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JUST JOBS

Anita Bernstein*

Activists who pursue gender justice in the United States have always focused on work, both the paid and unpaid kind. In her magisterial *Sex Equality*, Catharine MacKinnon chose “Work” as her first section, or illustrative locus, in the chapter titled “Sex and Sexism.”¹ At the workplace, MacKinnon wrote, begins “the most-traveled terrain” of sex equality law.² Unpaid work fills the waking hours of most women. Women’s labor makes the domestic economies of nation-states possible, even though it continues almost entirely uncounted in measurements of national output.³ Injustices in both categories of work, the paid and unpaid, buttress each other.⁴

Mindful of the undertakings and achievements of gender-justice activists in the realm of work, this Article adds to their task by proposing more for feminist law to do.⁵ I will argue that feminist

* Anita and Stuart Subotnick Professor of Law, Brooklyn Law School. This Article benefited from stimulating discussion at the Eighth Annual Feminist Legal Theory Conference held at the University of Baltimore. At my own school I gained from a brown-bag discussion, insightful supports from colleagues and students—Bailey Kuklin, Michael Cahill, Adam Kolber, Rebecca Kysar, Amanda Levine, Melissa Mortazavi, and Loren Pani in particular—and funding from the Dean’s Summer Research Stipend initiative.

1. CATHARINE A. MACKINNON, *SEX EQUALITY* 145–46 (1st ed. 2001).
2. *Id.* at 144.
3. Julie A. Nelson, *Foreword* to COUNTING ON MARILYN WARING: NEW ADVANCES IN FEMINIST ECONOMICS, at ix (Margunn Bjørnholt & Ailsa McKay eds., 2014) (returning to *If Women Counted*, the pathbreaking study first published in 1988, and finding its message only partly heeded).
4. CATHARINE A. MACKINNON, ARE WOMEN HUMAN? AND OTHER INTERNATIONAL DIALOGUES 335 n.54 (2006) (citing MARILYN WARING, *IF WOMEN COUNTED* (1990)) (connecting Waring’s work about counting unpaid labor with employment discrimination).
5. Should “feminist” and “feminism” call for elaboration as to what they mean in this Article, here are a couple of quasi-definitions that have suited my purposes both past and present. See Anita Bernstein, *The Feminist Jurisprudence of Jack B. Weinstein*, 64 DE PAUL L. REV. 341, 343 (2015) (endorsing MacKinnon’s quotation of John Stuart Mill to the effect that feminism seeks to eradicate “the aristocracy of sex”); see also Anita Bernstein, *Foreword: Still Unfinished, Ever Unfinished*, 75 CHI.-KENT L. REV. 641, 646 (2000) (referencing the argument of Katharine Bartlett that one of several feminist legal methods is “ask[ing] ‘the woman question’”).

efforts, which with respect to United States law have hewed mostly to what can be called the quality side of the inquiry about jobs, should enlarge to consider quantity too: that is, the number of jobs available. Widened attention would support the pursuit of quality and also add strength to a larger struggle for gender justice.

By “quality,” the contrasting noun of the pair and the more familiar point of feminist interest, I mean the nature of work conditions as experienced by individuals at their jobs or when they seek new employment. Positive law, spurred by activist efforts, has set out to improve these conditions. Employment discrimination has occupied feminist energies for decades. Equal pay, which Congress mandated before it codified the Civil Rights Act,⁶ has continued to occupy the Supreme Court and the nation’s legislatures.⁷ Workplace safety, environmental regulations that affect workers, and procedural and administrative rules that affect redress and workplace safety are also important issues found on the quality side. “Quantity,” simply put, means more jobs, in contrast to jobs that are better—fairer, safer, higher paid, or easier for qualified seekers to obtain.

Quantity affects quality in the workplace. Fewer jobs means worse experiences at work for workers, because when individuals become more desperate to keep what they have, they will endure more mistreatment.⁸ Their employers can get away with ignoring their

