the legal relationship normally called that of 'master and servant' or 'employer and employee.'").

employment for employers¹³¹ was that they were able to secure and direct workers on an ongoing basis, without having to constantly renegotiate the terms of a contract. As he put it, “it is this right of control . . . of being entitled to tell the servant when to work (within the hours of service) and when not to work, and what work to do and how to do it (within the terms of such service)” that made employment more efficient than contracting.¹³² As Oliver Williamson, the co-founder of institutional economics, would later put it, economic organization could be achieved through hierarchy or through markets.¹³³ Under certain conditions, Coase argued, hierarchy was more efficient.

B. What Coase Got Wrong About Employment

For a host of reasons, work law scholars have paid relatively limited attention to Coase’s theory of employment (as noted above, his insights have been incorporated into corporate law and law and economics much more than into work law and law and political economy).¹³⁴ As such, while many scholars have elaborated on, tested, and challenged Coase’s insights, few have done so from a work law or labor history perspective. Re-grounding Coase within the context of employment permits a more searching examination of his reasoning. Coase made two primary claims about the employment relationship: (1) Employment exists because it can reduce transaction costs and increase efficiency relative to the market; and (2) the distinguishing characteristic of the employment relationship, and the source of these efficiencies, is an employer’s legal right to control. But there are major historical, normative, legal, and sociological challenges to both of these contentions.

As to the first point, the employment relationship certainly did not originate in concerns about efficiency. Employment law developed directly from master and servant law, which itself originated in pre-industrial forms of economic organization that predated the move “from Status to Contract.”¹³⁵ Servants were part of a household, and like children and wives, they were expected to obey their master.¹³⁶ Coase’s imagining of business men “constantly experimenting,

131. Notably, Coase did not discuss whether, and if so why, the form was preferable for employees, but presumably his answer would have been the same—that employees similarly benefit from an ongoing legal relationship that does not require constant negotiation of terms.

132. *Id.* at 404.

133. See generally OLIVER E. WILLIAMSON, *MARKETS AND HIERARCHIES, ANALYSIS AND ANTITRUST IMPLICATIONS: A STUDY IN THE ECONOMICS OF INTERNAL ORGANIZATION* (1975).

134. Until recently, scholars in the law and economics tradition and the labor and employment law tradition were often seen as writing within distinct normative frameworks and did not regularly engage in meaningful dialogue. See, e.g., Diana S. Reddy, *After the Law of Apolitical Economy: Reclaiming the Normative Stakes of Labor Unions*, 132 YALE L.J. 1391, 1426–27 (2023); Cynthia Estlund, *Reflections on the Declining Prestige of American Labor Law Scholarship*, 23 COMPAR. LAB. L. & POL’Y J. 789, 792–95 (2002).

135. See HENRY SUMNER MAINE, *ANCIENT LAW* 170 (Transaction Publishers 2002) (1866) (emphasis removed).

136. STEINFELD, *supra* note 16, at 154.

controlling more or less” in order to maintain perfect equilibrium between in-house employment and contracting for labor could not be more anachronistic when it comes to development of the legal form.¹³⁷

As a historical matter, the relationship between master and servant was one of formal inequality and hierarchical domination, not economic calibration. Master and servant law accordingly guaranteed employers the right to control much more than employees’ work.¹³⁸ Well into the 1800s, servants were often legally restricted from exiting the relationship; the law permitted servants to be prosecuted, to face fines, and to be imprisoned if they abandoned their posts without legally sufficient cause.¹³⁹ Employees owed their employers duties of obedience and loyalty.¹⁴⁰ And employers were permitted to use corporal punishment to enforce them: They could “cuff[],” slap, strike, or even beat their servants.¹⁴¹ Servants, on the other hand, could not strike their masters.¹⁴²

Of course, Coase never framed his account of employment as a historical one.¹⁴³ And given his functionalist approach, it is perhaps unfair to expect historical explication. Rather than an origin story, Coase’s account might better be treated as an examination of why employment *continued* into the 1900s and why different firms engaged in different amounts of it. Why in the twentieth century did modern corporations continue to turn to employment rather than to contracting, when other relationships had (at least in theory) moved from status to contract?¹⁴⁴

137. Coase, *supra* note 18, at 404.

138. See Lea VanderVelde, *Servitude and Captivity in the Common Law of Master-Servant: Judicial Interpretations of the Thirteenth Amendment’s Labor Vision Immediately After Its Enactment*, 27 WM. & MARY BILL RTS. J. 1079, 1085–86 (2019).

139. STEINFELD, *supra* note 16, at 113.

140. VanderVelde, *supra* note 138, at 1085–86.

141. See Lea VanderVelde, *The Last Legally Beaten Servant in America: From Compulsion to Coercion in the American Workplace*, 39 SEATTLE U. L. REV. 727, 728–31 (2016).

142. See *id.*

143. Coase, *supra* note 18, at 403–04.

144. Sir Henry Maine famously depicted societal evolution from ancient to modern civilization, as characterized by a transition “from Status to Contract.” MAINE, *supra* note 135, at 170 (emphasis removed). In pre-modern societies, the roles, responsibilities, and general possibilities of people’s lives were largely allocated based on status categories assigned at birth: woman, man, serf, lord, slave, owner. *Id.* at 113–170. In modern societies, however, he argued that people had greater freedom to choose for themselves what work to do, what familial relationships to enter into, and the like. *Id.* at 305–307. He further argued that law had facilitated that evolution. *Id.* While law historically served to define and police status roles, modern law facilitated freedom of contract. *Id.* Critics of Maine, in turn, have argued that he overstated the extent of such freedom against a backdrop of economic inequality. See, e.g., Katharina Isabel Schmidt, *Henry Maine’s “Modern Law”: From Status to Contract and Back Again?*, 65 AM. J. COMPAR. L. 145, 160 (2017) (“Ancient Law celebrated the dual English ‘foundational myth’ of liberty and individualism . . .”). Some have also argued that Maine failed to recognize the power of status roles to protect groups and individuals from domination, to confer meaning, and to facilitate social coordination. See, e.g., *id.* at 180 (“While a formal contract normally delineates the rights and obligations between [people] . . . the actual content of the relationship is determined by the trust and power dynamics that develop between the parties over time.”). Perhaps a better use of Maine is to note that many social identities, activities, and relationships have aspects of both status and contract about them, and that societies vary and change over time in how they strike that balance. The modern employment relationship is very much a hybrid: part status and part contract.

Even with his question reformulated, though, the fact that employment originated as a system of domination¹⁴⁵ suggests important normative and analytical oversights in Coase's theorizing. It is true that at the time he wrote, master and servant law was no longer the semifeudal relationship it once was. In the United States, the Thirteenth Amendment had sanctified workers' fundamental right to quit, and corporal punishment had been outlawed for even longer.¹⁴⁶ Employment was moving toward greater juridical equality. Still, employment was also not yet what it is today. Coase wrote *The Nature of the Firm* in the early 1930s, and the piece was published in 1937. That same year the U.S. Supreme Court finally reversed its *Lochner*-Era treatment of economic legislation by upholding the constitutionality of minimum wage legislation.¹⁴⁷ The modern employment relationship, which today is so often associated with worker protection rather than employer domination, was just beginning to evolve. More specifically, workers and policymakers were forcing its evolution, by emphasizing all that was wrong with the very form Coase was celebrating.

Coase avoided these normative questions in his account of the benefits of employment over contract.¹⁴⁸ But he was certainly aware that the moral acceptability of different forms of labor extraction had been—and continued to be—contested. An employee, he explained, “agrees to obey the directions of an entrepreneur *within certain limits*.”¹⁴⁹ He noted that employment law might go even further and allow the entrepreneur unlimited domination. This, he reflected blandly, would be a form of “voluntary slavery.”¹⁵⁰ Coase then explained that a legal scholar had informed him that, under current law, such a contract would probably be unenforceable.¹⁵¹

Coase also avoided the question of whether employment was an economic advantage or a legal one. Just as scholars today dispute whether the cost savings of independent contracting over employment is true economic efficiency or

145. See JEAN-CHRISTIAN VINEL, *THE EMPLOYEE: A POLITICAL HISTORY* 2–3 (2013).

146. *Pollock v. Williams*, 322 U.S. 4, 17 (1944) (“The undoubted aim of the Thirteenth Amendment as implemented by the Antipeonage Act was not merely to end slavery but to maintain a system of completely free and voluntary labor throughout the United States.”); STEINFELD, *supra* note 16, at 114.

147. See *W. Coast Hotel Co. v. Parrish*, 300 U.S. 379, 400 (1937) (upholding the constitutionality of state minimum wage legislation and overturning *Adkins v. Children's Hospital*). This decision is commonly considered the ending point of the *Lochner* Era. See, e.g., Barry Cushman, *Teaching the Lochner Era*, 62 ST. LOUIS U. L.J. 537, 565 (2018).

148. Spot contracting is the term Coase and other economists of the time used to refer to the procurement of labor for specific tasks or limited time periods, as needed and on demand, as opposed to through employment. Before the rise of platforms, the closest modern analog would have been the work of day laborers. See generally Abel Valenzuela, Jr., *Day Labor Work*, 29 ANN. REV. SOCIO. 307, 310–15 (2003) (describing how day laborers gather at informal hiring sites or worker centers where employers hire them for short-term jobs, primarily in construction, landscaping, and domestic work, with wages negotiated on the spot and paid in cash).

149. Coase, *supra* note 18, at 391.

150. *Id.* at 391 n.2.

151. *Id.*

manipulated legal advantage, the line was blurred then too. According to Coase, employment was more economically efficient *because* of the legal entitlements attached to it—the legal rule constructed the economic advantage. But whether a practice is considered legal or economic often turns on social meaning, a difference between legal forms naturalized so as to appear innate and legal forms that remain contested.¹⁵² By the early twentieth century, the law of employment had been naturalized, rendering corporations’ decision to enjoy its benefits a matter of economic efficiency rather than value judgment. Coase therefore never had to ask whether the human costs of the employment relationship justified its economic returns.

But Coase’s account is equally limited by its thin conceptualization of employment; drawing from one legal treatise, Coase treated the right to control as the sole defining characteristic of employee status. Coase underemphasized the normative stakes of this right, but ironically, he may have also overemphasized its factual and analytical importance. As discussed in greater detail in Part IV, although “the right to control” test remains the leading legal test of employee status, few scholars are happy with it. Historically, the right to control was the standard for employers’ vicarious liability for the wrongs of their servants.¹⁵³ As a legal form, the right to control was then (and still is today) just one of hundreds of legal principles that constitute the relationship between employee and employer.¹⁵⁴ And as a sociological matter, employment has always been characterized as much by institutional norms and social practices as it has been by law.¹⁵⁵ To distinguish employment from labor contracts based solely on this one criterion is to miss much of the story.

C. The Coasean Legacy

For all the limitations of Coase’s early theorizing about the nature of employment and its putative advantages, Coase’s empirical approach might have

152. For example, corporations, as a legal form that aggregates capital and grants it advantages, are often naturalized, while unions, as a legal form that aggregates workers and grants them certain advantages, are often treated as a legally granted monopoly that can interfere with the operation of a free market. See, e.g., F.A. HAYEK, *LAW, LEGISLATION AND LIBERTY, VOLUME 3: THE POLITICAL ORDER OF A FREE PEOPLE* 83, 89–90 (1979); F.A. HAYEK, *THE CONSTITUTION OF LIBERTY* 266–84 (1960).

153. Michael C. Harper, *Using the Anglo-American Respondeat Superior Principle to Assign Responsibility for Worker Statutory Benefits and Protections*, 18 WASH. U. GLOB. STUD. L. REV. 161, 166–71 (2019).

154. See, e.g., MARK A. ROTHSTEIN, CHARLES B. CRAVER, L. CAMILLE HÉBERT, ORLY LOBEL, S. ELIZABETH MALLOY, MARCIA L. MCCORMICK & SANDRA F. SPERINO, *EMPLOYMENT LAW* (6th ed. 2019) (outlining in two volumes the law of employment).

155. See, e.g., Michael J. Zimmer, *What Happened to the “Standard Employment Contract” and What Are Some Countries Doing About It?*, JOTWELL: WORKLAW (Oct. 1, 2013), <https://worklaw.jotwell.com/what-happened-to-the-standard-employment-contract-and-what-are-some-countries-doing-about-it/> [https://perma.cc/KAG8-2MKR] (reviewing RETHINKING WORKPLACE REGULATION: BEYOND THE STANDARD CONTRACT OF EMPLOYMENT (Katherine V.W. Stone & Harry Arthurs eds., 2013)) (explaining that in the United States, the standard employment relationship was as much about “mutual expectations” as law).

allowed for a rapid course correction, a recognition that employment was more complicated than the “right to control” and that it offered benefits beyond cost-reduction. Coase was an empiricist who sought to understand how the real world complicated economic theory. He wanted transaction-cost economics to examine all the ways in which real-world human messiness affected economic behavior.

Within legal academia, however, Coase’s legacy has often been the opposite of what he intended. Today, Coase is most remembered for his provocative counterfactual about the role of law. In *The Problem of Social Cost*, written decades after *The Nature of the Firm*, Coase emphasized the importance of transaction costs by describing a world without them: a world in which mutually beneficial exchange was instantaneous and frictionless. In such a world, he argued, the initial allocation of property rights—who got what according to the law—would not matter, because people could instantly reallocate consistent with their preferences.¹⁵⁶

Coase’s point was that this world did *not* exist. Because transacting would always have costs, initial legal allocations usually mattered a great deal. But this point often became lost in translation. Increasingly, Coase’s imaginary world transformed from a pedagogical tool to an ideal and from an ideal to a policy agenda. In turn, transaction costs came to be seen as an impediment to efficient contracting levels, rather than as a fact of life that should be accounted for in institutional design.¹⁵⁷ As law and economics pioneers Robert Cooter and Thomas Ulen put it, the normative Coase theorem (as opposed to a descriptive Coase theorem) is that lawmakers should structure the law “so as to remove the impediments to private agreement.”¹⁵⁸ That is, the law should minimize transaction costs.

Coase recognized this irony. His goal had been to initiate study of the real-world condition of *positive* transaction costs. But he reflected, “This has not been the effect of my article.”¹⁵⁹ Law journals, he noted, have instead concentrated on the so-called Coase Theorem, “a proposition about the world of zero transaction costs.”¹⁶⁰ Coase attributed this divergence to disciplinary priors: “The world of zero transaction costs,” he said, “is the world of modern economic analysis, and

156. Coase, *supra* note 120, at 6–8.

157. See, e.g., Coase, *supra* note 18; see also Gary S. Becker, *A Theory of the Allocation of Time*, 75 ECON. J. 493 (1965); WILLIAMSON, *supra* note 133; Sanford J. Grossman & Oliver D. Hart, *The Costs and Benefits of Ownership: A Theory of Vertical and Lateral Integration*, 94 J. POL. ECON. 691 (1986); WILLIAM M. LANDES & RICHARD A. POSNER, THE ECONOMIC STRUCTURE OF TORT LAW (1987); Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer & Robert W. Vishny, *Law and Finance*, 106 J. POL. ECON. 1113 (1998); Oliver E. Williamson, *Why Law, Economics, and Organization?*, 1 ANN. REV. L. & SOC. SCI. 369 (2005).

158. David M. Driesen & Shubha Ghosh, *The Functions of Transaction Costs: Rethinking Transaction Cost Minimization in a World of Friction*, 47 ARIZ. L. REV. 61, 69 (2005) (quoting ROBERT COOTER & THOMAS ULEN, LAW & ECONOMICS 93 (3d ed. 2000)).

159. R.H. COASE, THE FIRM, THE MARKET, AND THE LAW 15 (1988) (“What my argument does suggest is the need to introduce positive transaction costs explicitly into economic analysis so that we can study the world that exists. This has not been the effect of my article.”).

160. *Id.*

economists therefore feel quite comfortable.”¹⁶¹ Economists did not want to accept the inevitable nature of transaction costs, because in such a world, “current economic analysis [would be] incapable of handling many of the problems to which it purports to give answers.”¹⁶²

Just as Coase emphasized the importance of real-world context in understanding economic behavior, real-world context is arguably also important for understanding Coase and his scholarship. Coase came of age and wrote during a period of radical change within political economy.¹⁶³ His theories can be seen as both reflecting an evolving economic common sense and creating it. Coase once considered himself a socialist.¹⁶⁴ But in college, his views began to change. Coase credited courses in Commerce and Business Administration at the London School of Economics for changing his thinking about markets.¹⁶⁵ Still, in *The Nature of the Firm*, Coase remained open to the idea that non-market coordination could make economic sense.¹⁶⁶ He acknowledged that his theory of transaction costs might justify some state planning: A state, he reflected, is essentially a very large firm with the potential capacity to reduce transaction costs.¹⁶⁷ Consistent with his form of proto-behavioral economics, Coase’s account of transaction costs was descriptive and to some extent agnostic about whether any particular form of economic organization was inherently superior.