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6. Equal Pay Act of 1963, 29 U.S.C. § 206(d) (2012); Civil Rights Act of 1964, 42 U.S.C §§ 1981 to 2000h-6 (2012 & Supp. I 2013). For a concise history of the Equal Pay Act, see *Equal Pay Act of 1963*, NAT’L PARK SERV., <http://www.nps.gov/subjects/civilrights/equal-pay-act-1963.htm> (last updated Sept. 26, 2015).
 7. See, e.g., *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618, 640–43 (2007) (construing Title VII adversely to plaintiffs who bring wage-discrimination claims); Lilly Ledbetter Fair Pay Act of 2009, Pub. L. 111-2, 123 Stat. 5 (codified as amended at 29 U.S.C. §§ 626, 633a, 794a & 42 U.S.C. §§ 2000e-5, 16) (amending Title VII in response to the *Ledbetter* decision); Bryce Covert, *How States Are Leading the Way on Equal Pay for Women*, THINK PROGRESS (May 17, 2003, 3:00 PM), <http://thinkprogress.org/economy/2013/05/17/2030071/how-states-are-leading-the-way-on-equal-pay-for-women/>.
 8. Courts have remarked on this truism. See, e.g., *Milligan v. Bd. of Trs. of S. Ill. Univ.*, 686 F.3d 378, 387 (7th Cir. 2012) (“Many if not most harassment cases involve allegations that someone in a position of power harassed someone else for whom job retention is an important if not paramount consideration.”); *Campos v. Daisy Constr. Co.*, 107 A.3d 570, 579 n.33 (Del. 2014) (observing that undocumented workers tolerate abuses because they fear losing their jobs and deportation); see also Claire Bradley, *How Unemployment Stats Affect Employed People*, INVESTOPEDIA, (Jan. 26, 2011), <http://www.investopedia.com/financial-edge/0211/how-unemployment-stats-affect-employed-people.aspx> (“With high unemployment comes fierce competition for jobs, and this is often accompanied by lower wages and tougher work conditions.”).

grievances or harming them. More jobs, conversely, means better experiences for this population. This Article approves legislation and other government action—undertaken especially, but not only, at the federal level—that set out to improve the domestic economy by creating new jobs and making them available throughout the United States.⁹ Activism can make these initiatives more likely to be launched and to succeed after their enactment.

Though it is consistent with current feminist efforts, the undertaking that I endorse in this Article lies outside the activist mainstream of this movement. Consider the center of feminism as marked by the venerable National Organization for Women (NOW), an institution with a wide range of concerns and a strong record of accomplishment. NOW is only one of many American feminist organizations, of course, but it has an especially wide mandate.¹⁰

Let us take a look at NOW's website. Six subdivisions appear on its Issues page: "Reproductive Rights and Justice," "Economic Justice," "Ending Violence Against Women," "Racial Justice," "LGBT Rights," and "Constitutional Equality."¹¹ Topics relating to employment appear in multiple subdivisions, not just "Economic Justice." In May 2015, I clicked on them all. The website expresses support for the Paycheck Fairness Act; the Social Security Caregiver Credit Act, a bill that would ascribe earnings to workers who leave their jobs to provide care; and a proposed requirement that federal contractors provide information on pay broken down by race, gender, and ethnicity.¹² NOW also signed a July 2012 letter that endorsed an increase in the national minimum wage (the wished-for amount was \$9.80 per hour) and a higher minimum cash wage for tipped workers.¹³ Worthy goals like these are distinct from, though entirely compatible with, an effort by feminist activists to increase the number of jobs that exist in the United States.

Job creation can come from many inputs and antecedents. Because I write as a lawyer in the pages of a law review with an audience of

9. See *infra* Part IV.C. (discussing the U.S.-centrism of my thesis).

10. *About*, NAT'L ORG. FOR WOMEN, <http://now.org/about/> (last visited Dec. 30, 2015) ("NOW is the largest organization of feminist activists in the United States, with hundreds of thousands of contributing members and more than 500 local and campus affiliates in all 50 states and the District of Columbia.").

11. *Issues*, NAT'L ORG. FOR WOMEN, <http://now.org/issues/> (last visited Dec. 30, 2015).

12. *Economic Justice*, NAT'L ORG. FOR WOMEN, <http://now.org/issues/economic-justice> (last visited Dec. 30, 2015).

13. Letter from Women's Organizations to Rep. George Miller, U.S. House of Representatives (July 11, 2012), http://www.nwlc.org/sites/default/files/pdfs/womens_organizations_support_fair_minimum_wage_act_of_2012_7_11_12.pdf.

lawyer-readers in mind, this Article understands legal change to be a significant source of new jobs. The most fundamental such intervention is job-creation legislation.¹⁴ In this Article, I commend it simultaneously to feminist activists and the national polity.¹⁵

If I am right to say that job-quality improvement follows from job-quantity improvement, then legislation that succeeds in creating new jobs goes on to enlarge rights and prerogative for workers, legal rights included. Thus it becomes reasonable to anticipate new law, the statutory and decisional kind included, that comports better with what feminism seeks to install. A traditional legal-feminist struggle against employment discrimination joins hands with the less traditional struggle that I commend here, each receiving and gaining support from the other.¹⁶

The path to Just Jobs starts in the first half of this Article, which postpones feminist questions and particulars in order to lay a foundation. Part I reviews job creation as policy. I look at major American legislative interventions that set out to make new jobs, paying particular attention to eras of crisis: first the Depression of the 1930s and then the more recent downturn that commenced in 2008. With Part I having covered the What of job-creation projects that governments pursue, Part II turns to the Why. I choose in Part II to