As the range of acceptable economic ideas shifted rightward in the mid-late twentieth century, Coase’s normative views evolved in tandem. By the time he wrote *The Problem of Social Cost*, Coase considered himself more ideologically aligned with “free market” conservatives.¹⁶⁸ He had become concerned with failures of government.¹⁶⁹ But this transition was not a one-way process of Coase coming to the discourse. Rather, the discourse also came to Coase. Coase had envisioned an empirical examination of the relationships between transaction costs, economic organization, and legal rules. The burgeoning law and economics movement read into Coase a compelling theory of deregulation. Legal rules and

161. *Id.*

162. *Id.*

163. See Ronald H. Coase: Biographical, NOBEL PRIZE, <https://www.nobelprize.org/prizes/economic-sciences/1991/coase/biographical/> [<https://perma.cc/UD8T-32GL>] (describing how “it was what [Arnold Plant] said in his seminar . . . that was to change my view of the working of the economic system”).

164. R.H. Coase, *The Nature of the Firm: Origin*, 4 J.L., ECON., & ORG. 3, 5 (1988) (“I was at that time a socialist . . .”).

165. R.H. Coase, *The Institutional Structure of Production*, 82 AM. ECON. REV. 713, 714 (1992).

166. See Coase, *supra* note 18, at 388–93.

167. See *id.* at 389 n.3.

168. See R.H. COASE, *Economists and Public Policy*, in ESSAYS ON ECONOMICS AND ECONOMISTS 47, 49–50 (1994) (explaining his growing skepticism of government intervention based on observing regulatory agencies’ frequent failures to improve market outcomes).

169. *Id.*

organizational norms might themselves be transaction costs, demanding minimization.¹⁷⁰

As such, when Coase was awarded the Nobel Prize—decades after the publication of his two most important articles—it arguably said as much about the brilliance of Coase’s insights as it did about the role those insights played within contemporary economic theory. Whereas organizational economics had once been seen as an alternative school of economic thought, one that radically differed from the neoclassical account in its assumptions about human motivation and the role of law, Coase’s theories collapsed the distinction. In explaining firms as an efficient alternative to the market, he paradoxically also redefined the social meaning of the firm—from a socio-legal institution to an efficiency function.

Coase’s personal narrative provides important context for his intellectual inclinations. This is because Coase, by his own words, was someone who felt great discomfort about human interdependence. “I was an only child but although often alone, I was never lonely,” Coase explained in his Nobel Prize biography.¹⁷¹ “When I learnt chess, I was happy to play the role of each player in turn.”¹⁷² Importantly, this was not an idiosyncratic experience from his childhood. Rather, it seems to suggest an enduring worldview. As Coase ultimately reflected:

My mother’s hero was Captain Oates, who, returning with Scott from the South Pole and finding that his illness was hampering the others, told his companions that he was going for a stroll, went out into a blizzard and was never heard of again. I have always felt that I should not be a bother to others but in this I have not always succeeded.¹⁷³

While Coase’s core argument about the efficiencies of the right to control can and should be judged on its own merits, this socio-political and personal context provides an additional lens through which to understand the limited scope of his theorizing about the social embeddedness of transactions. Coase may have been pre-disposed to view the social interactions attendant to economic transactions as costly by nature. But as set forth below, there are alternative perspectives—have always been alternative perspectives—that merit consideration.

D. Taking Coase Seriously

What, then, are we to make of Coase’s claim about twentieth-century employment? Did the institution of employment reduce transaction costs relative to the labor market in early twentieth-century America? If so, was the mechanism the

170. See, e.g., Frank H. Easterbrook & Daniel R. Fischel, *The Corporate Contract*, 89 COLUM. L. REV. 1416, 1420–21 (1989) (arguing corporate law should provide default rules that minimize transaction costs by approximating what parties would have negotiated for themselves); see also Carol M. Rose, *Crystals and Mud in Property Law*, 40 STAN. L. REV. 577, 580–83 (1988) (examining the tension between clear property rules that better reduce transaction costs and vague equitable standards that better promote fairness).

171. *Ronald H. Coase: Biographical*, *supra* note 163.

172. *Id.*

173. *Id.*

economic efficiency of the right to control or the legal subjugation of servants? And what should this all mean for the credibility of neo-Coasean claims about the future of work in the twenty-first century? I return to these questions in greater detail in Part IV, but for now, one point is certain: We need to know more about employment to assess its comparative strengths and weaknesses as a legal form. The story of employment is far more complex than a straight line from control to efficiency vis-à-vis transaction cost minimization.

However we theorize the line between economic efficiency and legal domination, Coase was certainly right that the employment relationship has endured long after many other statuses dissolved into contract. Importantly, the institutionalized employment relationship proliferated throughout the twentieth century, even as the legal nature of employment evolved from one of relational domination to one of partially mediated domination with meaningful benefits.¹⁷⁴ Institutional employment remained far and away the preferred form for securing labor as employees unionized, as minimum wages and overtime protections were enacted, as employers were required by law to take responsibility for the health and safety of the people who labored under their control.¹⁷⁵

As to employment's longevity, some might argue that social practices are sticky, driven by what sociologists call institutional isomorphism—the tendency for people and institutions to do what others do and to continue doing the things they have done before—rather than strategic choice.¹⁷⁶ From this perspective, firms hired employees because that was what was done and what they knew how to do. And this continued even as the institution of employment changed into something quite different than the relationship Coase analyzed.

And yet there is a materiality to the practice of employment which can and should be considered separately from the legal rules that shape it and the cultural frameworks that attempt to make sense of it. As I will argue in Part III, the value of how we work together cannot be fully judged from the perspective of transaction costs; transaction benefits matter too.

III.

TRANSACTION BENEFITS AT WORK

In Part III, I set forth my theory of relational transaction benefits and their importance for economic efficiency, individual well-being, and social solidarity. I also argue that work is a uniquely important source of transaction benefits, at least under the right conditions.

174. See VINEL, *supra* note 145, at 21–27.

175. *Id.*

176. See generally Paul J. DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 AM. SOCIO. REV. 147 (1983) (explaining the sociological theory that organizational forms and practices often do not result from careful cost-benefit analysis but rather from institutional isomorphism).

I start by introducing nascent theorizing of transaction benefits within legal scholarship. Then I consider what classical social theory, economic sociology, behavioral economics, social psychology, and even evolutionary biology have had to say about the social character of work, through the theoretical lens of transaction benefits. From Adam Smith to Émile Durkheim, from studies of factory workers to studies of coffee shop customers, we know that work is a social institution as much as it is an economic one, with the potential for affecting social connectedness, psychological health, familial structure, and even political commitments. To make this more concrete, I detail what work's relational benefits look like at multiple levels of analysis: for workers, customers, firms, and our sociopolitical system. I conclude with some hypotheses about why work may be particularly important when it comes to transaction benefits, and about the role of specific working conditions in creating (or squelching) these benefits.

A. Emergent Theorizing of Transaction Benefits

In the almost ninety years since Coase wrote *The Nature of the Firm*, and in the more than sixty years since he wrote *The Problem of Social Cost*, transaction cost economics has focused almost entirely on just that: costs and the institutional realities making transactions either more or less costly. While economists working within this framework have asked broader questions about the multifaceted relationship between human psychology, institutional environments, and economic activity, the leading theoretical and empirical construct has nonetheless remained unidirectional, focused on how socioeconomic organization can make people and institutions more efficient. How our quest for efficiency shapes our humanity has gotten shorter shift.

In recent years, though, a few scholars have begun to insist that the concept of transaction costs required a more robust theoretical framework: that Coase's exemplar might be just one instantiation of a set of broader phenomena occurring at the intersection of economic activity and social structure. In 1994, legal scholar Neil Komesar briefly suggested that transaction benefits might also exist and should be considered in institutional design.¹⁷⁷ And a handful of economics articles over the years have referenced the idea that there may be benefits, along with costs, attendant to transacting behavior and its organizational forms.¹⁷⁸

Finally, in a 2021 Symposium piece, Yale law professor Daniel Markovits published the first law review article to name the concept of transaction benefits. Markovits started by emphasizing that transaction costs arise out of the processes,

177. NEIL K. KOMESAR, IMPERFECT ALTERNATIVES: CHOOSING INSTITUTIONS IN LAW, ECONOMICS, AND PUBLIC POLICY 106–11 (1994); see also Daniel H. Cole, *Taking Coase Seriously: Neil Komesar on Law's Limits*, 29 LAW & SOC. INQUIRY 261, 265 (2004).

178. See, e.g., K. Blomqvist, K. Kyläheiko & V.-M. Virolainen, *Filling a Gap in Traditional Transaction Cost Economics: Towards Transaction Benefits-Based Analysis*, 79 INT'L J. PROD. ECON. 1, 5–6 (2002) (arguing that firms should consider the potential value that might be created by different forms of economic organization in addition to considering their costs).

interactions, and other activities that accompany economic behavior. These “inevitable frictions,” as he called them, “that attend to human affairs can produce gains as well as losses.”¹⁷⁹ Markovits’s piece named three potential types of transaction benefits: publicity benefits, the capacity of transactional forms and the knowledge they contain to convey important information to the broader public; legitimacy benefits, how the conditions under which transactions are conducted can convey the seriousness or importance of the transaction, increasing the likelihood of compliance; and finally, solidarity benefits, how the social connections and relationships formed through contracting processes might bring people together.¹⁸⁰ The first two, he suggested, did not require fundamental adjustments in the core methodologies or theoretical assumptions of law and economics.¹⁸¹ Solidarity benefits, however, he suggested, might be a bigger threat to the field.¹⁸² As he put it, recognition of solidarity benefits inevitably mean recognizing that “value inheres not in states of affairs but rather in relations among persons.”¹⁸³

Building upon this early and essential scholarship, I focus in this Part on building a theory of relational transaction benefits. In line with but broader than Markovits’s solidarity benefits, the concept of relational transaction benefits draws much of its analytical purchase from the reality that economic behavior is relational, that transactions occur between people. Relational transaction benefits are therefore economic *and* social simultaneously. This is because relationships do not only bind people together socially—they actively enable and enhance economic production and exchange. In other words, economic value inheres in relations among persons too.

In the Sections that follow, I draw from a diverse array of theoretical and empirical scholarship to make my case for the existence and analytical importance of relational transaction benefits. While I show that the concept matters for a range of economic activities, I focus particularly on work. For many of us, transacting in our labor is—by time and monetary value—the primary transaction that we engage in. Moreover, as discussed below, there are reasons to believe that work is a uniquely important source of relational transaction benefits.

B. Work and Social Solidarity in Social Theory

The general lack of attention to the possibility of transaction benefits within law and economics is all the more surprising given that there is no shortage of theoretical foundations for the concept. Classical political economy, classical social theory, and even staunch neoliberal economic theory treat economic behavior generally, and the conditions of work specifically, as constitutive of the social order. In all of these accounts, the value of economic activity is never cabined as purely

179. Daniel Markovits, *Transactions Benefits*, 38 YALE J. ON REGUL. 633, 633 (2021).

180. *Id.*

181. *Id.*

182. *Id.* at 634.

183. *Id.*

economic. Here, I start by synthesizing how theorists from a broad range of fields have connected the way that we work with the quality of our society, and vice versa.

In pre-market societies, the connection between the economic and the social was arguably more readily apparent than it is today. According to Karl Polanyi, one of the founders of economic sociology, a defining characteristic of traditional societies was that economic activities were fully embedded in social relations.¹⁸⁴ The foundational social and economic units of society were often the same. People co-produced and co-consumed via the relationships they were born into: tribe, caste, clan, family.¹⁸⁵ As a result, there was little distinction between economic and noneconomic relationships.¹⁸⁶

Anthropologist Marcel Mauss's work showed that pre-market systems of production and exchange contained both affective and instrumental dimensions.¹⁸⁷ Throughout history and across cultures, Mauss argued, groups engaged in gift-giving practices that were neither singularly altruistic nor purely self-interested.¹⁸⁸ Gift giving, for many societies, involved complicated and regularized practices of reciprocity.¹⁸⁹ There was an expectation of exchange. But the quid pro quo nature of gift giving was at least as much about community building as about value maximization.¹⁹⁰ Mutual indebtedness bonded people together.¹⁹¹

While the turn to modern market society has sometimes been conceptualized as a decoupling of the economic and the social, this was never the claim of classical political economists. Adam Smith, the great champion of markets, celebrated them in part because of their social impact.¹⁹² For him, economics and moral action were connected because economic coordination and exchange led to pro-social

184. KARL POLANYI, *THE GREAT TRANSFORMATION: THE POLITICAL AND ECONOMIC ORIGINS OF OUR TIME* 46–47 (1944) (“[M]an’s economy, as a rule, is submerged in his social relationships. He does not act so as to safeguard his individual interest in the possession of material goods; he acts so as to safeguard his social standing, his social claims, his social assets.”).

185. See KENNETH HIRTH, *THE ORGANIZATION OF ANCIENT ECONOMIES: A GLOBAL PERSPECTIVE* 43–75 (2020) (“In all ancient and premodern societies, the first line of economic support for households came from social networks composed of kinsmen, friends, and social partnerships.”).

186. See *id.*

187. See MAUSS, *supra* note 30; see also POLANYI, *supra* note 184, at 71–80 (1944) (arguing that treating human labor and other fundamentally socially goods as pure market commodities undermines social cohesion).

188. MAUSS, *supra* note 30, at 147, 205.

189. *Id.*

190. *Id.*

191. See, e.g., Alain Marie, *Donating Is a Market (of Debt)*, 4 FIELD ACTIONS SCI. REP. (Special Issue) 109, 111 (2012) (“The gift . . . establishes a long-term bond between ‘creditors’ and ‘debtors.’”); see also Marion Fourcade, *The Imperfect Promise of The Gift*, 11 HUMAN. 208, 209 (2020) (“The Gift can be read as an effort to give interactional and empirical depth to precontractual solidarity, and elaborate on the kinds of practices that forge and give substance to it.”).

192. See generally ADAM SMITH, *AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS* (London, W. Strahan & T. Cadell 1776) (discussing the pro-social benefits of markets, along with their economic benefits); Walter Nord, *Adam Smith and Contemporary Social Exchange Theory*, 32 AM. J. ECON. & SOCIO. 421, 423 (1973) (analyzing Smith’s views about how market exchange impacts social structure and comparing those views to more modern sociological perspectives on exchange).

behavior.¹⁹³ Engaging in cooperative production and mutually beneficial exchange civilized people. As a matter of individual human development, children learned to share through the process of being shared with, and to help others achieve their goals through the process of being helped. Societies, like toddlers, became more peaceful through mutually beneficial interactions.¹⁹⁴ According to Smith and others who championed this view of “doux commerce,” economic coordination and exchange “not only produce[d] economic harmony (the satisfaction of individuals’ desires and needs), they also create[d] social harmony.”¹⁹⁵

Much like classical political economy, classical sociological theory also focused on the mutually constitutive relationship between economy and society. In fact, this was *the* puzzle of modernity—how would society adapt to the rapid technological and economic developments of the era? How would human relationships change amidst these dislocations?

Marx, Durkheim, and Weber—the Big Three of classical sociological thought¹⁹⁶—each addressed different aspects of these questions about economy and society. And notably, they all focused to a greater or lesser extent on the phenomenon of work under modern capitalism. Marx considered the relationship between power, material conditions, and ideology.¹⁹⁷ Durkheim focused on whether (and if so, how) social solidarity could be found within a diverse and differentiated market society.¹⁹⁸ And Weber emphasized culture—that certain societies were predisposed to the social psychological perspective most conducive to material success under capitalism (a deep and unresolvable status anxiety).¹⁹⁹

From this perspective, it is Émile Durkheim who best set forth the theoretical underpinnings for an account of transaction benefits at work. Although he has often been criticized as blind to inequality and conflict, his ideas are perhaps better understood for their normative takeaways than their descriptive accuracy.²⁰⁰

193. See, e.g., Albert O. Hirschman, *Rival Interpretations of Market Society: Civilizing, Destructive, or Feeble?*, 20 J. ECON. LITERATURE 1463, 1465 (1982) (“There is here then the insistent thought that a society where the market assumes a central position for the satisfaction of human wants will produce not only considerable new wealth . . . but would generate . . . a more ‘polished’ human type . . .”).

194. *Id.*

195. Marion Fourcade & Kieran Healy, *Moral Views of Market Society*, 33 ANN. REV. SOCIO. 285, 287 (2007).

196. See, e.g., EDWARD ROYCE, CLASSICAL SOCIAL THEORY AND MODERN SOCIETY: MARX, DURKHEIM, WEBER 1 (2015) (noting the centrality of Marx, Durkheim, and Weber to classical sociological theory).

197. See KARL MARX, ECONOMIC AND PHILOSOPHIC MANUSCRIPTS OF 1844, at 17–74 (Martin Milligan trans., Progress Publishers 1959) (1932).

198. See EMILE DURKHEIM, THE DIVISION OF LABOR IN SOCIETY 51–157 (W.D. Halls trans., The Free Press 1997) (1893) (contrasting “mechanical solidarity” that he argued marked minimally socially differentiated societies with the “organic solidarity” among individuals in modern market societies).

199. See MAX WEBER, THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM 51–125 (Talcott Parsons trans., Routledge 2001) (1904) (arguing that there was an elective affinity between Protestant beliefs and resulting social characteristics and capitalism).

200. See, e.g., ROYCE, *supra* note 196, at 55–90.

Durkheim believed that social solidarity was paramount, that shared beliefs and functional social institutions were the connective glue that transformed individuals into something we might recognize as a society. While not everyone needed to understand the world in exactly the same way for a society to exist, *enough* people had to understand *enough* of the world in the same way for there to be a baseline consensus understanding of the world. Without a sufficiently compelling and widely accepted consensus view, society would not function.²⁰¹ On an individual level, anomie and lawlessness would follow,²⁰² and on a societal level, political and economic collapse would result.²⁰³ The social constructivism underlying his functionalism meant that he anticipated, better than more critical scholars, the fragility of modern society.