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14. A recent report subtitled *Good Jobs for All* calls itself a “blueprint” that “will directly create a minimum of 5.6 million new jobs per year by investing in infrastructure and a jobs program that addresses high unemployment in high-poverty communities.” DORIAN T. WARREN, COLUMBIA UNIV. & ROOSEVELT INST., PUTTING FAMILIES FIRST: GOOD JOBS FOR ALL 10 (2015), <http://www.goodjobsforall.org/wp-content/uploads/2015/05/PFA-GJFA-Launch-Report.pdf>. Details in this report are too sparse to present a “blueprint,” see *id.* at 29 (adverting only to an expenditure of “\$200 billion [to] be made available annually to support these efforts in eligible, high-poverty communities where at least 20 percent of residents have income below the federal poverty level”), but the *Putting Families First* agenda seems to call for an appropriation by Congress and thus comports with the policy focus of this Article.
 15. In my endorsement of job creation through legislation I stop short of recommending legislation that would guarantee paid employment for all. See generally Eric Tymoigne, *Job Guarantee and Its Critiques*, 42 INT’L J. POL. ECON. 63, 63–65 (2013) (distinguishing job-creating legislation as commended in this Article, which the author credits as central to the vanquishing of the Great Depression, from job-guaranteeing legislation, a more ambitious and riskier path).
 16. Jobs created by legislative fiat, unlike jobs created by other interventions like subsidies of a sector, are amenable to oversight for quality. Government funders can set out to monitor what their appropriations are buying, whereas assessments of quality become more debatable for jobs with more diffuse origins. I thank Michele Gilman for making this point about the quantity-quality relation—Professor Gilman used the terse phrase “crap jobs”—at the Center for Applied Feminism conference in March 2015.

focus on the material consequences of an uptick in this count, using as my methodology the perspective of an individual who is affected by the number of jobs that exist in the United States and the region in which she lives.

From there, on to feminism. My calling job creation a feminist issue may sound at least unfamiliar, if not odd. Why should feminist activists care about an initiative that may seem peripheral to their work?¹⁷ Part III explores the thesis about better quality through larger quantity with attention to women in the workforce. I explain how the experiences of applying for and holding a job improve for a woman, *ceteris paribus*, when the number of jobs for persons of all genders goes up.

Quantity thus serves as a means to the end of quality: and job quality, as I've noted, has long been a legal-feminist priority.¹⁸ Part III also returns to my short history that looked at the Depression and the twenty-first century downturn, giving attention to gender in federal job-creation initiatives. Even though women as workers have not received a fair allotment of this government spending, the feminist potential of Just Jobs remains powerful. Job creation makes women become better off in the material sense broached in Part II, even if men receive the lion's helping of taxpayer-funded expansion, because newly created jobs that go to men are not taken away from women and thus have good effects for both persons of every gender.¹⁹ The rising tide of higher employment lifts boats for women too.

The materialist focus of this Article does posit out quite a bit, I acknowledge. Just Jobs as presented here spends little time on other good things that higher employment levels install, such as the psychological satisfaction of having a job—any employment typically being better for a worker than none—and the likelihood that an individual will find fulfillment in paid work. At the collective level, enlarged employment expands social prosperity. Gains like a bigger bourgeoisie, more patience and faith in the future for more people, and stronger commitments to valuable and durable human

17. Cf. Anita Bernstein, *Distributive Justice Through Tort (And Why Legal Sociolegal Scholars Should Care)*, 35 L. & SOC. INQUIRY 1099 (2010) (explaining the impact of tort law on the redistribution of money and power, and why sociological scholars should care about this change).

18. See *supra* notes 1–5 and accompanying text.

19. Here I refer to job creation as an ameliorator of unemployment, a social problem that harms families and relationships. See RICH MORIN & RAKESH KOCHHAR, PEW RESEARCH CTR., *THE IMPACT OF LONG-TERM UNEMPLOYMENT* (2011), <http://www.pewsocialtrends.org/files/2010/11/760-recession.pdf>.

creations like schools and geographic communities derive from a fuller job market.²⁰ The American workplace also has fostered some—maybe not much, but some—hard-to-count rewards like friendship, teamwork, and integration of diverse populations. These benefits are as real as the gain of more money. They get short shrift here mainly because of limited page space.

Among the beyond-money reasons for American feminists to invest in Just Jobs is one that Part III will not omit, however, because it is too important to neglect: the possibility of coalition politics.²¹ Coalitions have been integral to American feminism even when priorities, compromises, and coalition partners of the movement have varied. Third Wave feminists pioneered intersectionality, an approach to activism that understands gender-oppression as linked to other sources of injustice.²² Before this generation came the Second Wave, a stage of the American women's movement that has received criticism for excluding and neglecting too many participants, potential allies, and whole groups of disadvantaged persons: but Second Wave feminists practiced considerable inclusion.²³ In the "applied" version of feminism that occupies the pages of this journal, coalitions are indispensable. Because activists outside feminism work on job creation, Just Jobs provides an opportunity for feminists to advocate alongside allies and partners.²⁴