The problem of social solidarity, Durkheim believed, was easier in pre-modern societies. In an agrarian culture, for instance, where most people lived similar lives, there was *mechanical* solidarity.²⁰⁴ Similarity in material conditions made it easier for people to adopt similar “social facts.” In modern society, however, people led drastically different lives. And such different experiences would necessarily result in divergent points of view, an orientation towards distinct social facts. As such, Durkheim’s primary sociological question revolved around how there could be social solidarity amidst socio-economic differentiation.

Durkheim concluded that the answer to his question was economic interdependence, more specifically, the division of labor.²⁰⁵ He termed this *organic* solidarity, an analogy to the human body and the interdependence of its organs.²⁰⁶ True, people tended to have distinct skills, jobs, and social circles in modern, industrial economies, but those differences could lead to interdependence, not just fracture.²⁰⁷ Durkheim thought interdependence would create solidarity—or at least it could—when accompanied by social institutions that helped people recognize and appreciate that interdependence.

In contrast, Marx might be interpreted as proffering a theory of relational harms of work, what some economists might term *negative* transaction benefits.²⁰⁸

201. *Id.*

202. *Id.* at 277–92.

203. *Id.* at 293–308; *see also* BONNIE HONIG, PUBLIC THINGS: DEMOCRACY IN DISREPAIR 12–15, 25–28 (2017) (arguing that democracy requires shared public objects and institutions that facilitate collective experiences and political community).

204. DURKHEIM, *supra* note 198, at 286–87.

205. *Id.* at 123 (“It is the division of labour that is increasingly fulfilling the role that once fell to the common consciousness. This is mainly what holds together social entities in the higher types of society.”).

206. *Id.* at 68–87.

207. *Id.* at 312–13.

208. Consistent with economic theorizing of transaction costs, which has at times described those costs as either positive or negative to signal that they are either greater than or lesser than what they would be under a different form of economic organization, transaction benefits might also be positive or negative. If transaction benefits refer to the relational benefits that accrue to individuals, groups, firms, and society from the social interactions that accompany economic exchange, then negative transaction

Like Durkheim, Marx believed that how we worked shaped our view of the world. But under a capitalist system, he argued that the conditions of work tended to alienate people from each other.²⁰⁹ An economy characterized by commodification, in which the human labor underlying economic production was actively obscured, did not necessarily engender solidarity.²¹⁰

And yet, Marx's and Durkheim's theories are united in their insistence that how we work constructs, in meaningful part, our social relations. Additionally, both theorists insist that the conditions of our work matter, that they can create social solidarity or revolution, depending. And while modern academic inquiry eschews the hyperbole of classical sociology, it continues to show that work is a society-producing institution.²¹¹

C. *Empirical Studies on the Social Functions of Economic Activity*

But it is not just abstract theory that supports an argument that economic activity and social structure are co-constitutive. Increasingly, empirical research supports the same conclusions. These empirical advances are a major step forward for a transaction benefits research agenda, making it possible to study more subtle human values. Within economic analysis, monetary costs and benefits have often been prioritized as variables, not just because they are seen as more important than other values, although certainly some believe this to be true. But money has also been a rough and easy proxy, a concrete and common denominator for comparing things that might otherwise be difficult to compare. Of late, social science has made substantial inroads into empirically examining the many things that count, despite being hard to measure. Collectively, these studies provide four important insights into the relationship between economic transactions and social integration.

The first of these insights is that the social interactions attendant to economic and/or instrumental activities—activities not conventionally understood as “social”—meaningfully impact our social well-being. One recent study found that commuters who talked to strangers on the subway felt happier afterwards than those who sat in solitude, regardless of whether they had originally wanted to engage in that conversation or not.²¹² Similarly, Starbucks customers who were instructed to try and “have a genuine interaction with the cashier” left feeling happier than those who were told to just “have [their] money ready, and avoid unnecessary

benefits indicate the possibility that transacting under certain conditions might result in a net loss in relational trust and solidarity relative to transacting under other conditions.

209. See MARX, *supra* note 197, at 74.

210. *Id.*

211. See generally ESTLUND, *supra* note 40 (explaining that workplace bonds can be important for forging connections across demographic categories).

212. Epley & Schroeder, *supra* note 35, at 1993; Elizabeth W. Dunn & Michael Norton, Opinion, *Hello, Stranger*, N.Y. TIMES (Apr. 25, 2014), <https://www.nytimes.com/2014/04/26/opinion/sunday/hello-stranger.html> [https://perma.cc/7JEM-GRC4].

conversation.”²¹³ Work, as it turns out, is the leading social location in which adults form friendships.²¹⁴ People are more likely to make friends at work than they are at school, in their neighborhoods, through religious or purely social activities, or even through existing friendships.²¹⁵

A second major insight from this research is that individuals tend not to be accurate judges of the value of these interactions and relationships *ex ante*. In an atomized United States, individuals often presume that interaction outside of carefully curated “social” settings is not enjoyable or valuable; and if given the choice, many of us would avoid these interactions. The subway riders in the above study hypothesized that they would feel worse after engaging in a forced conversation with a stranger; they were wrong.²¹⁶ Additionally, research shows that the benefit of these interactions transcends personality characteristic: The human need for sociability cannot be treated as a simple matter of individual *taste* for interaction. In one study, self-reported introverts and extroverts alike reported feeling happier on days when they had more social interactions, regardless of how much social interaction they *believed* they wanted or needed to have.²¹⁷ Arguably, this disconnect between our beliefs and preferences about social interaction and our actual need for social interaction is one of the reasons economic activity is such an important source of sociality. It provides an instrumental purpose and institutionalized context for interaction, when we might not otherwise seek it out absent that material benefit.

Third, these relational benefits accrue at the group and organizational level. And here, they translate more directly into traditionally measured “economic” benefits with a monetary value. As such, it is not just that economic situations foster sociability; it is also that social relationships foster productivity and efficacy. Organizational scholars have shown that face-to-face conversation leads to higher productivity.²¹⁸ Interpersonal relationships at work facilitate knowledge transfer and collaboration.²¹⁹ Invention and innovation are social processes that rely on peer connections and learning.²²⁰ Having positive coworker interactions increases

213. Gillian M. Sandstrom & Elizabeth W. Dunn, *Is Efficiency Overrated?: Minimal Social Interactions Lead to Belonging and Positive Affect*, 5 SOC. PSYCH. & PERSONALITY SCI. 437, 438 (2014); Dunn & Norton, *supra* note 212.

214. Daniel A. Cox, *The State of American Friendship: Change, Challenges, and Loss*, SURV. CTR. ON AM. LIFE (June 8, 2021), <https://www.americansurveycenter.org/research/the-state-of-american-friendship-change-challenges-and-loss/> [<https://perma.cc/59TE-VNJK>].

215. *See id.* (“Americans are now more likely to make friends at work than any other way . . .”).

216. Epley & Schroeder, *supra* note 35, at 1993.

217. Dunn & Norton, *supra* note 212.

218. SHERRY TURKLE, *RECLAIMING CONVERSATION: THE POWER OF TALK IN A DIGITAL AGE* 252 (2015).

219. ROB CROSS & ANDREW PARKER, *THE HIDDEN POWER OF SOCIAL NETWORKS: UNDERSTANDING HOW WORK REALLY GETS DONE IN ORGANIZATIONS* 52–55 (2004).

220. *See, e.g.*, Colleen Chien & Jillian Grennan, *Unpacking the Innovator–Inventor Gap: Evidence from Engineers* (Mar. 15, 2024) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4721522 [<https://perma.cc/HV3W-HAJN>]; *see also* Elias Einio, Josh Feng & Xavier Jaravel, *Social Push and the Direction of Innovation* (Ctr. for

employee commitment and productivity.²²¹ And yet, just as individuals struggle to appreciate ex ante the value of economically mediated sociality, firms, too, have trouble recognizing the value of transaction benefits, especially when fostering them requires investment in advance of the return. As one corporate researcher explained, the fact that workers are more productive when they are able to cultivate relationships with each other is “not always received as good news” by managers and executives.²²² It “complicate[s] the lives of businesses that have tried to cut costs . . . [a]nd . . . of individuals who feel most productive when they sit alone in front of their screens or who find this the best way to feel in control of their time and information overload.”²²³

Fourth and finally, these benefits transcend the individual and the firm. These are truly *social* benefits, positive externalities. Informal social and economic ties help produce broader social trust.²²⁴ When people’s daily experiences of interacting with others are positive, they feel better about people generally and more hopeful about the future. Meaningful interpersonal interactions in workplaces improve intergroup relations across complex racial and sociopolitical divides.²²⁵ In contrast, experiences of social exclusion and ostracism are associated with a greater likelihood of political extremism and even political violence.²²⁶ And political polarization, in turn, erodes social trust.²²⁷

This last point about how transaction benefits matter for socio-political trust, solidarity, and stability may be the most important point of this Article. If transaction benefits accrued only to individuals and organizations, we might hope for eventual self-correction; that over time, we would each realize that transaction cost minimization had, ironically, become too costly—that the push for more and faster transactions had hollowed out much of what made them valuable to begin with. But these benefits extend beyond individual actors. As externalities, they help constitute us as a social and political unit, and self-correction may come too late. For the time being, public policy must promote relational transaction benefits.

Econ. Performance, Discussion Paper No. 1861, (2022), <https://cep.lse.ac.uk/pubs/download/dp1861.pdf> [<https://perma.cc/FL6Z-Q5K9>].

221. Sandy J. Wayne, Lynn M. Shore, William H. Bommer & Lois E. Tetrick, *The Role of Fair Treatment and Rewards in Perceptions of Organizational Support and Leader-Member Exchange*, 87 J. APPLIED PSYCH. 590, 595–98 (2002).

222. TURKLE, *supra* note 218, at 253.

223. *Id.*

224. Jennifer L. Glanville, Matthew A. Andersson & Pamela Paxton, *Do Social Connections Create Trust? An Examination Using New Longitudinal Data*, 92 SOC. FORCES 545, 553–58 (2013).

225. Estlund, *Three Big Ideas*, *supra* note 15; Paul Frymer & Jacob M. Grumbach, *Labor Unions and White Racial Politics*, 65 AM. J. POL. SCI. 225, 236 (2021) (“[U]nion membership is associated with moderate to substantial reductions in racial resentment among whites.”).

226. Michaela Pfundmair, Natasha R. Wood, Andrew Hales & Eric D. Wesselmann, *How Social Exclusion Makes Radicalism Flourish: A Review of Empirical Evidence*, 80 J. SOC. ISSUES 341, 344–46 (2022).

227. Amber Hye-Yon Lee, *Social Trust in Polarized Times: How Perceptions of Political Polarization Affect Americans’ Trust in Each Other*, 44 POL. BEHAV. 1533, 1541–42 (2022).

D. Why Work Matters

The previous Section summarized the state of empirical research on relational transaction benefits generally, how they matter at different levels of social analysis, why they transcend individual preferences, and why policymakers should take them seriously. In this Section, I focus more specifically on work and its importance when it comes to transaction benefits. To make this case, I turn to another vein of scholarship: evolutionary anthropology. In recent years, there has been a paradigm shift in this field—a decentering of competition and “survival of the fittest” as the primary mechanisms of our evolutionary development and, in their place, a greater recognition of the importance of cooperation and social structure in fostering human development over thousands of years. Evolutionary anthropologist Michael Tomasello sums up this new perspective: The defining characteristic of humans—at least relative to our most immediate primate relatives, he says—is a “uniquely human sense of ‘we.’”²²⁸

From this perspective, our communal sense of identity and penchant for group formation has been central to human survival. Over one hundred thousand years of human foraging, hunting and gathering, humans developed the capacity for “shared intentionality.”²²⁹ According to scholars, over this time period, the *material* led to the *ideational*; the selection pressure of needing to work together to obtain or produce food made sociability an evolutionary advantage.²³⁰ Cooperative activities were a precondition for cooperative communication because “these activities provided the needed common ground for establishing joint topics, and because they generated . . . cooperative motives.”²³¹

Ultimately, the conclusion of this vein of literature is remarkably similar to Durkheim’s. The survival of the human species is tied to our ability “to engage in collaborative activities with a joint goal and distinct and generalized roles, with participants mutually aware that they were dependent on one another for success.”²³² In other words, working together is an essential component of our evolutionary history; working together made us human.

Drawing from all this research, with a particular focus on Tomasello’s theorizing of the evolutionary benefits of material cooperation, I suggest several tentative conclusions about why working together may be a uniquely important source of relational transaction benefits.

First, work facilitates social interaction and connection. It brings people together in time and space, enabling the formation of both strong ties and regular engagement with weak ties. Moreover, it offers a sociability that is otherwise inhibited in modern life—to engage with people who may be quite different from you. This is what political scientist Alexander Hertel-Fernandez has called the

228. MICHAEL TOMASELLO, WHY WE COOPERATE, at xiii, 57 (2009).

229. *Id.* at 54–55.

230. *Id.* at 75.

231. *Id.* at 72–73.

232. *Id.* at 98–99.

benefit of “involuntary association.”²³³ Yet, with transacting behavior, this involuntary association is not unmoored; there is a social script and a common goal to work towards. In this guided foray across social difference, we have the opportunity to connect, however briefly, with someone whom we would not otherwise seek out. And when that interaction goes well, we project that feeling onto society more broadly.²³⁴ If our bus driver, co-worker, customer, student, or client is kind, we are more likely to believe in that moment that most people are kind and that we are part of a kind society.

Transacting is not just another occasion for interaction, though. My second tentative conclusion is that the materiality of working together is essential to its importance. Working together entails experiences of mutual interdependence, shared risk, shared vulnerability, and shared fate. These are the experiences that psychological research has long shown most effectively lead to trust, solidarity, improved mental health, and positive relationships.²³⁵

Finally, working together builds a sense of group belonging; in other words, co-production is a uniquely powerful source of “we”-ness. In an otherwise atomistic economy, working together on an ongoing basis facilitates collective identification and social inclusion, feelings which many psychologists argue are basic human needs, as important as food or shelter.²³⁶ Social inclusion significantly predicts mental health.²³⁷ Group identification bonds people together across difference, potentially undercutting preexisting biases and prejudices.²³⁸ It also can increase

233. See ESTLUND, *supra* note 96, at 77 (quoting ALEXANDER HERTEL-FERNANDEZ, ECON. POL’Y INST., POWER AND POLITICS IN THE US WORKPLACE 10 (2020), <https://files.epi.org/uploads/215890.pdf> [<https://perma.cc/2LGR-Y8N9>]).

234. See, e.g., RAY OLDENBURG, THE GREAT GOOD PLACE: CAFES, COFFEE SHOPS, COMMUNITY CENTERS, GENERAL STORES, BARS, HANGOUTS, AND HOW THEY GET YOU THROUGH THE DAY (1989); Gillian M. Sandstrom & Elizabeth W. Dunn, *Social Interactions and Well-Being: The Surprising Power of Weak Ties*, 40 PERSONALITY & SOC. PSYCH. BULL. 910 (2014).

235. See generally MUZAFAER SHERIF, O.J. HARVEY, B. JACK WHITE, WILLIAM R. HOOD & CAROLYN W. SHERIF, THE ROBBERS CAVE EXPERIMENT: INTERGROUP CONFLICT AND COOPERATION (1988) (demonstrating that shared challenges requiring mutual dependence transformed hostile competing groups into cooperative allies through experiences of shared fate and vulnerability); Thomas F. Pettigrew, *Intergroup Contact Theory*, 49 ANN. REV. PSYCH. 65 (1998) (comprehensive review showing that cooperative interdependence—where success requires mutual reliance and shared outcomes—effectively builds cross-group trust and reduces prejudice through creating common fate).

236. Roy F. Baumeister & Mark R. Leary, *The Need to Belong: Desire for Interpersonal Attachments as a Fundamental Human Motivation*, 117 PSYCH. BULL. 497, 497–98 (1995) (review establishing that the need to belong is a basic human motivation as fundamental as needs for food and shelter, with lack of attachments linked to various ill effects on health, adjustment, and well-being).

237. See, e.g., Alexander K. Saeri, Tegan Cruwys, Fiona Kate Barlow, Samantha Stronge & Chris G. Sibley, *Social Connectedness Improves Public Mental Health: Investigating Bidirectional Relationships in the New Zealand Attitudes and Values Survey*, 52 AUSTL. & N.Z. J. PSYCHIATRY 365, 372 (2018) (four-year longitudinal study showing social connectedness significantly predicted better mental health over time).

238. See, e.g., Samuel L. Gaertner, John F. Dovidio, Phyllis A. Anastasio, Betty A. Bachman & Mary C. Rust, *The Common Ingroup Identity Model: Recategorization and the Reduction of Intergroup Bias*, 4 EUR. REV. SOC. PSYCH. 1, 5 (1993) (presenting initial empirical evidence for how recategorization of separate groups into a common ingroup reduces intergroup bias). See generally

civic engagement and social trust.²³⁹ Successful participation in one collective effort can be a font for ongoing civic and political participation.²⁴⁰

E. *A Caveat: Relational Harms at Work*

In making the argument that work—the human interactions attendant to how we produce goods and services—can make us happier and more unified, I do not seek to minimize that the opposite can also be true, and that benefits can vary across social position.

To acknowledge that our economic experiences are social experiences that matter for more than wealth maximization does not mean those experiences are inevitably positive. To return to the dialectic of Marx and Durkheim, *how* we work and *how* we transact matters for whether working together will stave off anomie or plunge us further into alienation. Economic interactions have the *potential* to confer relational benefits, but the conditions under which those interactions take place determine whether that potential is realized. Under the wrong conditions, working can be profoundly dispiriting. It can be lonely.²⁴¹ It can force us away from the people we love most, and it can put our health at risk.²⁴² It can make us bad citizens and community members.²⁴³ It can deaden our humanity.²⁴⁴ It can coerce socially marginalized groups away from the communities in which they feel most valued

SAMUEL L. GAERTNER & JOHN F. DOVIDIO, REDUCING INTERGROUP BIAS: THE COMMON INGROUP IDENTITY MODEL (2000) (explaining how the creation of an “ingroup” via a shared sense of identity can reduce bias, produce positive behaviors and attitudes, and increase trust).

239. See ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY 288–90 (2000) (showing how group membership increases social trust, civic engagement, and community resilience).

240. Bob Price, *Social Capital and Factors Affecting Civic Engagement as Reported by Leaders of Voluntary Associations*, 39 SOC. SCI. J. 119, 120 (2002) (showing that group membership creates social trust through shared norms, reciprocity, and collective identity, which can lead to broader civic and political engagement).

241. See, e.g., Vivek Murthy, *Work and the Loneliness Epidemic*, HARV. BUS. REV. (Sep. 26, 2017), <https://hbr.org/2017/09/work-and-the-loneliness-epidemic> [<https://perma.cc/E8YK-3ML5>] (analyzing business costs of workplace loneliness and proposing organizational interventions); Sarah Wright & Anthony Silard, *Unravelling the Antecedents of Loneliness in the Workplace*, 74 HUM. RELS. 1060 (2020) (identifying organizational characteristics that lead to workplace loneliness, such as competitive workplace cultures, identity stigmatization, poor coworker relationships, and so on).

242. See, e.g., Shirley Dex & Sue Bond, *Measuring Work–Life Balance and Its Covariates*, 19 WORK, EMP. & SOC’Y 627, 630–31 (2005) (examining several studies to find that employees who work long weekly hours have poor work-life balance and poorer quality of life).

243. See, e.g., Bruce E. Tonn & Carl Petrich, *Everyday Life’s Constraints on Citizenship in the United States*, 30 FUTURES 783, 785–92 (1998) (explaining that work-related constraints on attention, time, and choice limit civic engagement).

244. See, e.g., Karen M. Tani, *Compensation, Commodification, and Disablement: How Law Has Dehumanized Laboring Bodies and Excluded Nonlaboring Humans*, 119 MICH. L. REV. 1269, 1272 (2021) (explaining how workers’ compensation schemes have caused employers to think about employee lives in terms of monetary value); Noreen Tehrani, *Compassion Fatigue: Experiences in Occupational Health, Human Resources, Counselling and Police*, 60 OCCUP. MED. 133, 133–34 (2010) (describing the experience of “compassion fatigue” resulting from intense emotional demands at work).

and force them, instead, into daily experiences of isolation and subjugation.²⁴⁵ Moreover, the work that has the greatest potential for fostering relational transaction benefits, emotional labor,²⁴⁶ tends to be both feminized and, as a result, insufficiently remunerated.²⁴⁷

But it is a mistake, I think, to attribute these harms to work itself. Almost any social institution can be transcendent or repugnant—be it family, religion, or politics—depending on how it is structured. It is the *conditions under which* we labor that most determine its costs and benefits.

From the right and the left, the social character of work has sometimes been overlooked in favor of other important policy goals: productivity, meritocracy, or

245. See, e.g., Danielle D. Dickens & Ernest L. Chavez, *Navigating the Workplace: The Costs and Benefits of Shifting Identities at Work Among Early Career U.S. Black Women*, 78 *SEX ROLES* 760, 767–71 (2017) (discussing how Black women are expected to “code switch” and “act[] White” to advance professionally); Tristin K. Green, *Discomfort at Work: Workplace Assimilation Demands and the Contact Hypothesis*, 86 *N.C. L. REV.* 379, 413–14 (2008) (arguing that workplace assimilation can “perpetuate stereotypes and intergroup hostility”).

246. Here, a brief interlude on foundational concepts within economic sociology—and how the idea of relational transaction benefits draws from and builds upon them—is warranted. First, as conceptualized by sociologist Arlie Hochschild, “emotional labor” refers to the commodification of emotional display in the workplace, particularly in service sector jobs held by women. See ARLIE RUSSELL HOCHSCHILD, *THE MANAGED HEART: COMMERCIALIZATION OF HUMAN FEELING* (1983). Hochschild focused on how scripted, managed, and compulsory emotional work could be alienating for workers, and she also emphasized that this kind of work was often taken for granted, undervalued, and insufficiently remunerated. Yet, in recent years, the term emotional labor has at times been used in broader discourse to refer to all work related to human connection, regardless of its conditions. This has unfortunately lent a presumptively negative connotation to all work that connects. More recently, sociologist Allison Pugh coined the phrase “connective labor” to refer to the work that people do in “forging an emotional understanding with another person to create valuable outcomes.” ALLISON J. PUGH, *THE LAST HUMAN JOB: THE WORK OF CONNECTING IN A DISCONNECTED WORLD*, at x (2024). Pugh emphasizes the importance of this work and how it can benefit both those who perform the work and the recipients of it. Finally, as a conceptual backdrop to both of these ideas, sociologist Viviana Zelizer’s idea of “relational work” refers to the cognitive and emotional processes that people inherently engage in to navigate the “intersections between intimate and economic relations.” Nina Bandelj, *Relational Work in the Economy*, 46 *ANN. REV. SOCIO.* 251, 253 (2020). Each of these terms accordingly theorizes different aspects of how people inhabit economic spaces and socioemotional spaces simultaneously. Connective labor names the effort entailed in human connection and emphasizes its deep human and economic value; emotional labor calls attention to the conditions under which this work is compelled, managed, and commodified and the harms that can result; and relational work refers more broadly to how each of us engages in differentiating, and drawing and redrawing boundaries, between the economic and everything else.

The idea of relational transaction benefits accordingly builds upon each of these insights to recenter the fact that all economic activity ultimately involves relations among people, and that accordingly all economic activity has the potential to be connective. Moreover, it calls attention to the importance of organizational structure and law in shaping the background conditions that inform people’s relational work and that matter greatly for whether economic activities generate their connective potential—whether they support and recognize the value of connective labor in its micro- and macro-forms, avoid the alienation and exploitation of taking this work for granted, and ultimately create conditions that optimize the mutually constitutive relationship between our humanity and our work.

247. See, e.g., Amy S. Wharton, *The Psychosocial Consequences of Emotional Labor*, 561 *ANNALS AM. ACAD. POL. & SOC. SCI.* 158, 168–69 (1999) (noting that many jobs requiring emotional labor are in the service sector and filled by women).

equality. For the neoliberal right, work has often been treated as the means to more narrow, economistic ends, and corresponding attempts to humanize work have been dismissed as inefficient.²⁴⁸ And conservative attacks on the welfare state built around work, protections that rendered work a site of social citizenship in addition to economic productivity, have weakened its communal character.²⁴⁹ Meanwhile, for liberals, the desire to ensure that work is fair, equitable, and accessible has at times meant weakening its social character. Anti-nepotism and civil service reforms sought to eliminate grift and fraud.²⁵⁰ At the same time, they also helped craft a new logic for work—instead of co-production and economic coordination arising out of preexisting social bonds, work became a place of strangers, purposefully uprooted from their social context.²⁵¹ Union contracts sought to limit managerial discretion and reduce opportunities for exploitation.²⁵² In so doing, they often routinized tasks and at times inhibited creativity.²⁵³ Employment discrimination laws banned racial and gender segregation at work and have provided a language and a legal framework for considering how coworkers can be a vector of discrimination.²⁵⁴ Yet, managers have sometimes used these laws to “sanitize” the workplace, making it a place where people are more cautious and less emotionally open—a place where it is harder to form deep social connections.²⁵⁵

Against a backdrop of work as a site of pure labor extraction, on the one hand, or as a bureaucratic experiment in social engineering, on the other, it is no surprise that future-of-work imaginaries are alluring, e.g., work as discrete tasks performed by humans on the way to the things they truly care about, or robot workers cleaning toilets or analyzing data to alleviate our mental and physical burden. And perhaps those interventions will make us more productive. Some scholars have argued that

248. See, e.g., JENNIFER KLEIN, *FOR ALL THESE RIGHTS: BUSINESS, LABOR, AND THE SHAPING OF AMERICA'S PUBLIC-PRIVATE WELFARE STATE* 14–15 (2003) (explaining how conservatives often thought of public health and recreation programs as “inefficient, and inflationary”).

249. See *infra* Part IV.C.

250. Howard Frant, *Rules and Governance in the Public Sector: The Case of Civil Service*, 37 AM. J. POL. SCI. 990, 994–96 (1993) (describing how the introduction of civil service systems was intended to reduce patronage and corruption).

251. See ADAM BELLOW, *IN PRAISE OF NEPOTISM: A HISTORY OF FAMILY ENTERPRISE FROM KING DAVID TO GEORGE W. BUSH* 16–18 (2004) (explaining how social and legal prohibitions on nepotism in the United States have created a civil service system based on “merit and efficiency,” rather than social bonds, community, and enjoyment).

252. See SANFORD M. JACOBY, *EMPLOYING BUREAUCRACY: MANAGERS, UNIONS, AND THE TRANSFORMATION OF WORK IN THE 20TH CENTURY* 13–23 (rev. ed. 2004) (explaining how unions restricted managerial control and discretion by creating their own bureaucratic rules and procedures).

253. *Id.* (noting the downsides of unions’ embrace of bureaucracy).

254. See, e.g., NANCY MACLEAN, *FREEDOM IS NOT ENOUGH: THE OPENING OF THE AMERICAN WORKPLACE* 8–10 (2008) (discussing changes in the workplace caused by the enactment of Title VII and other antidiscrimination laws).

255. See, e.g., Vicki Schultz, *The Sanitized Workplace*, 112 YALE L.J. 2061, 2087–88 (2003) (arguing that companies have created overly broad policies that punish “benign” forms of sexual conduct at work that do not constitute sex discrimination in an effort to reduce liability under Title VII); Ahmed A. White, *My Coworker, My Enemy: Solidarity, Workplace Control, and the Class Politics of Title VII*, 63 BUFF. L. REV. 1061, 1110–35 (2015) (arguing that overbroad interpretation of Title VII has undermined worker solidarity).

they might make us more equal too.²⁵⁶ Yet the question remains: What will they make us as a society?

IV. EMPLOYMENT AS RELATIONSHIP

In this final Part, I use the theory of relational transaction benefits to intervene in the debates introduced in Parts I, II, and III concerning the future of work and the ongoing value of employment as a socio-legal form. I begin by considering how automation and labor contracting compare to employment in terms of relational transaction benefits. I argue that employment, notwithstanding its many faults, has greater capacity to foster these benefits because of its orientation towards building ongoing co-productive relationships. Based on this claim, I then revisit the question of how to make sense of Coase's claims about employment, given all he got right and what he got wrong. Here, I argue that Coase was right to think about employment's advantages as arising from how the form affects human interaction. But I posit that the primary mechanism of this impact is not decreased transaction costs via the right to control, but instead increased transaction benefits via creation of an economic community rooted in ongoing human connection, collaboration, and meaning making. I also argue that this understanding of employment as a specific relational form is a far better analytical touchstone than the right to control for defining and identifying employment. Finally, I reflect on what the ongoing allure of a future without employment is telling us about the problems with the *now* of work. Employment is in crisis, but the solution is not to replace it; it is to rehabilitate it. And I conclude with some brief reflections on a possible future for transaction benefit economics as an intellectual and political paradigm—how to study transaction benefits, how to maximize them through organizational forms and legal rules, how to engage in a transaction cost-benefit analysis, and ultimately how to think about law, across domains, as an instrument of social solidarity.

A. *The Costs and Benefits of Automation and Labor Contracting*

Oliver Williamson once described transaction-cost economics as a paradigm for identifying the ideal structure for any given economic activity based on its transaction costs.²⁵⁷ For decades, many scholars simplified this call, focusing single-mindedly on cost reduction, whatever the transaction, whatever the cost. A theory of transaction benefits, however, requires a broader lens. Are the technologies, organizational forms, and legal rules that currently constitute our imagined future of work—both automation and the dissolution of employment relationships into labor contracts—benefit maximizing? Here, I discuss how

256. See, e.g., LOBEL, *supra* note 112, at 90–93 (arguing that automation and artificial intelligence may benefit women in particular); McGinnis, *supra* note 28, at 367 (arguing that the gig economy promotes greater equality for both suppliers and customers).

257. See Oliver E. Williamson, *The Logic of Economic Organization*, in *THE NATURE OF THE FIRM: ORIGINS, EVOLUTION, AND DEVELOPMENT* 90 (Oliver E. Williamson & Sidney G. Winter eds., 1993).

automation and labor contracting may undermine relational transaction benefits at work.

1. Automation

I start by considering automation, since it poses the more obvious threat to relational transaction benefits at work. If exchange is as much about human connection as wealth maximization, increasing exchanges by doing away with their social component is a Pyrrhic victory at best.

The leading concern about automation from a transaction benefits perspective is its potential to displace the human interactions historically necessary for co-production and exchange and to replace them with human-machine or machine-machine interactions. Much of the current conversation about automation and artificial intelligence focuses on job loss—which, of course, is itself a potential threat to relational transaction benefits. But history shows that automation is also likely to alter the social character of the remaining work.²⁵⁸ Personal banking, for instance, was once a highly social process. Today, automated teller machines and internet- and app-based banking have significantly reduced its social character, albeit less so for the rich.²⁵⁹ Factory work, while arguably less deeply connective than artisanal production, was still once collaborative, with multiple possibilities for human interaction. Today, factory work is increasingly solitary, as workers interact more with robots than with each other.²⁶⁰

Proponents of automation are no strangers to the argument that automation may weaken the social character of work, and they have compelling responses. A leading argument is that automation promotes human sociality by reducing the need for human labor, allowing people to spend time on more meaningful pursuits and the social interactions that will necessarily follow there.²⁶¹ Instead of tedious or awkward or exploitative interactions in the workplace, we will all have more time to pursue the activities that genuinely interest us, alongside people who actively share those interests.²⁶² We will form social bonds through family, education, recreation, volunteering, and nonmarket labor, rather than employment.

From a relational transaction benefits perspective, one measure of this argument is in the details of these other social interactions. A future with more time for family and friends is compelling. But while family and friendship are essential to community—and overworked Americans certainly need more time for them—

258. See DAVID F. NOBLE, *FORCES OF PRODUCTION: A SOCIAL HISTORY OF INDUSTRIAL AUTOMATION* 3, 56–76 (1984).

259. See BERNARDO BÁTIZ-LAZO, *CASH AND DASH: HOW ATMS AND COMPUTERS CHANGED BANKING* 1, 4–6 (2018).

260. Rania Gihleb, Osea Giuntella, Luca Stella & Tianyi Wang, *Keeping Workers Safe in the Automation Revolution*, BROOKINGS (Sep. 12, 2023), <https://www.brookings.edu/articles/keeping-workers-safe-in-the-automation-revolution/> [<https://perma.cc/8LTG-4P63>].

261. See, e.g., LOBEL, *supra* note 112, at 256 (emphasizing the benefits of spending less time on work).

262. *Id.*

family and friends alone do not create a society. Specifically, they do not create the “bridging” connections that political scientists like Robert Putnam theorize as essential to social cohesion and solidarity.²⁶³ According to Putnam and others, a diverse society requires interaction *among* different groups, not just within them. And yet, in voluntary activities, people tend to interact with people who are like them.²⁶⁴ Work is, of course, segregated along lines of race, immigration status, gender, and more.²⁶⁵ But it is significantly *less* segregated than our homes and our families.²⁶⁶ Along with public schools and the military, work has long been one of the most effective social locations for bringing people together in cooperative situations, across racial, cultural, and ideological lines.²⁶⁷

Automation proponents also contend that technology can help create better work, work that is more fulfilling, more dignified, and in turn, more connective.²⁶⁸ There is no denying that many working people spend much of their time on rote, unpleasant, even dangerous tasks, and that the quality of work impacts its relational benefits.

Again, though, the devil is in the details. It is difficult to disagree with any broad call for higher quality work. But there is reason to question whether automation will, in fact, be used to improve job quality. Studies of how employers have historically used technology in the workplace show that the driving consideration is reducing labor costs, not maximizing worker satisfaction.²⁶⁹ The work tasks targeted for automation have usually been tasks that are labor-intensive

263. PUTNAM, *supra* note 239, at 22.

264. See THEDA SKOCPOL, *DIMINISHED DEMOCRACY: FROM MEMBERSHIP TO MANAGEMENT IN AMERICAN CIVIC LIFE 185–99* (2003) (analyzing how voluntary associations have become increasingly segregated by class and education level compared to mid-twentieth-century cross-class membership organizations); see, e.g., Thomas H. Sander & Robert D. Putnam, *Still Bowling Alone? The Post-9/11 Split*, 21 J. DEMOCRACY 9, 15–16 (2010) (finding that voluntary associations remain more homogeneous and significantly less diverse than the workplace).