Broadening coalition politics presents risks as well as gains for feminists. From here Part IV, called "Qualms," moves to note misgivings about the Just Jobs thesis.²⁵ This Part considers not only the danger that joining a coalition will weaken American feminism

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20. Neil Buchanan makes this point by inverting it. See Neil H. Buchanan, *High Unemployment and Political Extremism: How Much Worse Might Political Conditions Become if the Job Market Remains Depressed?*, FINDLAW, (Apr. 8, 2010), <http://writ.news.findlaw.com/buchanan/20100408.html> (observing that when unemployment rises, bad social consequences ensue: lost output, increased crime, harms to individuals and families, and social unrest).
 21. See *infra* notes 131–50 and accompanying text.
 22. The leading work on intersectionality, which coined the term and set the stage for a growing literature, is Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139.
 23. See generally FEMINIST COALITIONS (Stephanie Gilmore ed., 2008) (discussing Christians, peace activists, and welfare-rights activists, among others).
 24. See WARREN, *supra* note 14, at 11–12, 33 (discussing job creation as a cause that brings together environmentalists, feminists, and activists fighting mass incarceration, among others).
 25. See *infra* Part IV (discussing potential limitations of the Just Jobs thesis, including risks of coalition politics, the danger that both job quantity and job quality cannot both increase, and more).

on the ground but also the possibility that enlarging the number of jobs in the United States is a wrongheaded goal for activists. I respond to these concerns. Qualms noted, Just Jobs remains worth pushing for.

I. JOB CREATION AS POLICY

A. Things for Governments to Do on the Jobs Front: An Overview and Spectrum

Which actions by governments cause new jobs to emerge is a robustly debated point. Taking a literal approach to the question, I start with the assumption that the most reliable, straightforward way to generate jobs is to apply public funding directly to this end: in other words, new statutes that put workers on governmental payrolls and mandate the collection of data to count what got created.

One example of such legislation comes from the New Deal. The Emergency Relief Appropriation Act of 1935, for example, built the Works Progress Administration, among other job-generating agencies.²⁶ Closer to the present while harking back to Depression-era maneuvers, the American Recovery and Reinvestment Act of 2009 (ARRA) appropriated about \$787 billion toward a variety of stimuli for the American domestic economy.²⁷ ARRA put job creation at its foreground.

The literal approach to job creation does not rule out more diffuse interventions, of course.²⁸ Moving along the directness spectrum, new appropriations could try to apply government supports to sectors of the American economy that look like good bets for job creation

26. Ashley Johnson, *The New Deal in Chicago and the Midwest*, NEWBERRY, <http://dcc.newberry.org/collections/new-deal> (last updated Sept. 14, 2014, 5:41 PM).

27. Jeanne Sahadi, *Senate Passes \$787 Billion Stimulus Bill*, CNN MONEY, http://money.cnn.com/2009/02/13/news/economy/house_final_stimulus/index.htm (last updated Feb. 15, 2009, 9:45 AM).

28. Writing about stimulus spending aimed at creating new jobs, one prominent economist has called it “a simple story, but politically it is a non-starter.” Dean Baker, *The Paid Vacation Route to Full Employment*, TRUTHOUT (Dec. 1, 2014, 10:04 AM), <http://www.truth-out.org/opinion/item/27723-the-paid-vacation-route-to-full-employment#>. But see L. Randall Wray, *The Answer to the Unemployment Problem Is More Jobs*, NEW ECON. PERSPECTIVES (Dec. 2, 2014), <http://neweconomicperspectives.org/2014/12/answer-unemployment-problem-jobs.html> (disagreeing with Baker on the feasibility question and wondering why, “for every social problem except unemployment, progressives advocate a direct solution,” such as single-payer health insurance to fix lack of medical care, food stamps for hunger, Social Security for poverty, and public housing for homelessness).

because they compete well under conditions of global capitalism.²⁹ Further along the vector of indirectness on the directness spectrum, governments can take actions aimed at preserving jobs that already exist,³⁰ and at discouraging employers from making choices that reduce employment.³¹

Whereas resistance to job-creating legislation consists mainly of unreflective opposition to tax-and-spend progressive economic initiative, job-preserving legislation tends to provoke controversy even among observers who want more jobs. Actions taken to protect existing employment levels cause harms as well as benefits and—perhaps because sectors experience this intervention as a goring of their own ox—arguments emerge against these proposals that go beyond reflexive disapproval of government spending. Consider for example a bill called the United States Call Center Worker and Consumer Protection Act of 2013, introduced in Congress to penalize American businesses that move their call centers overseas,³² an initiative with parallels in state legislatures.³³ Any business penalized by this kind of measure has an incentive to protest and marshal counterarguments, and disinterested reasons to disapprove of