265. See Mark Ellis, Richard Wright & Virginia Parks, *Work Together, Live Apart? Geographies of Racial and Ethnic Segregation at Home and at Work*, 94 ANNALS ASS’N AM. GEOGRAPHERS 620, 627–28 (2004) (tracing patterns of segregation in living and working).

266. See, e.g., JOHN R. LOGAN & BRIAN J. STULTS, BROWN UNIV., METROPOLITAN SEGREGATION: NO BREAKTHROUGH IN SIGHT 3–5 (2021), <https://s4.ad.brown.edu/Projects/Diversity/Data/Report/report08122021.pdf> [<https://perma.cc/UY7A-5BHW>] (documenting how residential segregation remains high relative to more integrated workplace settings); GRACE KAO, KARA JOYNER & KELLY STAMPER BALISTRERI, *THE COMPANY WE KEEP: INTERRACIAL FRIENDSHIPS AND ROMANTIC RELATIONSHIPS FROM ADOLESCENCE TO ADULTHOOD* 45–48 (2019) (showing that despite increases in interracial marriage, families remain the most demographically homogeneous sphere of American life, particularly compared to workplaces and schools).

267. See ESTLUND, *supra* note 40, at 8–12 (finding workplaces generally more racially and ethnically diverse than neighborhoods or voluntary associations, with workers more likely to form meaningful relationships across demographic lines at work than in other social settings).

268. See generally LOBEL, *supra* note 112.

269. See, e.g., William Lazonick & Mary O’Sullivan, *Maximizing Shareholder Value: A New Ideology for Corporate Governance*, 29 ECON. & SOC’Y 13, 18–22 (2000) (showing how shareholder primacy drives firms to pursue labor-replacing technology rather than productivity-enhancing innovation).

and therefore expensive either because the work is time-consuming or because it requires great skill, and those characteristics may or may not map onto which work is either the most meaningful to workers or the most connective.

Beyond the realities of implementation, though, there is the deeper concern that we may not yet have the conceptual tools to identify what work needs saving, given the lack of research into the multiple ways in which work can be socially or existentially valuable, including because of its relational transaction benefits. To put a finer point on it, many of the metrics that we might use to judge whether a task should be automated—its difficulty, its repetitiveness, its skillfulness, its pleasantness—do not necessarily track work’s pro-social value. As many parents and caregivers will tell you, the work of caring for a baby or a young child is often physically exhausting and mentally draining. At the same time, it can also be deeply connective on both sides. It is quite possible that healthy human development simply requires that this work be done by humans. From an asocial perspective, changing diapers might be seen as a prime candidate for automation—it is repetitive, messy, and unpleasant. And yet, notwithstanding its disutility, it is important to our humanity. As sociologist Alison Pugh argues in *The Last Human Job*, “connective labor” is not limited to those jobs we think of as “helping” professions.²⁷⁰ Rather, all labor that involves interaction with other human beings has the potential to be connective.

From a transaction benefits lens, a better criterion for deciding which work to automate is its potential for meaningful social connection. As a matter of policy, technological advances that ease solitary burdens or facilitate meaningful human interaction might be prioritized over ones that replace or inhibit social interaction and teamwork. For instance, the use of AI to reduce healthcare workers’ charting responsibilities may increase doctor-patient interaction and connection; in this example, AI might increase transaction benefits. Unfortunately, many contemporary advances in workplace technology and economic organization—self-checkout stations, online shopping, and more—specifically displace work at the point of interaction.²⁷¹

Law and policy *could* be used to encourage the types of automation likely to be benefit-enhancing (and to discourage the benefit-reducing). As one example, government agencies could consider technology’s impact on the social aspects of work and consumer activity when making funding decisions. Similarly, government agencies charged with promoting worker health and safety, like the federal Occupational Safety and Health Administration, could facilitate such investment by developing guidelines about health and safety in connection with modern technological advances in the workplace—or more generally promoting social health in the workplace.

270. See generally PUGH, *supra* note 246.

271. See, e.g., Daron Acemoglu & Pascual Restrepo, *Automation and New Tasks: How Technology Displaces and Reinstates Labor*, 33 J. ECON. PERSPS. 3, 8–12 (2019) (noting high automation rates affecting retail cashiers, bank tellers, and travel agents).

2. *Independent Contracting and “Gig” Work*

How the *socio-legal form* of human labor—employment vs. independent contracting—matters from a relational transaction benefits perspective is somewhat harder to evaluate. This analysis is complicated by the perpetual fuzziness of the dividing line between employee and independent contractor, as well as the significant variation among independent contracting arrangements—from the more traditional skilled consultant to today’s DoorDasher or MTurker. Across the board, however, the comparison involves more complicated trade-offs in sociality. Rather than human vs. robot, it is one way of organizing human work vs. another.

Drawing from what existing research tells us about why work is particularly important for social connections, solidarity, productivity, and trust, however, it is possible to sketch a theoretical framework for the comparison—and for future empirical research in this vein. Herein, I focus on how these two legal forms compare on the four leading factors that I have suggested set work apart as an essential site for building transaction benefits. These factors include (1) group belonging (“we”-ness), (2) co-production and mutual interdependence, (3) regular social connection and interaction, particularly across difference; and finally (4) the conditions—including power relationships, autonomy, voice, material benefits, and more—under which those interactions take place. As set forth below, there are potential relational advantages to each form. Yet, on the whole, employment stands out for its orientation towards building longer-lasting cooperative relationships, reinforced by group identification and ongoing structural coordination.

When it comes to the first two factors, group belonging and material co-production and interdependence, employment arguably offers the clearest advantages. This is because employment by definition entails the creation of an enduring legal and socioeconomic collective; this is what Coase meant by “the firm.”²⁷² Employees make investments in the unique knowledge, skills, and relationships that characterize that firm.²⁷³ And a legally-sanctioned group identity makes true co-production possible; the creation of goods and services that are more than the sum of individual efforts, but the result of coordinated and synergistic group effort.²⁷⁴

In contrast, independent contracting preserves juridical independence. This is why independent contracting has traditionally been reserved for the kind of work that can be performed independently of the ongoing and core tasks of the business,

272. See Coase, *supra* note 18, at 393 (a firm “consists of the system of relationships” among workers organized by an employer).

273. Comparable data is limited. However, the studies that do exist tend to find that employees have longer tenure than contractors. See, e.g., Matthew J. Bidwell & Forrest Briscoe, *Who Contracts? Determinants of the Decision to Work as an Independent Contractor Among Information Technology Workers*, 52 ACAD. MGMT. J. 1148, 1155 (2009) (“As proposed, we found that contracting jobs had much shorter mean duration than regular employment (440 days versus 915 days; $t = 4.98$).”).

274. See generally ROSABETH MOSS KANTER, *MEN AND WOMEN OF THE CORPORATION* 135–38 (2d ed. 1993) (considering how employment stability enables deeper workplace relationships and group identity).

by one person, in isolation from others. This is not to say there was no sociality in traditional independent contracting, but that sociality was likely to be limited by the transaction-specific nature of the interaction. Historically, independent contracting generally did not involve ongoing co-production.²⁷⁵

This historical distinction has been undermined in part with the rise of “gig” work. Today, advances in technology permit greater coordination, allowing work performed by different people in different locations at different times to be amalgamated to serve a broader purpose, all without interactive collaboration or shared socio-legal identity. But this coordination is necessarily more limited than that provided through employment. It does not actually unite these independent economic actors into a collective, and it does not change the fact that they are competitors, rather than collaborators. While the employees of a taxi company might have jostled for the best shifts or for the best tips, they could also coordinate to make sure the schedule was covered, that their cars were maintained, and that people knew about their services. In contrast, Uber drivers primarily exist in a competitive relationship with each other and largely do not coordinate, let alone collaborate.²⁷⁶ By design, there tends to be substantially less “we”-ness in contracting.

For the next factor, opportunities for interaction and connection, ideally across difference, it is useful to consider two subcomponents: (1) the question of temporal autonomy and coordination, how each form brings people together in time and space; and (2) the nature, quality, frequency, and duration of the social interactions that follow.

Independent contracting has long been understood to be the better form when it comes to temporal autonomy and coordination. For champions of independent contracting, one of its most celebrated characteristics is that it allows businesses, consumers, and workers to reclaim control of their time. Ideally, this would lead to a better balance between work and the other aspects of our lives, including our

275. See Julia Tomassetti, *From Hierarchies to Markets: FedEx Drivers and the Work Contract as Institutional Marker*, 19 LEWIS & CLARK L. REV. 1083, 1098–100 (2015) (analyzing how courts distinguish employment from independent contracting based partly on whether work requires coordination among multiple workers versus discrete individual tasks).

276. As a matter of law, independent contractors are currently seen as competitors and prohibited from unionizing under antitrust law because of concerns about anticompetitive price fixing. See Sanjukta M. Paul, *The Enduring Ambiguities of Antitrust Liability for Worker Collective Action*, 47 LOY. U. CHI. L.J. 969, 977–80 (2016). Scholars and policymakers are actively engaged in trying to change this and to exempt a broader swath of labor coordination from antitrust regulation. See generally Josh Jacob, *Avenues for Gig Worker Collective Action After Jinetes*, 123 COLUM. L. REV. F. 208 (2023) (discussing potential pathways for independent contractors to act collectively without facing antitrust liability); Kate Andrias & Benjamin I. Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 YALE L.J. 546 (2021) (discussing how the law can be used to create organizations that empower working class people in a host of different domains). But separately from whether such coordination is *legally* permissible, it remains to be seen whether independent contracting can create the *social* conditions necessary for workers to overcome their differences and find sufficient common cause to collectively bargain effectively.

social lives.²⁷⁷ While the purported differences in temporal freedom between the two forms are likely overstated, it seems likely that independent contracting is the more flexible form of work. What remains unclear is whether either form provides an *optimal* balance of autonomy and synchronicity.

It is worth reiterating that in comparing temporal freedom across the two forms, there is meaningful distinction between formal freedom and actual freedom. It is true that independent contractors, both traditional and gig workers, *formally* maintain control over their schedules.²⁷⁸ And in theory, this could mean that each worker would decide for themselves when to work and when not to work. In the best of worlds, parents of young children could engage in meaningful, remunerative work *and* stay home with a sick child or volunteer at their children's school. People with disabilities could work when their condition permits and stop working as needed, without having to worry about running out of sick leave or navigating the bureaucratic maze of requesting accommodations.

Absent significant changes in the social safety net, though, these freedoms are not equally available to all gig workers. This is because economic precarity and dependence undermines the ability of workers to truly choose their own schedules. As work law scholar Veena Dubal has shown, platform services like Uber often use monetary incentives to induce drivers to work long hours or staff needed time slots.²⁷⁹ Workers with other sources of income may be unaffected by strategic pricing.²⁸⁰ But for the increasing number of economically dependent gig workers entirely reliant on their gig work to pay their bills, these "incentives" often prove determinative.²⁸¹ Moreover, because the independent contracting model shifts risk of fluctuating demand and pay to the worker, many gig workers report working a greater number of hours, as well as more irregular hours, than their employee counterparts.²⁸²

At the same time, the extent to which employment necessarily means a loss of temporal freedom is often overstated. Employers are certainly not required by law to strictly control their employees' schedules, and it has long been true that many professional employees have had broad latitude to set their own schedules.²⁸³ And

277. See David Plouffe, *With Uber, Flexible Work Helps Families Turn Car Payments into Paychecks*, LINKEDIN (Nov. 13, 2015), <https://www.linkedin.com/pulse/uber-flexible-work-helps-families-turn-car-payments-david-plouffe/> [<https://perma.cc/7RHB-Z7T7>] ("With Uber, there is no schedule. Ever. People who drive with Uber decide for themselves whether they are going to work at any given time, and for how long. This flexibility and independence is key. Around 65 percent of drivers vary their hours from week to week by more than 25 percent. In other words, they want work that fits around their life—not the other way around.").

278. See *id.*

279. See Dubal, *supra* note 29, at 17.

280. See *id.*

281. See generally, e.g., ALEXANDREA J. RAVENELLE, *HUSTLE AND GIG: STRUGGLING AND SURVIVING IN THE SHARING ECONOMY* (2019) (finding gig workers often work during undesirable hours and accept unsafe conditions due to economic pressure and lack of alternatives).

282. See, e.g., *id.*

283. As discussed throughout, under most state and federal laws, the legal issue of worker classification turns on either the employer's "right to control" the employee or whether the employer

in post-pandemic America, many employers have been experimenting with greater flexibility in where and when their employees work.²⁸⁴ Still, recent back-to-work mandates have emphasized that while employment certainly does not require control over employees schedules, many employers expect it and demand it. As a result, independent contracting likely does allow for greater temporal independence for working people.

How temporal independence matters for the quality of our relational lives is not entirely clear, though. In a moment where asynchronicity is increasingly championed as a more humane way to structure work, it is worth noting that synchronicity still has its benefits, not just for employers but for workers and customers too. Social commentator Oliver Burkeman has accordingly criticized what he calls the “individual time sovereignty” paradigm, celebrated by the proponents of non-standard work.²⁸⁵ Flexible work, he argues, offers the illusion that everyone will be able to work when they choose and not work when they choose, giving us all greater freedom to do other things that we value, including connect with friends and family. But aggregated to the societal level, he argues, this is poor social policy. With asynchronous schedules, social coordination becomes more difficult, not less, because our schedules no longer match up. The freedom this paradigm offers, he suggests, is the “freedom to never see your friends.”²⁸⁶

To the extent societies have tried to vary from a generally shared work-time paradigm, it has not gone well. For instance, in the 1930s, the Soviet Union experimented with varying workers’ work weeks, so that some people worked Monday to Friday, and some workers Thursday to Monday, and so on.²⁸⁷ The goal was to maximize productivity but still allow for meaningful rest and leisure. Factories could run seven days a week and every worker would still be guaranteed two days of rest. The result, however, was that everyone had different days of rest, making those days less meaningful.²⁸⁸

“suffers or permits” the employee to work, both of which can be true for an asynchronous employee. See generally RESTATEMENT OF EMP. L. § 1.01 (A.L.I. 2015) (summarizing factors that constitute a legal employment relationship). As the rise of remote work due to the COVID-19 pandemic showed, asynchronicity can coexist with “employee” status, and this is particularly feasible for white-collar and professional employees whose work is self-paced and performed on a computer.

284. Kelly Quinn, Faith Ulrich & Anthony Colavito, *Business Responses to the COVID-19 Pandemic*, U.S. BUREAU OF LAB. STATS.: SPOTLIGHT ON STATS. (Mar. 2023), <https://www.bls.gov/spotlight/2023/business-responses-to-the-covid-19-pandemic/> [https://perma.cc/4YKS-ERN6]; Jim Harter & Ben Wigert, *The Post-Pandemic Workplace: The Experiment Continues*, GALLUP (Mar. 11, 2025), <https://www.gallup.com/workplace/657629/post-pandemic-workplace-experiment-continues.aspx> [https://perma.cc/BM6V-H6YT].

285. OLIVER BURKEMAN, *FOUR THOUSAND WEEKS: TIME MANAGEMENT FOR MORTALS* 31, 33 (2021) (“[T]he more individual sovereignty you achieve over your time, the lonelier you get. . . . [F]reedom . . . is to be found not in achieving greater sovereignty over your own schedule but in allowing yourself to be constrained by the rhythms of community—participating in forms of social life where you *don’t* get to decide exactly what you do or when you do it.”).

286. *Id.* at 197–98.

287. *Id.* at 192–94.

288. See, e.g., Natasha Frost, *For 11 Years, the Soviet Union Had No Weekends*, HIST. (Sep. 7, 2023), <https://www.history.com/news/soviet-union-stalin-weekend-labor-policy>

At a societal level, an undue emphasis on individual time sovereignty often comes at the cost of something greater, what sociologist Eviatar Zerubavel calls the communal experience of “temporal symmetry.”²⁸⁹ Her research shows that the collective experience of time alignment—the knowledge “that your schedule and my schedule are in sync, that we are at work at the same time and off at the same time”—is one of the foundations of social cohesion.²⁹⁰ And its benefits are both individual and collective. Research shows, for instance, that people enjoy vacation more when most others are on vacation too.²⁹¹ The communal practice of starting and stopping work together, whether on a daily, weekly, or yearly basis, allows for communal experience of social purpose, joy, and relaxation. These are social needs, not just individual ones.

Proponents of gig work also claim that the socio-temporal freedom of independent contracting leads to increased productivity. Allowing people to work and not work as they choose allows for more efficient work. And while this must be true to a certain extent, it remains important to note that there are productivity benefits associated with being in the same place at the same time. For true co-production, some socio-temporary synchronicity is required. According to evolutionary biologist Michael Tomasello, a primary distinction between human beings and their immediate evolutionary predecessors is this capacity to physically and mentally collaborate in space and time to accomplish a work task that would otherwise be impossible. Although chimpanzees share and cooperate, they do not exhibit this kind of collaborative physical labor. As an example of this fact, Tomasello is known to opine: “It is inconceivable . . . that you would ever see two chimpanzees carrying a log together.”²⁹² But, of course, we cannot carry logs together without being in the same place at the same time.

For better or worse, we know that simply being in the presence of others matters for how we work. The Hawthorne effect—the psychological principle that being observed by others changes human behavior—was first discovered in organizational studies of work.²⁹³ This principle has often been weaponized by employers, using surveillance to coerce worker productivity, and it has accordingly

[<https://perma.cc/3B8Q-CWMM>] (“[Workers] complained that staggered rest days defeated the purpose of time off: ‘What is there for us to do at home if our wives are in the factory, our children at school and nobody can visit us? It is no holiday if you have to have it alone.’”).

289. See EVIATAR ZERUBAVEL, *THE SEVEN DAY CIRCLE: THE HISTORY AND MEANING OF THE WEEK* 38 (1989).

290. Frost, *supra* note 288.

291. BURKEMAN, *supra* note 285, at 189 (describing study of relationship between vacation patterns and happiness in Sweden and noting that “the more Swedes who were off work simultaneously the happier people got”); see also JEREMY RIFKIN, *TIME WARS: THE PRIMARY CONFLICT IN HUMAN HISTORY* 168–70 (1987) (discussing historical development of standardized vacation periods and their role in facilitating social coordination and collective enjoyment).

292. Gary Stix, *The “It” Factor*, *SCI. AM.*, Sep. 2014, at 72, 77.

293. See generally, e.g., F.J. ROETHLISBERGER & WILLIAM J. DICKSON, *MANAGEMENT AND THE WORKER* (1939).

generally been disregarded by advocates for more humane workplaces.²⁹⁴ But, consistent with the broader thesis of this Article, there is also a takeaway here about community, separate and independent from its appropriation as a hierarchical tool of employer control.²⁹⁵ We will often do more when there are others bearing witness. Ironically, now that work has been reorganized in space and time, a host of different platforms are monetizing the importance of this seeming fact of human nature.²⁹⁶ Remote workers and contractors are increasingly willing to pay for “body doubling” to be connected over the internet to another person working at the same time, in order to increase focus and productivity.²⁹⁷

The second subcomponent of this factor moves beyond temporary coordination to the quality and kind of the interactions and relationships that follow. On this, employment and independent contracting again stand out for their distinct takes on how best to integrate our work and social lives. Even though employment is, in common parlance, a relationship, proponents of the platform economy have long touted gig work’s comparative advantage when it comes to social interaction.²⁹⁸ The sharing economy is one *defined* by interconnectedness, or so has

294. See, e.g., RICHARD GILLESPIE, *MANUFACTURING KNOWLEDGE: A HISTORY OF THE HAWTHORNE EXPERIMENTS* 180–85, 210 (1991) (examining how corporations co-opted Hawthorne studies to legitimize psychological manipulation and surveillance of workers under guise of “human relations”). These techniques may sometimes create short-term productivity boosts, but they often prove counter-productive in the longer-term, leading to burnout, turnover, and low morale. See, e.g., Paul Glavin, Alex Bierman & Scott Schieman, *Private Eyes, They See Your Every Move: Workplace Surveillance and Worker Well-Being*, 11 SOC. CURRENTS 327, 339 (2024).

295. These complicated trade-offs, between temporal and spatial synchronicity and asynchronicity, also present in contemporary debates about remote work. Here too, there are productivity and sociality arguments on both sides. As for productivity, many workers experienced significant boosts in productivity during the first or second year of the pandemic, much attributable to time saved in travel and grooming as well as greater schedule control. Years later, it is contested whether working from home continues to boost productivity, as employees struggle with motivation and engagement. When it comes to sociality, the evidence is also mixed. Workers, it seems, feel this tension acutely. Seventy-one percent of workers who work remotely at least some of the time note that its biggest benefit is the improved “ability to balance their work and personal lives.” Kim Parker, *About a Third of U.S. Workers Who Can Work from Home Now Do So All the Time*, PEW RSCH. CTR. (Mar. 30, 2023), <https://www.pewresearch.org/short-reads/2023/03/30/about-a-third-of-us-workers-who-can-work-from-home-do-so-all-the-time/> [https://perma.cc/YM9N-VZ48]. At the same time, 53 percent of these same workers says that remote work hurts “how connected they feel to their co-workers.” *Id.*

296. See, e.g., Tessa Eagle, Leya Breanna, Baltaxe-Admony & Kathryn E. Ringland, “*It Was Something I Naturally Found Worked and Heard About Later*”: An Investigation of Body Doubling with Neurodivergent Participants, 17 ACM TRANSACTIONS ON ACCESSIBLE COMPUTING 16:1, 16:19 (2024) (“Virtual coworking platforms . . . have surged in popularity during the pandemic and the transition of many to work from home. . . . While some of these platforms are free to use, there may be limitations on use without payment . . .”).

297. See *id.*

298. See, e.g., Brian Chesky, *Belong Anywhere*, MEDIUM (July 16, 2014), <https://medium.com/@bchesky/belong-anywhere-ccf42702d010> [https://perma.cc/B422-2ZZR] (“[Being a part of the Airbnb community] isn’t a transaction. It’s a connection that can last a lifetime. That’s because the rewards you get from Airbnb aren’t just financial—they’re personal—for hosts and guests alike. . . . Belonging is the idea that defines Airbnb . . .”); JOE GEBBIA, *How Airbnb Designs for Trust*, at 12:20–12:26 (TED, Feb. 2016),

been the claim. Freed from the too often stultifying confines of bureaucratic control, the new economy allows for direct connections between producers and consumers. In enabling community-based exchange, it reintegrates economic activity and social interaction.²⁹⁹

And yet, there are reasons to question whether these claims are consistent with workers' or consumers' lived experience. Here, it is useful to typologize the leading ways in which social interaction occurs at work and distinguish among them when considering how the legal form of work may shape relational transaction benefits. To some extent, the legal form of work, employment vs. independent contracting, may matter less when it comes to worker-consumer interactions, since workers with customer-facing roles will engage in interactions with customers regardless of worker classification (although those interactions are arguably more likely to be repeated and to develop into relationships when the worker is an employee). But independent contracting, or "gig" work, by definition, means significantly reduced interaction and coordination *among* workers. It turns collaborators into competitors. It also transforms stable, ongoing relationships into brief, limited interactions.

This loss of stable co-worker relationships is dramatically underemphasized in debates about the future of work. But the progenitors of non-standard work were clear-eyed about how impactful this change would be. According to Louis Hyman's account of the rise of precarious work, temp agency executives knew that irregular work would undermine ongoing co-worker relationships. "Long-term workplace relationships would no longer be possible," these innovators knew.³⁰⁰ "Living in temporary work systems" would lead to "social strains and psychological tensions that could only be relieved outside the workplace."³⁰¹ Within this changed work environment, home would take on an even greater importance. It would be the sole remaining source of stability. As one executive acknowledged, "[T]o be a wife in this era will become a profession of providing stability and continuity."³⁰²

Ultimately, the greatest threat to relational transaction benefits posed by independent contracting is its likely impact on long-term relationships at work.³⁰³ Our social and economic lives involve both strong and weak ties. And one of the leading takeaways from economic sociology is that weak ties are much more

https://www.ted.com/talks/joe_gebbia_how_airbnb_designs_for_trust (on file with the *California Law Review*) ("[T]his connection beyond the transaction is what the sharing economy is aiming for.").

299. See ARUN SUNDARARAJAN, *THE SHARING ECONOMY: THE END OF EMPLOYMENT AND THE RISE OF CROWD-BASED CAPITALISM* 5, 35–38 (2016) (arguing that platforms enable "community-based exchange" and revive older forms of social connection through economic activity).

300. LOUIS HYMAN, *TEMP: HOW AMERICAN WORK, AMERICAN BUSINESS, AND THE AMERICAN DREAM BECAME TEMPORARY* 169 (2018).

301. *Id.* (first alteration in original).

302. *Id.* (citation omitted).

303. See Catherine E. Connelly & Daniel G. Gallagher, *Independent and Dependent Contracting: Meaning and Implications*, 16 HUM. RES. MGMT. REV. 95, 100 (2006) ("Over time, the nature of [reciprocal employee] exchanges expands... as trust between the parties builds... Independent contractors are less likely to benefit from these social exchanges that permanent employees may take for granted.").

important than we might assume.³⁰⁴ As in some of the studies discussed in Part III, short encounters with people we do not know well can brighten our days, facilitate sharing of information, and increase our trust in society and its institutions. But weak ties do not and cannot take the place of strong ties. Strong ties are necessary for social and emotional support, for help in times of crisis, and for general well-being.³⁰⁵ According to one of the longest studies on human flourishing, deep relationships are one of the *primary* predictors of human well-being.³⁰⁶ And there is no getting around the fact that formation of these close relationships requires sustained connection over periods of time, regular and ongoing interactions, and the opportunity to depend on each other and help each other.³⁰⁷ Employment builds these kinds of relationships and is arguably, at its best, characterized by these kinds of relationships.³⁰⁸ Gig work, by its very nature, cannot compare.

Here again, defenders of contract work argue that this destabilization of work relationships may be a positive—that whatever the loss to workplace relational stability, it is worth it, because it will deepen and improve the relationships in other parts of our lives.³⁰⁹ We may no longer have deep friendships at work, but we will reconnect with our children, with our families, and with our friends. But as discussed above, bonding social capital, connections with those who are similar to you, does not directly substitute for lost bridging social capital, connections with those who are different from you. Notwithstanding the real time-bind experienced by single parents and dual-earner parents struggling to make ends meet while managing a family, the empirical reality is that parents today spend more time with their children, not less.³¹⁰ And yet, notwithstanding this fact, many Americans are

304. See Granovetter, *supra* note 31, at 1378 (“[W]eak ties, often denounced as generative of alienation are here seen as indispensable to individuals’ opportunities and to their integration into communities.” (citation omitted)).

305. See, e.g., Barry Wellman & Scot Wortley, *Different Strokes from Different Folks: Community Ties and Social Support*, 96 AM. J. SOCIO. 558, 566–68 (1990) (explaining that the majority of people’s social support stems from strong ties).

306. Robert Waldinger & Marc Schulz, *What the Longest Study on Human Happiness Found Is the Key to a Good Life*, ATLANTIC: IDEAS (Jan. 19, 2023), <https://www.theatlantic.com/ideas/archive/2023/01/harvard-happiness-study-relationships/672753> [<https://perma.cc/KJ23-NDSM>].

307. Wellman & Wortley, *supra* note 305, at 564 (noting that a key characteristic of strong ties is an “interest in being together as much as possible through interactions in multiple social contexts over a long period”).

308. KANTER, *supra* note 274, at 135–38 (analyzing how employment stability enables deeper workplace relationships and group identity).

309. See, e.g., Plouffe, *supra* note 277.

310. Mothers in 2012 spent nearly twice as much time on childcare activities per day on average than they did in 1965. Giulia M. Dotti Sani & Judith Treas, *Educational Gradients in Parents’ Child-Care Time Across Countries, 1965–2012*, 78 J. MARRIAGE & FAM. 1083, 1090–91 (2016). For fathers, the time spent on childcare almost quadrupled over the same period. *Id.*; see also *Time Spent Caring for Household Children in 2023*, U.S. BUREAU LAB. STAT.: THE ECON. DAILY (Nov. 12, 2024), <https://www.bls.gov/opub/ted/2024/time-spent-caring-for-household-children-in-2023.htm> [<https://perma.cc/22N7-KCGA>] (reporting more recent data from the American Time Use Survey).

lonelier than ever. What we need is close ties across multiple life domains.³¹¹ We need a deeper bench.

Finally, I briefly consider the last factor that I have argued is essential for relational transaction benefits at work: the ever-important conditions under which we work and interact. Here, the leading argument in favor of independent contracting is that it facilitates greater equality than employment relationships. For all its complexity, the employment relationship remains technically one of hierarchy, of a legal “right to control.” As such, interactions among workers and even between workers and customers or the public may be limited by rules and regulations—all inhibiting workers’ abilities to be their full selves. Independent contractors, by contrast, theoretically stand on a more equal footing with the companies they work for, because legally, they retain the right to co-create the conditions of their work. Equality of status and mutual co-determination can both facilitate solidarity.³¹²

Yet, once again, the formal equality of the contracting relationship is often undermined by its economic realities, particularly when it comes to the new forms of independent contracting. As such, critics of gig work argue that through the combination of economic dependence and technological control, this new breed of independent contractor is just as subordinate as any employee, but without attendant legal rights.³¹³ The legal protections attached to employment were each carefully crafted to circumscribe employer domination, to prohibit discrimination, to require accommodation, to promote collective worker power, to provide a social safety net, and to encourage fair remuneration. Yet gig companies continue to argue that the best way to reclaim worker freedom is to opt out of these protections and back into unregulated contract.

I will return to the question of what conditions make employment fair in Part IV.C below. For now, I note that historically, unionization has been one of the most effective ways of counterbalancing employer domination in the workplace.³¹⁴ Given the reality that so many gig workers remain economically dependent on the platforms they serve, worker advocates today argue that independent contractors

311. See, e.g., Hanne K. Collins, Serena F. Hagerty, Jordi Quoidbach, Michael I. Norton & Alison Wood Brooks, *Relational Diversity in Social Portfolios Predicts Well-Being*, PNAS, Oct. 25, 2022, at 1, 6.

312. Stephen Adair, *Status and Solidarity: A Reformulation of Early Durkheimian Theory*, 78 SOCIO. INQUIRY 97, 115 (2008) (“Within arrangements based on solidarity, the underlying norms of reciprocity often mean that any preexisting status distinctions among potential members must be either significantly reduced or eliminated.”).

313. See generally Dubal, *supra* note 29, at 1945–47 (demonstrating how algorithmic management systems create new forms of worker control and wage subordination in the gig economy, belying claims of worker independence); James Duggan, Ronan Carbery, Anthony McDonnell & Ultan Sherman, *Algorithmic HRM Control in the Gig Economy: The App-Worker Perspective*, 62 HUM. RES. MGMT. 883, 888–90 (2023).

314. See Begum Icelliler, *The Necessity of Labor Unions for Curbing Domination*, CRITICAL REV. INT’L SOC. & POL. PHIL. 14 (2025), <https://www.tandfonline.com/doi/full/10.1080/13698230.2025.2520036> (“Unions curb domination not only by providing key services for their members but also facilitating their collective action.”).

should be allowed to engage in collective bargaining too.³¹⁵ But even if the legal impediments to contractor bargaining are removed, it is unclear whether the conditions of independent contracting are conducive to the solidaristic relationships needed for successful collective bargaining. Solidarity at work does not arise from legal rules alone. Like other transaction benefits, it follows from the material conditions under which we work and interact.

B. *Reinterpreting Coase and Redefining Employment*

Above, I have argued that employment has many potential advantages over other ways of organizing work when it comes to relational transaction benefits. I have also argued that the leading legal distinction between employment and independent contracting—the employer’s putative right to control—matters far less in practice than on paper. Whether employee or contractor, economic dependency begets control.

With these points in mind, I return to the question I posed at the end of Part II: In light of employment’s socio-legal complexity, how should we understand Coase’s argument about employment and its advantages? If all labor extraction between entities with unequal resources and power involves some meaningful degree of control, either by means of legal rule or economic reality, it becomes harder to argue that transaction costs between employment and independent contracting differ greatly. But as set forth above, employment likely *does* differ significantly from contracting in terms of its potential for transaction benefits.

When Coase defined employment based on Batt’s proclamation in *Law of Master and Servant* about the employer’s right to “direct and control,” Coase interpreted this long-enduring socio-legal form based on one short paragraph in a book approximately five hundred pages long.³¹⁶ Yet, the very first paragraph of the volume offered a distinct take on the relationship. According to Batt’s introduction, “The relation of master and servant [is] one of the three great relations of private life, those of husband and wife and of parent and child being the other two.”³¹⁷ The employee relationship arises when “a man is directed to call in the assistance of others, where his own skill and labour will not be sufficient to answer the cases incumbent upon him.”³¹⁸ To be clear, this grand definition obfuscates the legal inequality which the relationship has historically presumed and the exploitation it has often legitimated. Yet, it does emphasize that the legal form was never solely about control.

In a recent judicial opinion, District Court Judge Vince Chhabria of the Northern District of California reflected on what we “[t]raditionally” think of as

315. Paul, *supra* note 276, at 977–80.

316. See generally BATT, *supra* note 128.

317. *Id.* at 1; see also WILLIAM M. LEISERSON, RIGHT AND WRONG IN LABOR RELATIONS 10 (1942) (“Employer and Employee are . . . personalities bound together in contractual agreements not unlike the relations set up by a marriage contract.”).

318. BATT, *supra* note 128, at 1.

employees (and, in turn, independent contractors). His law-in-action account of employee status also emphasized the difference between employment as a legal definition and employment as an institutional economic reality.³¹⁹ “We generally understand an employee,” he began, “to be someone who works under the direction of a supervisor, for an extended or indefinite period of time, with fairly regular hours, receiving most or all his income from that one employer.”³²⁰ In contrast, independent contractors are people we “might have found in the Yellow Pages . . . [as] someone hired to achieve a specific result that is attainable within a finite period of time.”³²¹ Building on Judge Chhabria’s reflections, the authors of a leading textbook, *Work Law*, ask: “Query . . . whether the commonsense difference between employees and contractors reflects the legal difference between the two.”³²² The common sense definition of employee emphasizes some level of ongoing commitment and extra-contractual expectation and obligation, and yet the legal definition seems almost willfully blind to this reality. Historically, the fact that employment is an ongoing relationship, rather than a discrete transaction, was recognized more directly. As the U.S. Supreme Court declared in 1891, an employee is someone “in regular and continual service.”³²³ In contrast, “one who is engaged to render service *in a particular transaction*” is a contractor.³²⁴

Ultimately, then, if what is truly distinctive about employment is its relational character, Coase’s account of employment’s comparative advantage suddenly starts to look like one that should and must be tied to those relational benefits. Employment has always been a complex and contradictory form: It combines freedom and unfreedom. But it has the potential—as a form of ongoing economic relationship, as inclusion within an economic community—for significant and meaningful relational transaction benefits. And any analysis of the form that does not consider relationships should be suspect. Of course, reduced transaction costs may often follow from collaborative, ongoing relationships. But they are not the driver.