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29. Journalist Fareed Zakaria has identified three potential sectors: “culture,” which includes films, television shows, and popular music; high-priced medical treatments, which draw visitors to this country; and tourism, where the United States has a fair amount to offer. Fareed Zakaria, *A Flight Plan for the American Economy*, FAREED ZAKARIA (May 19, 2011), <http://fareedzakaria.com/2011/05/19/a-flight-plan-for-the-american-economy/>. Just Jobs efforts related to the first of these three sectors could examine intellectual property protection in China and foreign bans on importing American recordings. Almost any effort related to tourism would improve on the status quo of no federal-level attention except the negative kind, exemplified by TSA horror tales and visa hassles.
 30. See Baker, *supra* note 28 (proposing that forcing employers to pay for more vacation leave would have the beneficial effect of promoting job sharing).
 31. For example, lowering the age for Medicare eligibility would make it less risky for an employer that pays for health insurance to hire an older applicant. This intervention would also have the effect of making retirement more affordable for workers who reach Medicare eligibility. When retirement becomes more affordable, workers can retire sooner, and the supply of jobs increases. Bill Kline, *Lower Medicare Age to 62 to Spark the Economy?*, LEHIGH VALLEY BUS. (Oct. 11, 2013, 2:00 PM), <http://www.lvb.com/article/20131011/EDITORATLARGE/131019944/lower-medicare-age-to-62-to-spark-the-economy>.
 32. See United States Call Center Worker and Consumer Protection Act of 2013, H.R. 2909, 113th Cong. (2013).
 33. See, e.g., Save New York Jobs Act of 2014, S.542, 2013 Leg., 236th Sess. (N.Y. 2013); Christopher Cousins, *Bill to Keep Maine Call Centers from Exporting Jobs Overseas Nearing Passage*, BANGOR DAILY NEWS (Apr. 8, 2014, 6:30 PM), <http://bangordailynews.com/2014/04/08/business/bill-to-keep-maine-call-centers-from-exporting-jobs-overseas-nearing-passage/>.

protectionism abound. An American observer might conclude that call center jobs fall in the buggy-whip category of obsolete,³⁴ not worth trying to keep. She might condemn the legislation as too hurtful to workers in countries like India and the Philippines. Tariffs, trade barriers, restraints on foreign investments, and legislation that punishes American businesses that relocate to overseas locations pursue the protection of jobs in the United States while adding at least one detriment, such as constraints on capital movement or higher prices for consumer goods.

B. Precedents

Great American experiments in job creation via federal policy were launched in the middle of the Depression to ease catastrophically high unemployment.³⁵ The Public Works Administration, remembered in a paper titled *Historical Amnesia*, functioned to build “much of the nation’s infrastructure in the 1930s, including, among many examples, the Lincoln Tunnel and Triborough Bridge in New York, Oregon’s coastal highway, the Port of Brownsville, Texas, . . . and the majority of the era’s new schools, courthouses, city halls and sewage plants.”³⁶ The Civilian Conservation Corps put unemployed young men to work planting trees where they were needed, thinning trees when trees were in the way, stocking streams with millions of fish, and laboring successfully to protect the environment.³⁷ The Works Progress Administration (WPA) stayed in operation for eight years, from 1935 to 1943, and over its lifetime spent \$13.4 billion.³⁸ Individuals on the WPA payroll created structures like bridges and roads, launched new improvements in agriculture, expanded regional libraries, staged plays and concerts, and took modest wages home to their families.³⁹

“Historical amnesia” may make it hard to recall that seven decades ago, political conditions were hospitable enough for President Franklin Roosevelt to propose in his fourth State of the Union address what he called a Second Bill of Rights that would guarantee,

34. On the buggy whip metaphor, *see infra* note 171 and accompanying text.

35. Tymoigne, *supra* note 15, at 65.

36. Helen Lachs Ginsburg, *Historical Amnesia: The Humphrey-Hawkins Act, Full Employment and Employment as a Right*, 239 REV. BLACK POL. ECON. 121, 123 (2012), <http://njfac.org/wp-content/uploads/2015/07/bpe-ginsburg.pdf>.

37. *Id.*

38. NICK WYNNE & JOE KNETSCH, FLORIDA IN THE GREAT DEPRESSION 115 (2012).

39. Ginsburg, *supra* note 36, at 124.

inter alia, full employment for all.⁴⁰ This guarantee, which sounds extreme today (to me, anyway) enjoyed support among mainstream economists in 1945 and as a policy goal persisted for decades. Early versions of the Humphrey-Hawkins Full Employment and Balanced Growth Act of 1978—a statute that endures in the United States Code,⁴¹ though now in much weakened form—provided an enforceable legal entitlement to a job for anyone who wanted one. Its authors expected the private sector to provide most of the needed jobs; Humphrey-Hawkins ordered the federal government to create a backup supply to cover the entitlement should private employers fail to deliver enough.⁴²

Civil rights activists carried the jobs torch forward. A demonstration led by Martin Luther King, Jr. in 1963 titled itself the March on Washington for Jobs and Freedom.⁴³ It is difficult to overstate how much the nation's most acclaimed civil rights leader cared about full employment. For King, jobs were integral to not only racial progress but national prosperity.⁴⁴ Take away job creation, he argued at the 1965 White House Civil Rights Conference and elsewhere, and federal anti-poverty intervention would be perceived as ghetto-focused riot control;⁴⁵ it would entrench, rather than ease, racial division in the country.