Importantly, a revisionist understanding of employment as characterized by an ongoing relationship is not as revisionist as it may seem at first blush. In fact, it lands almost exactly where a number of leading scholars have landed in recent years, in trying to better articulate the lived reality and concomitant legal definition of employment. Work and corporate law expert Matthew Bodie, for example, has argued that employment should be understood as participation in a distinct socio-

319. See *Cotter v. Lyft, Inc.*, 60 F. Supp. 3d 1067, 1069 (N.D. Cal. 2015) (denying cross-motions for summary judgement on the question of whether Lyft drivers were employees or independent contractors under California State employment law).

320. *Id.* at 1069.

321. *Id.* (alteration in original) (quoting *Antelope Valley Press v. Poizner*, 75 Cal. Rptr. 3d 887 (Ct. App. 2008)).

322. MARION G. CRAIN, PAULINE T. KIM, MICHAEL SELMI & BRISHEN ROGERS, *WORK LAW: CASES AND MATERIALS—TEACHER’S MANUAL* 15 (4th ed. 2020).

323. *Louisville, Evansville & St. Louis Ry. Co. v. Wilson*, 138 U.S. 501, 505 (1891).

324. *Id.* (emphasis added).

economic entity, the firm.³²⁵ Similarly, legal scholar Eric Posner has defined employees, not based on employers' right to control, but as workers who make relationship-specific investments in a firm.³²⁶

Because of the centrality of an ongoing relationship to the lived experience of employment, virtually all modern tests for employment status do consider length of potential service and integration into an ongoing co-production process as relevant to the question of employee status, even if only subsidiary to the right to control. Among the factors considered as part of the right to control test are whether the work is integral to the employer's business, the duration of the relationship, and the expectation that the workers will be assigned additional work on an ongoing basis.³²⁷ The "economic realities" test, adopted for evaluating employee status for the Fair Labor Standards Act, considers similar factors: permanence of relationship and whether the work performed is integral to the business entity.³²⁸ Finally, the "ABC" test asks whether the worker performs "work that is outside the usual course of the hiring entity's business."³²⁹ If the answer to this question is no—if the worker performs work that *is* central to the ongoing concerns of the business—that ends the inquiry: The worker is an employee.

The Restatement of Employment Law's account of employee status arguably goes a step further in making inclusion within an economic community the definitive characteristic of employee status. This is because it asks whether the worker "operates as an independent business person."³³⁰ To be an independent business person means, at minimum, retaining "entrepreneurial control over the allocation of capital and labor."³³¹ To be sure, the Restatement uses key factors from the leading tests in order to evaluate the question of control. Such factors include: the worker's ability to hire and pay assistants; the source of instrumentalities and tools used in the work; the worker's opportunity for profit or loss depending on managerial skill; and whether the worker is engaged in an independently established trade, occupation, or business.³³² These factors are part of a limited inquiry into employer control, however. According to the Restatement, it is whether the control

325. Matthew T. Bodie, *Participation as a Theory of Employment*, 89 NOTRE DAME L. REV. 661, 665–66 (2013).

326. Eric A. Posner, *The Economic Basis of the Independent Contractor/Employee Distinction* 100 TEX. L. REV. 353, 353, 376 (2021).

327. See, e.g., *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 323–24 (1992) ("Among the other factors relevant to [the right to control test] . . . are . . . the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party . . . [and] whether the work is part of the regular business of the hiring party . . .").

328. See, e.g., *Sec'y of Lab. v. Lauritzen*, 835 F.2d 1529, 1534–35 (7th Cir. 1987) ("Among the criteria courts have considered [when applying the economic realities test] are . . . the degree of permanency and duration of the working relationship . . . [and] the extent to which the service rendered is an integral part of the alleged employer's business.").

329. E.g., CAL. LAB. CODE § 2775 (b)(1)(B) (West 2020).

330. Michael C. Harper, *Focusing the Multifactor Test for Employee Status: The Restatement's Entrepreneurial Formulation* 9 (Bos. Univ. Sch. L., Pub. L. Rsch. Paper No. 15-51, 2015).

331. *Id.*

332. *Id.* at 7–8.

exercised by the hiring party “effectively prevents the individual from rendering the services as an independent businessperson” that matters most.³³³ That is, the real question is: Is this person in business for themselves or are they a part of the firm?

Recognizing that inquiry into any generalized right to control is largely a red herring also helps untether the concept of employment from any particular ownership or management structure. This means that employment can exist, and it does exist, outside of the domination it has long been associated with.³³⁴ Today, we tend to think of firms as defined by their ownership and management structure. But again, Coase’s theory of employment did not address ownership, and he assumed the importance of management without validating it.³³⁵

In line with this intuition that employment and hierarchical control are not inexorably related, a host of contemporary scholars, activists, and working people are reinterpreting both the firm and the employment relationship in ways that detach their legal meaning from hierarchy, management, and ownership. For instance, work law scholar Gali Racabi posits that we can and should abolish the employer prerogative: the idea that the employer by default has a broad right to control its employees. Yet, he contends that the legal form itself can survive under a more democratic form of control.³³⁶ Similarly, Matthew Bodie argues that employment should be conceptualized as a bidirectional fiduciary relationship, in which both employer and employee owe legal duties to each other.³³⁷ And Sabine Tsuruda and other political philosophers have refocused on making the workplace one of relational justice through the adoption of a cooperative paradigm for employment.³³⁸ Of course, all of these different approaches to ownership and management will have their own transaction costs and benefits. But the calculus for those decisions is distinct from the calculus about employment.

333. *Id.* at 10.

334. *See, e.g.,* *Goldberg v. Whitaker House Coop.*, 366 U.S. 28, 32 (1961) (holding that workers at an employee-owned cooperative were statutory employees covered by the Fair Labor Standards Act because “there is nothing inherently inconsistent between the coexistence of a proprietary and an employment relationship”).

335. Coase, *supra* note 18, at 388–89.

336. Gali Racabi, *Abolish the Employer Prerogative, Unleash Work Law*, 43 *BERKELEY J. EMP. & LAB. L.* 79, 79 (2022); *see also* Samuel R. Bagenstos, *Employment Law and Social Equality*, 112 *MICH. L. REV.* 225, 239 (2013) (arguing that promoting social equality should be understood as a central goal of employment law and examining how various workplace doctrines advance or impede this objective); David C. Yamada, *Human Dignity and American Employment Law*, 43 *U. RICH. L. REV.* 523, 524–25 (2009) (proposing human dignity as an organizing principle for employment law reform).

337. Matthew T. Bodie, *Employment as Fiduciary Relationship*, 105 *GEO. L.J.* 819, 821 (2017) (“The debate over employee fiduciary duties is just the tip of a larger set of unresolved issues that make up the complicated fiduciary relationship between employees and employers. . . . As a result, it is appropriate to say that employers are fiduciaries, too. . . . [E]mployees and employers have multiple and interwoven responsibilities to each other [and amongst themselves] that would appropriately structure the employment relationship.”); *see also* Spencer Thompson, *Towards a Social Theory of the Firm: Worker Cooperatives Reconsidered*, 3 *J. CO-OPERATIVE ORG. & MGMT.* 3, 5 (2015).

338. *See generally* *WORKING AS EQUALS: RELATIONAL EGALITARIANISM AND THE WORKPLACE* 2 (Julian David Jonker & Grant J. Rozeboom eds., 2023).

A revisionist account of Coase's theory of employment as a theory of its relational transaction benefits is also consistent with how other scholars have reinterpreted Coase's arguments about when employment makes sense. While some of this scholarship continues to emphasize transaction costs, it complicates Coase's singular emphasis on "control" versus "contract" as the mechanism of differentiation. The concept of relational transaction benefits accordingly helps build upon and clarify these reinterpretations of what "employment" really constitutes—and why it makes both social and economic sense.

As one example, economic sociologist Oliver Williamson has argued that the concept of idiosyncratic exchange or asset specificity is a central consideration when deciding whether assets, either people or things, should be procured on the market or in-house.³³⁹ When it comes to people, asset specificity is generally read to mean the possession of a particularized skill set.³⁴⁰ With regard to things, asset specificity is generally read to mean a specialized use.³⁴¹ When goods or people must be tailor-made or carefully trained, Williamson has argued that an organized governance structure, through vertical integration or employment, is usually more efficient than markets.³⁴²

From a transaction costs perspective, the conclusion here has been that employment makes economic sense for highly skilled workers because it minimizes the transaction costs associated with hiring and training workers that cannot easily be replaced. But a transaction benefits framework emphasizes another dimension of Williamson's theory, one which recenters the social aspects of human labor. A transaction benefits framework posits that human relationships *always* have asset specificity. That is, connections are formed between specific people, and to change one of those people is by necessity to change the relationship.

Similarly, economists Armen Alchian and Harold Demsetz have reinterpreted Coase to argue that employment is most important when there is "team production," or when multiple people contribute to a goal that is more than the sum of its parts.³⁴³ Alchian and Demsetz emphasize the role of firm governance in coordinating efforts and ensuring the appropriate differentiation of rewards.³⁴⁴ Here, again, a transaction benefits approach offers a more capacious view of *when* teamwork matters: namely, always. Social context affects even the most arguably piecemeal production. As

339. See Oliver E. Williamson, *Transaction-Cost Economics: The Governance of Contractual Relations*, 22 J.L. & ECON. 233 (1979) [hereinafter Williamson, *Transaction-Cost Economics*]; see also Oliver E. Williamson, Michael L. Wachter & Jeffrey E. Harris, *Understanding the Employment Relation: The Analysis of Idiosyncratic Exchange*, 6 BELL J. ECON. 250 (1975); Oliver E. Williamson, *Credible Commitments: Using Hostages to Support Exchange*, 73 AM. ECON. REV. 519, 526 (1983); OLIVER E. WILLIAMSON, *THE ECONOMIC INSTITUTIONS OF CAPITALISM: FIRMS, MARKETS, RELATIONAL CONTRACTING* 116–19 (1985).

340. See Williamson, *Transaction-Cost Economics*, *supra* note 339, at 255–57.

341. See *id.* at 240–41.

342. See *id.* at 259.

343. Armen A. Alchian & Harold Demsetz, *Production, Information Costs, and Economic Organization*, 62 AM. ECON. REV. 777, 779 (1972).

344. *Id.* at 780.

economic sociologist Viviana Zelizer puts it: “[T]he overall performance of an organization is not the simple sum of individual performances but the outcome of interactions among its members.”³⁴⁵ And while differentiation of reward can certainly be important to management, a transaction benefits approach calls attention to an inverse concern: It is not just that team production makes it harder to accurately identify and apportion rewards (although that is certainly one side of the story). It is also that team production can, under the right circumstances, increase commitment, effort, joy, and overall productivity.

One additional reinterpretation of the firm is worth mentioning here. In recent years, the concept of “corporate culture” has become increasingly central to studying firm performance, particularly within the field of corporate finance.³⁴⁶ This literature shows that profitability depends largely on “culture.” And while culture has proven difficult to define and even more difficult to replicate, it nonetheless seems clear that corporate culture, whatever it is and wherever it is to be found, is *the* driving characteristic of firm success.³⁴⁷ As such, there has been a call to jettison a traditional understanding of the firm as defined by property rights, principal-agent relationships, and a Coasean “nexus of contracts.” In their place, some scholars provocatively call for an inherently social understanding of the firm: a collective endeavor that, at its best, is pushed by “the innate capacity for human cooperation, driven by social norms existing outside the legal system.”³⁴⁸

Consistent with evolutionary biology’s new framework for understanding the nature of being human, perhaps it was employment’s superior ability to invoke the human capacity for “we”-ness—generating pro-social, relational benefits—that made it so valuable all along.³⁴⁹

C. Towards A New Standard Employment Relationship

If employment has these relational benefits, why then do gig work and automation remain so alluring, even to some of the workers whose livelihoods may soon be imperiled by them?³⁵⁰ This question, I think, emphasizes that the *conditions*

345. ZELIZER, *supra* note 41, at 258.

346. Gary B. Gorton, Jillian Grennan & Alexander K. Zentefis, *Corporate Culture*, 14 ANN. REV. FIN. ECON. 535, 536–37 (2022); *see also* Claudine Gartenberg & Todd Zenger, *The Firm as a Subsociety: Purpose, Justice, and the Theory of the Firm*, 34 ORG. SCI. 1965, 1969 (2023).

347. Gorton, Grennan & Zentefis, *supra* note 346, at 536.

348. *Id.*

349. None of this is to suggest that contracts are asocial. Both social theory and empirical research emphasize that contracting is often relational, both arising from and constitutive of social relationships, and that these relationships often serve a gap-filling role. *See, e.g.*, Ian R. Macneil, *The Many Futures of Contracts*, 47 S. CAL. L. REV. 691, 731–33 (1974) (establishing foundational theory of relational contracting); Stewart Macaulay, *Non-Contractual Relations in Business: A Preliminary Study*, 28 AM. SOCIO. REV. 55, 60–62 (1963). My point here is simply that employment is distinct from contracting in its relational expectation and its implications.

350. V.B. Dubal, *Wage Slave or Entrepreneur?: Contesting the Dualism of Legal Worker Identities*, 105 CALIF. L. REV. 101, 118 (2017) (“Strikingly, every driver gave the same answer, ‘I like the freedom.’ In addition to embracing the structural control and flexibility enabled by independent

under which people are employed matter too. Employment can be a powerful source of social connectedness and solidarity under the right conditions. The reality is that we are increasingly failing to create those conditions in the United States.

While a thorough critique of contemporary labor and employment policy, as well as housing, transportation, and care infrastructure, is beyond the scope of this piece, any discussion of employment's potential transaction benefits must reckon with how degraded employment has become for so many and how the current reality of work shapes future of work imaginaries.

The problems with employment today do not arise inexorably from its legal form, though. As reiterated throughout, employment is a multifaceted and capacious legal relationship, capable of being shaped and reshaped as needed to meet the needs of a changing society. The problem with employment today is, in significant part, the downfall of the twentieth century "standard employment relationship" (SER) and our ongoing political failure to build a new SER that works for the twenty-first century.³⁵¹

The twentieth-century SER was multidimensional, shaped as much by law as by collective bargaining agreements, personnel policies, and cultural norms.³⁵² Per employment law scholar Katherine Stone, the SER arose from political compromise and manifested as a psychological contract.³⁵³ For workers, the SER meant an ongoing normative ideal of employment that included job security, opportunities for advancement, fair pay and benefits, and loyalty.³⁵⁴ It also offered social connection and a sense of identity and belonging.³⁵⁵ For employers, the SER meant a dedicated workforce with deep firm-specific knowledge. The SER—at least for

contracting, many immigrant and racial-minority drivers experienced the independent contractor identity as a freeing identity.”).

351. See, e.g., Fudge, *supra* note 52, at 15 (analyzing how the standard employment relationship was historically constructed through worker power and institutional supports, and arguing its future depends on rebuilding these foundations).

352. *Id.*

353. From the 1970s through the 1990s, workers and unions often brought promissory estoppel actions in their attempt to enforce the “implicit contracts” that had constituted many of the terms and conditions of their employment to mixed results. See Daniel A. Farber & John H. Matheson, *Beyond Promissory Estoppel: Contract Law and the “Invisible Handshake,”* 52 U. CHI. L. REV. 903, 912 (1985). Compare *Charter Township of Ypsilanti v. Gen. Motors Corp.*, No. 92-043075-CK, 1993 WL 132385, at *13 (Mich. Cir. Ct. Feb. 9, 1993) (holding that “[t]here would be a gross inequity and patent unfairness if General Motors, having lulled the people of the Ypsilanti area into giving up millions of tax dollars which they so desperately need to educate their children and provide basic governmental services, is allowed to simply decide that it will desert 4500 workers and their families because it thinks it can make these same cars a little cheaper somewhere else”), *rev’d*, 506 N.W.2d 556 (Mich. Ct. App. 1993), with *Charter Township of Ypsilanti v. Gen. Motors Corp.*, 506 N.W.2d 556, 559 (Mich. Ct. App. 1993) (“[T]he fact that a manufacturer uses hyperbole and puffery in seeking an advantage or concession does not necessarily create a promise.”).

354. Stone, *supra* note 44, at 539–41 (characterizing standard employment as involving long-term job security, predictable advancement paths, employer-provided benefits, and implicit reciprocal loyalty commitments).

355. See STONE, *supra* note 59, at 53–56 (analyzing how employment relationships provided psychological as well as economic benefits).

those with access to it—promoted relational transaction benefits for workers, employers, customers, and society writ large.