The United States had a historical model of what Just Jobs could achieve, argued co-leader A. Philip Randolph. For Randolph, “the New Deal’s labor legislation and public investments did more than provide jobs and foster collective bargaining.”⁴⁶ Civil rights initiatives in pursuit of Just Jobs “evoked a new psychology of citizenship, a new militancy and sense of dignity” among white

40. *Id.* at 125.

41. Full Employment and Balanced Growth Act of 1978, Pub. L. No. 95-523, 92 Stat. 1887 (codified as amended in scattered sections of 2 U.S.C., 12 U.S.C., 15 U.S.C.).

42. Ginsburg, *supra* note 36, at 130.

43. *March on Washington*, HISTORY (2009), <http://www.history.com/topics/black-history/march-on-washington>.

44. L. Randall Wray, *Jobs for All: The Missing but Essential Element of Dr. King's March on Washington*, ECONOMONITOR (Jan. 20, 2014), <http://www.economonitor.com/lrwwray/2014/01/20/jobs-for-all-the-missing-but-essential-element-of-dr-kings-march-on-washington/#sthash.ueprlG7a.dpuf>.

45. “Black and white, we will all be harmed unless something grand and imaginative is done,” King wrote. “The unemployed, poverty-stricken white man must be made to realize that he is in the very same boat with the Negro.” *Id.*

46. William E. Forbath, *Civil Rights and Economic Citizenship: Notes on the Past and Future of the Civil Rights and Labor Movements*, 2 U. PA. J. LAB. & EMP. L. 697, 709 (2000).

workers, as would the Freedom Budget among ‘millions of Negroes.’ The Freedom Budget would be ‘[their] New Deal thirty years late.’”⁴⁷

Civil rights leaders linked jobs to freedom, not only in their name for the 1963 March but as a source of citizenship for each individual holder of paid employment.⁴⁸ King located the connection between freedom and jobs when he noted that both furnish the individual with power. “People must be made consumers,” he wrote, either through full national employment or high employment levels buttressed by taxpayer-financed guaranteed income.⁴⁹

C. Contemporary Initiatives

The American financial crisis that started in 2008 sparked new federal and state programs to create jobs. The main federal legislation so focused has addressed “job preservation and creation [and] infrastructure investment” through appropriations reminiscent of the New Deal and civil rights era initiatives.⁵⁰ Every year since 2009 the Congressional Budget Office (CBO) has set out to count the number of new jobs attributable to American Recovery and Reinvestment Act.⁵¹

In its February 2015 report, the most recent study available as this Article goes to press, the CBO estimated that in 2013 the statute “funded an average of about 76,000 full-time equivalent jobs.”⁵² With several caveats about the uncertain scope of other effects,⁵³ the report concluded that ARRA “lowered the unemployment rate by an amount” that might have been as high as 0.2 percentage points and

47. *Id.* (citation omitted).

48. Wray, *supra* note 44.

49. Mark Engler, *Dr. Martin Luther King’s Economics: Through Jobs, Freedom*, NATION, (Jan. 15, 2010), <http://www.thenation.com/article/dr-martin-luther-kings-economics-through-jobs-freedom>. King even questioned the line between the two: “New forms of work that enhance the social good will have to be devised for those for whom traditional jobs are not available.” *Id.*

50. See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115; see also *supra* notes 46–47 and accompanying text.

51. CONG. BUDGET OFFICE, ESTIMATED IMPACT OF THE AMERICAN RECOVERY AND REINVESTMENT ACT ON EMPLOYMENT AND ECONOMIC OUTPUT IN 2014, at 9 (Feb. 2015), <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/49958-ARRA.pdf> (“Section 1512(e) of the American Recovery and Reinvestment Act of 2009 (ARRA) requires the Congressional Budget Office (CBO) to comment on reports filed by recipients of ARRA funding that detail the number of jobs funded through their activities. This CBO report fulfills that requirement.”).

52. *Id.* at 1.

53. *Id.* at 2–3.

increased the number of persons employed by a number between 100,000 and 300,000.⁵⁴ Slight but positive upticks, in short, on the jobs front. Observers who approve the initiative agree it should have been much bigger,⁵⁵ but the stance on spending favored in this Article has fared well for workers, especially in contrast to the austerity-and-liquidation posture that European policymakers favored during the same time.⁵⁶

State office-holders, worried about unemployment within their borders—joblessness in their states is bad for tax revenues, budget tradeoffs, and their own future at the polls—continue to promote job creation at the local level. Their ideas and goals vary. In my home state, for example, the government chose in 2012 to invest “\$1 billion over time to spur investment and job creation in the Buffalo region.”⁵⁷ Trying to turn this once-big city into a “high tech manufacturing and innovation hub,” sponsors of this initiative have confidently predicted that “at least 850 new jobs initially” will ensue from one of its sites, a vacant brownfield parcel repurposed to work on green energy.⁵⁸ One state to the west, a popular Republican governor put together JobsOhio, a new state agency whose mandate emphasizes public-private sector cooperation.⁵⁹

54. *Id.* at 3.

55. Paul Krugman and Joseph Stiglitz lead this consensus among contemporary writers who assess U.S. macroeconomic policy for popular audiences. See, e.g., John B. Judis, *Paul Krugman vs. Joseph Stiglitz: How Income Inequality Could be Slowing our Recovery from the Great Recession*, NEW REPUBLIC (Jan. 30, 2013), <http://www.newrepublic.com/article/112278/paul-krugman-vs-joseph-stiglitz-inequality-slowng-recovery> (discussing Stiglitz and Krugman’s debate over why income inequality is growing again).

56. John Aziz, *Obama’s Stimulus Succeeded—Even If It Was Too Small*, THE WEEK, (Feb. 18, 2014), <http://theweek.com/articles/450788/obamas-stimulus-succeeded—even-small>.

57. COMM. ON ECON. DEV., N.Y. STATE ASSEMBLY, LEGISLATIVE UPDATE, Assemb. 73rd Sess., at 3 (2014) <http://assembly.state.ny.us/comm/Econ/20140725/index.pdf>.

58. *Id.* A news report describes the yield of job creation programs in New York as disappointing. Susanne Craig & Jesse McKinley, *Cuomo’s Job Creation Program Is Slow to Take Hold*, N.Y. TIMES (May 14, 2015), http://www.nytimes.com/2015/05/15/nyregion/for-76-new-jobs-new-york-state-has-spent-tens-of-millions.html?_r=0.

59. Robert Higgs, *How Effective is JobsOhio?*, CLEVELAND.COM, (Aug. 23, 2013, 6:10 PM), http://www.cleveland.com/open/index.ssf/2013/08/how_effective_is_jobsohio_experience_1.html. Procter & Gamble, one of the largest employers in the state, announced in 2014 that it would invest a million dollars in jobs-related projects covering southern Ohio. Chelsey Livingston, *P&G Commits \$1M to Cincinnati-Area Job Creation Efforts*, JOURNAL-NEWS, (June 11, 2014, 1:20 PM), <http://www.journal-news.com/news/business/pg-commits-1m-to-cincinnati-area-job-creation-effort/ngJgY/>.

What these state-level efforts have in common—and how they relate to the Just Jobs thesis of this Article—is their manifestation of universal enthusiasm for higher employment, at least in principle. Commitment to job creation has long occupied civil rights leaders,⁶⁰ a Democratic presidential administration with progressive goals,⁶¹ and the labor movement of today and yore;⁶² but it was also central to the short-lived 2012 presidential campaign of Rick Perry, running as a conservative incumbent governor. Perry, noting that his state was the home of almost half the post-2009 new jobs in the United States, revealed his saucy Texas recipe for how to lead the country in job creation: “low taxes, low regulation, tort reform, and ‘don’t spend all the money,’” he said.⁶³ I quote the Perry boast not for any truth-value the ingredients may hold *qua* recipe, but to show consensus about the policy goal considered in this Article. Just Jobs has a following at many points on the American political spectrum, not only at the progressive extreme.⁶⁴ The breadth of its popularity makes it politically feasible.

II. MATERIAL STAKES IN JUST JOBS

Why try to create jobs? This broad question draws a narrow answer here. In this Part, I focus on a few consequences that an increase in employment would foster, as a prelude to attention to effects on women workers in the next Part. Econ 101 says that when employment levels go up, gains to workers ensue.⁶⁵ Real-world circumstances complicate any theoretical effect one can posit, of course, but the gains noted here are plausible enough for the Just Jobs thesis to anticipate. Feminist implications arise here, but will get more attention later.⁶⁶

60. See *supra* notes 43–45 and accompanying text.

61. See *supra* notes 40–42 and accompanying text.

62. See *infra* notes 109–15 and accompanying text.

63. Phillip Longman, *Oops: The Texas Miracle That Isn't*, WASH. MONTHLY, Mar.–May 2014, http://www.washingtonmonthly.com/magazine/march_april_may_2014/features/oops_the_texas_miracle_that_is049289.php?page=all.

64. The centrist Democratic governor of Delaware expressed agreement with this message. Jack Markell, *Americans Need Jobs, Not Populism*, ATLANTIC, May 2015, <http://www.theatlantic.com/politics/archive/2015/05/americans-need-jobs-not-populism/391661/> (“My agenda was clear: My entire tenure as governor would be focused on job creation.”).

65. RONALD G. EHRENBURG & ROBERT S. SMITH, *MODERN LABOR ECONOMICS* 45 (10th ed. 2009) (describing “the market-clearing wage” set at the intersection of two curves, demand from employers and supply from workers).