There are many reasons for the decline of the SER, and again, a full explanation of them is beyond the scope of this Article. But it is particularly worth noting the role of deunionization. While labor unions in the United States never achieved the power that they had in many other well-off democracies, labor unions were still a major player in the so-called “golden era” of American capitalism, shaping the working conditions of both union and nonunion workers. Unions were instrumental in increasing the material rewards of work, assuring job security, benefits, and regular raises. Unions also fostered worker solidarity, pride, and collective identity.³⁵⁶ The weakening of unions has meant the erosion of important social institutions that gave meaning to work life, as well as erosion of workers’ political power to broker a new political compromise, a twenty-first-century standard employment relationship.³⁵⁷

There are three points worth briefly noting here about the decline of the SER and its implications for employment today. First, there has been a sharp decline in the extent to which public policy supports quality employment relationships. Workers incur transaction costs when they work too.³⁵⁸ In order to work, workers must develop the skills to be hired, must travel to and from work, must have a place to live close to their work, and must invest in and maintain their own productive capacity through eating well, exercise, seeking health care, and more. Under the SER, employers shared responsibility for many of these costs. They paid a “family” wage (at least to White men). They provided health care benefits, as well as opportunities for meaningful social interaction.³⁵⁹ Some employers even offered subsidized housing and transportation.³⁶⁰ Government policy further supported quality employment through tax incentives for employer-run programs, as well as through direct investments in affordable housing, public transportation, and child

356. See RICK FANTASIA, *CULTURES OF SOLIDARITY: CONSCIOUSNESS, ACTION, AND CONTEMPORARY AMERICAN WORKERS* 82–85 (1988) (examining how unions created cultures of mutual support and dignity).

357. See THOMAS GEOGHEGAN, *WHICH SIDE ARE YOU ON? TRYING TO BE FOR LABOR WHEN IT’S FLAT ON ITS BACK* 195–98 (1991) (describing how union decline eliminated spaces for worker socialization and solidarity).

358. See, e.g., Nancy Fraser, *Contradictions of Capital and Care*, *NEW LEFT REV.*, July/Aug. 2016, at 99, 101–03, <https://newleftreview.org/issues/ii100/articles/nancy-fraser-contradictions-of-capital-and-care.pdf> [<https://perma.cc/UGK5-QQEX>]; SILVIA FEDERICI, *REVOLUTION AT POINT ZERO: HOUSEWORK, REPRODUCTION, AND FEMINIST STRUGGLE* 5–8 (2012).

359. See SANFORD M. JACOBY, *MODERN MANORS: WELFARE CAPITALISM SINCE THE NEW DEAL* 35–49 (1997) (documenting how major employers, even though nonunion, once provided housing, recreation facilities, and other social supports as part of “welfare capitalist” programs); BETTY FRIEDAN, *THE SECOND STAGE* 123–25 (1981) (describing how some large employers provided on-site childcare and other family supports in 1970s before retreating from such programs).

360. See JACOBY, *supra* note 359, at 35–49.

care.³⁶¹ Today, the lack of affordable housing near job centers, inadequate public transit, and insufficient care infrastructure all increase the costs workers face in building meaningful careers and workplace relationships.³⁶²

Second, the most enduring characteristic of the twentieth-century SER is ironically the characteristic that is least well suited for the needs of American workers and their families today: the forty-hour work week as the paradigm for full-time and fully remunerated work. This normative ideal arises neither from employer munificence nor any economic imperative. The forty-hour work week was a massive political victory for working people, acceded to by employers only in the face of worker disruption and protest. Workers and unions sought a forty-hour work week because it was a cultural fit for then-dominant gender ideology and divisions of labor. As work and family scholar Joan Williams has argued, the SER presumed a modal worker, a man, working full-time and supported at home by a wife who did not work outside the home, and who would bear almost total responsibility for the unpaid labor of social reproduction.³⁶³

Today, most Americans families have a very a different division of paid and unpaid labor. People of all genders value market labor, and they value caring for a home and for a family. Yet, for all the other changes to the SER, presumptions about total hours, work schedules, and flexibility remain much the same. Ironically, one of the core claims of platform employers is that they *must* treat their workers as independent contractors in order to give them flexibility. But as legal scholars repeatedly respond, this is not the case. Workers' "full-time" schedules do not arise from law; they are constituted by power, policies, and norms. We do not need to give up on employment to accommodate workers and their families today. We just need a politics capable of creating a SER fit for the twenty-first century, one which among other things should mean significantly reducing the number of hours that constitutes the normative ideal.

Finally, it is important to emphasize that the decline of the SER and our ongoing failure to rebuild has been enabled by meaning-making about work; by ideas like the Coasean understanding of employment as a cost-reducing mechanism. Sociologist Erin Hatton has argued that there are two warring normative paradigms for valuing employment,³⁶⁴ the asset model and the liabilities model. Under the asset model, predominant through the 1970s, human labor was understood as the font of economic productivity, and from that view, it followed

361. See MARIE GOTTSCHALK, *THE SHADOW WELFARE STATE: LABOR, BUSINESS, AND THE POLITICS OF HEALTH CARE IN THE UNITED STATES* 82–85 (2000) (examining how tax policy once encouraged employer provision of benefits but has become less supportive).

362. See generally Noah D. Zatz, *The Impossibility of Work Law*, in *THE IDEA OF LABOUR LAW* 234 (Guy Davidov & Brian Langille eds., 2011) (analyzing how work law's isolation from other social policies undermines job quality).

363. See JOAN C. WILLIAMS, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT* 64–68 (2000) (examining how workplace norms reflect outdated single-breadwinner model).

364. HATTON, *supra* note 56, at 2–7.

that workers should be respected and well-compensated. Under the liabilities model, predominant since the 1970s, however, business ingenuity and innovation are treated as the real source of value. Workers, in contrast, became understood as costs. The state of employment today, and the stubborn allure of future of work imaginaries, are reflections of how comprehensively the liabilities model has supplanted the asset model in public understanding, even as workers grow increasingly productive. As Louis Hyman has argued, understanding the allure of the gig economy “requires recognizing that even those who receive W-2s aren’t living in a world of stable employment.”³⁶⁵ For too many workers, employment today *is* experienced as the right to control and little else.

Given employment’s potential benefits for productivity, for social flourishing, and for political sanity, this should be a worrying state of affairs. And it should be a wakeup call to create a new and better standard employment relationship before it is too late. Today, too many otherwise progressive scholars have been convinced by the liabilities model of labor to understand workers as a cost rather than a source of value.³⁶⁶ As a result, too many accept that work’s future must be a race to the bottom. Faced with the threat of automation and AI, the argument is that workers must find ways to make themselves cheaper.³⁶⁷ A transaction benefits perspective challenges this false dichotomy. To invest in workers is to build value, not lose it. In the same way, a transaction benefits perspective also calls into question one of the core assumptions that has thus far guided this Article—namely, that the legal rights and protections attached to employment should be considered independently of employment’s ability to promote social solidarity. Like employment itself, perhaps these distributional and dignitary commitments were never liabilities, but investments.

D. *The Future of Transaction Benefit Economics*

Before concluding, I reflect briefly on potential futures for transaction benefit economics—as a research agenda, an academic paradigm, a policy tool, and a normative commitment.

I have argued that under the right conditions, employment may better promote transaction benefits than either automation or gig work. But if today’s Coaseans are correct, employment may no longer be the best vehicle to minimize transaction costs.³⁶⁸ There are reasons to question whether this is actually the case; but if it is, at least some of the time, how should we think about the relationship between cost minimization and benefit maximization?

To answer this question requires delving into the complex relationship between transaction costs and benefits. Within the world of transaction-cost economics, it has long been known that phenomena like trust, norms, and shared

365. HYMAN, *supra* note 300, at 303.

366. HATTON, *supra* note 56, at 2.

367. *Id.*

368. *See, e.g., supra* note 14 and accompanying text.

morality can help reduce transaction costs.³⁶⁹ Up until now, though, trust, norms, and shared morality have often been treated as exogenous to the transacting process, as societal characteristics that either exist or not. A transaction benefits framework insists that the story is more complicated: How we transact helps create shared norms and moral values. Put more simply, a well-functioning society facilitates a well-functioning economy, and vice versa.

This mutually constitutive relationship need not mean analytical fuzziness, however, nor the pretense that it is possible to equally serve all policy goals at once. To the contrary: If transaction costs and benefits were entirely independent phenomena, institutional design might allow us to fully maximize each. But given their likely interdependence, there will be trade-offs. Without some amount of transaction costs, there are unlikely to be transaction benefits. In turn, at very high levels, transaction costs almost certainly reduce relational benefits, as anyone who has ever tried to navigate an inflexible bureaucracy can attest. If the relationship between transaction costs and benefits is curvilinear, if it changes based on the levels of each, then careful, empirical analysis is all the more important for finding an ideal balance.

In Markovits's exploratory consideration of transaction benefits, he queried whether law and economics as a discipline could incorporate the idea of social solidarity as a transaction benefit. He asked whether economic analysis could account for benefits beyond the strictly monetary.³⁷⁰ Without the rational actor assumption, without the celebration of Pareto efficiency, without inexorably linking aggregate social welfare to individual self-maximization, what would law and economics be?

Arguably, what it could be is more rooted in Coase's vision than ever before. To say that the economy is neither independent of other social institutions nor of solely monetary importance is not to say that the study of human production is unimportant or impracticable. It is to say that the work of understanding how the multiple dimensions of human flourishing are interrelated is complicated, and that we have no choice—as academics, policymakers, workers, and human beings—but to engage with that complexity.

The fact is that the normative Coase theorem has never done justice to Coase's empirical or theoretical importance. His intervention was to say that the economy is embedded in society, and economists cannot and should not simply assume away this embeddedness. Instead, economy and people must be studied together, as each impacting the other. This requires considering transactions in their social context. It also requires considering the full breadth of human nature, which extends beyond bounded rationality and opportunism and includes attributes like altruism, a need

369. See, e.g., Anastassios D. Karayiannis & Aristides N. Hatzis, *Morality, Social Norms and the Rule of Law as Transaction Cost-Saving Devices: The Case of Ancient Athens*, 33 EUR. J.L. & ECON. 621 (2012).

370. Markovits, *supra* note 179, at 623–33.

for social belonging, and a susceptibility to radicalization and violence when isolated.³⁷¹

Today, cost-benefit analysis is at a crossroads. As academics and policymakers alike step back from the bipartisan economism of previous decades, there is disagreement across disciplines about whether cost-benefit analysis can still be useful. To some, it is morally indefensible—an attempt to assign a monetary value to things that cannot be defined by price and to compare the incomparable.³⁷² But for others, there is a belief that cost-benefit analysis can remain an important tool of policymaking in a pluralistic society—if and only if it becomes more adept at accounting for the less tangible, yet equally essential, components of a fair and functional human society.³⁷³ Collectively, there is much that we want for the future of work: efficiency, productivity, equality, distributional justice, and social connectedness too. At times, there will be synergies among these goals, and at other times, there will be trade-offs. We can only make policy decisions in the “discerning” manner that these crucial questions deserve through full consideration of all the costs and all the benefits.³⁷⁴

An essential first step towards this goal is an ambitious empirical research agenda for transaction-benefit economics. Over the course of ninety years of transaction-cost economics, we have learned a great deal about how to design organizations and construct legal rules that minimize transaction costs. Transaction benefits deserve the same empirical attention. There are big picture questions: What aspects of our economic lives are the most connective? What do we lose when we decouple production and exchange from interaction? The best way to answer them is to identify and study the smaller questions: How do workers feel about self-check-out kiosks? Are they happy to avoid the emotional labor often demanded by customer-facing roles? Do workers supported by these kiosks have more time to focus on more authentic interactions with co-workers? Or do they feel invisible? If anything is clear about the future of work, it is that we need to know more about the costs and benefits of how we structure work today.

371. *Contra* WILLIAMSON, *supra* note 133, at 8.

372. *See, e.g.,* Melissa Luttrell & Jorge Roman-Romero, *Modernizing Regulatory Review Beyond Cost-Benefit Analysis*, LAW & POL. ECON. PROJECT (Oct. 11, 2021), <https://lpeproject.org/blog/modernizing-regulatory-review-beyond-cost-benefit-analysis/> [<https://perma.cc/YT7P-5HDF>]; James Goodwin, *A Post-Neoliberal Regulatory Analysis for a Post-Neoliberal World*, LAW & POL. ECON. PROJECT (Oct. 14, 2021), <https://lpeproject.org/blog/a-post-neoliberal-regulatory-analysis-for-a-post-neoliberal-world/> [<https://perma.cc/S9PB-WCRF>].

373. *See, e.g.,* Zachary Liscow, *Equity in Regulatory Cost-Benefit Analysis*, LAW & POL. ECON. PROJECT (Oct. 4, 2021), <https://lpeproject.org/blog/equity-in-regulatory-cost-benefit-analysis/> [<https://perma.cc/TUJ9-UW33>]; Elizabeth Popp Berman, *Let's Politicize Cost-Benefit Analysis*, LAW & POL. ECON. PROJECT (Oct. 5, 2021), <https://lpeproject.org/blog/lets-politicize-cost-benefit-analysis/> [<https://perma.cc/VF6Q-XC5B>].

374. *See* Anjali Rameshabu & Heidi Hudson, *Social Connection and Worker Well-Being*, CDC: NIOSH SCI. BLOG (Jan. 30, 2025), <https://blogs.cdc.gov/niosh-science-blog/2023/11/20/social-connection-and-work/> [<https://perma.cc/X384-PKRA>], for an example of policy-oriented guidance at the nexus of social connection and worker well-being.

CONCLUSION

We live in difficult times. Today, Americans are unhappy and lonely.³⁷⁵ Social trust is at a low.³⁷⁶ Disinformation and polarization corrode the efficacy and stability of our institutions.³⁷⁷ By some measures, one-third of all adults in this country struggle with anxiety or depression.³⁷⁸ In 2023, over fifty thousand Americans died by suicide—more than any other year on record.³⁷⁹ In a much-read 2022 article in *The Atlantic*, social psychologist Jonathan Haidt urged Americans to see these disparate phenomena as interrelated, systemic, and dangerous.³⁸⁰ “If we do not make major changes soon,” he concluded, “then our institutions, our political system, and our society may collapse.”³⁸¹ This is a Durkheimian crisis, if ever there was one.³⁸²

Against this backdrop, it would be a mistake to contemplate the future of any American institution without contemplating its impact upon the future of American social solidarity. And yet, in discussing the future of work, its impact on our social relationships has largely been an afterthought. How we transact is left out of our increasingly pained reflections on how we interact. We blame Twitter (now X) but let Amazon Prime off scot-free.

Transaction cost economics has always troubled this false dichotomy between our social lives and our economic lives. It has framed transactions as interactions—as potential relationships. Economic activity takes place between human beings, and it is therefore inevitable that our humanity will shape our economy and our economy will shape our humanity. And just as shrewd policymaking can minimize

375. See generally OFF. OF THE SURGEON GEN., U.S. DEP’T OF HEALTH & HUM. SERVS., OUR EPIDEMIC OF LONELINESS AND ISOLATION: THE U.S. SURGEON GENERAL’S ADVISORY ON THE HEALING EFFECTS OF SOCIAL CONNECTION AND COMMUNITY (2023), <https://www.hhs.gov/sites/default/files/surgeon-general-social-connection-advisory.pdf> [<https://perma.cc/TNP3-Q2SU>] (treating loneliness as an epidemic in the United States).

376. See Esteban Ortiz-Ospina, Max Roser & Pablo Arriagada, *Trust: How Does Interpersonal Trust Differ Across Societies and What Role Does It Play in Shaping Economic Development?*, OUR WORLD IN DATA (Apr. 2024), <https://ourworldindata.org/trust> [<https://perma.cc/UK8N-GJ4Z>] (showing that social trust is at a low).

377. Lee, *supra* note 227, at 1541–42 (finding that individuals’ perceptions of high political polarization correlate with decreased social trust and increased skepticism about others’ trustworthiness, even in non-political contexts).

378. *Mental Health and Substance Use State Fact Sheets*, KFF (Mar. 20, 2023), <https://www.kff.org/interactive/mental-health-and-substance-use-state-fact-sheets/> [<https://perma.cc/UBR5-MAEM>].

379. MEET THE PRESS, *More Than 50,000 Americans Died by Suicide in 2023 — More Than Any Year on Record* (NBC News Dec. 31, 2023), <https://www.nbcnews.com/meet-the-press/video/more-than-50-000-americans-died-by-suicide-in-2023-more-than-any-year-on-record-201161285832> (on file with the California Law Review).

380. Jonathan Haidt, *Why the Past 10 Years of American Life Have Been Uniquely Stupid*, ATLANTIC (Apr. 11, 2022), <https://www.theatlantic.com/magazine/archive/2022/05/social-media-democracy-trust-babel/629369/> [<https://perma.cc/L9WQ-FTXK>].

381. *Id.*

382. See ANNE CASE & ANGUS DEATON, DEATHS OF DESPAIR AND THE FUTURE OF CAPITALISM (2020).

transaction costs in order to promote efficiency, so too can it maximize transaction benefits in order to promote social solidarity, trust, and cohesion.

If the overlapping crises of the past several years have taught us anything, it is that none of us are truly independent. No matter how much wealth we create or how strong we assume our social institutions to be, each of our lives depends on the lives of others. Climate change, pandemics, insurrections: For better or worse, other people affect us, and we affect them.

There are no easy solutions to the divisions among us. But there are clear mistakes. Our material needs have the potential to bring us closer together or pull us further apart. Transaction benefit economics provides analytical tools necessary for us to choose wisely.