66. See *infra* Part III.

A. More Jobs to Choose From

Increased numbers of jobs means more prospective workplaces (as always, *ceteris paribus*) for an employed individual or job seeker. A banal truism? Less so when we put ourselves in her shoes. *More*. Effects on wages warrant their own discussion,⁶⁷ as do other effects on job quality.⁶⁸ Here I briefly gather other quantity-related inducements.

Should job levels increase at the national level—this Article has focused more on the United States as a whole nation than its localities—our hypothetical worker is more likely to relocate to a different state or region and the benefits it offers. Her new home will have its downsides too, of course, no place being perfect; but in tallying up the *More* of more jobs, it would be erroneous to overlook collateral gains beyond the job itself.⁶⁹ Relocation opportunities could be narrow or few in a particular state or region but in most places, for most people, they will increase when the number of jobs nationwide goes up. Job opportunities have always fueled interstate moves in the United States⁷⁰; our worker might have wanted to live somewhere else but lacked prospects of supporting herself there. *More* jobs means better odds of financing a home in her new location. If she is happy enough where she is and does not choose to move, job-generating persons or ventures might relocate near her if they cannot find enough workers in their original region.

The proliferation of jobs in an information age means more information for workers about their vocational prospects, not only the

67. See *infra* Part II.B.

68. See *infra* Part III.

69. I have in mind a counterpart to the familiar multiplier effect of job creation. When workers move to take new jobs, they do something that Congress wishes to subsidize, as is evident from the persistence of the income tax deduction for moving expenses. Making an activity tax-deductible subsidizes it. Cf. Eric Johnson, *Dodging DOMA: The State of the Mortgage Interest Deduction for Same-Sex Couples After Sophy v. Commissioner*, 66 TAX LAW. 787, 798 (2013) (quoting legislative history of the Tax Reform Act of 1986 that deemed “encouraging home ownership . . . an important policy goal” and that indicates Congress knows that the mortgage interest deduction forgoes revenue in two ways: not only do mortgage-interest taxpayers get to write off the mortgage interest they pay, they also owe no taxes on imputed rental income attributable to living in one’s own home). Congress wishes to encourage, at least at the margin, the decision to move. Job creation is consistent with this policy goal. Multiplier effects extend to moving businesses, real estate agents, and other sources of employment, for example giving advice about which schools to choose.

70. Richard Florida says so. See Richard Florida, *Why Americans Are Moving Less: New Jobs Aren’t Worth It*, CITYLAB (Apr. 28, 2014), <http://www.citylab.com/work/2014/04/why-americans-are-moving-less-new-jobs-arent-worth-it/8973/>.

prospects themselves. Job seekers connect to employment opportunities through online technologies that not only link them to openings but also expand the roster of positions they might seek. Our hypothetical worker might not yet have heard of a job title like “data architect,” “big data engineer,” or “lead applications developer,” all listed as destined for significant pay raises in the year 2015.⁷¹ This worker could set out to become such a person once she knows the category exists.

Upticks in information also support entrepreneurship. Our hypothetical worker does not need to hustle as much to get a job and so is less likely to start a new business out of desperation, but the expansion of the national job market could help our hypothetical worker join what Mitt Romney during his 2012 run for the U.S. presidency called “job creators.”⁷² Perhaps an enterprise she would start would employ a title-holder like data architect or lead applications developer. Prospective job creators are burdened by the likelihood of needing to pay their employees more, but the upsides of more jobs—more optimism about the economy, better prospects for spending by customers, more wage income available to invest in one’s new business—at least offset, and might exceed, this downside.

More jobs to choose from can aid the imperative to improve the allocation of labors inside the homes of working people. Presaging the wider story about gender to come,⁷³ a feminist point: Working women, especially mothers, do an unjustly large share of domestic toil; men do unreasonably little.⁷⁴ The old patriarchal bargain wherein women contributed housework to a marriage and men, in return, contributed wage earnings (an exchange never much practiced

71. Ann Bednarz, *15 Job Titles Getting Big Salary Boosts in 2015*, NETWORK WORLD, (Jan. 5, 2015, 3:00 AM), <http://www.networkworld.com/article/2862141/careers/15-job-titles-getting-big-salary-boosts-in-2015.html>.

72. Alexander Burns, *Romney: Obama Waging ‘War on Job Creators,’* POLITICO (May 23, 2012, 12:31 PM), <http://www.politico.com/blogs/burns-haberman/2012/05/romney-obama-waging-war-on-job-creators-124350.html>.

73. See *infra* Part III.

74. By “unjustly” I mean with reference to a 50-50 default, unexplained by any good excuse for shirking or a good reason to carry more than half of tedious and distasteful labors. On the gender imbalance in housework performed, see Gail O’Connor, *Ending the Chore Wars—How to Get Your Mate to Help on the Home Front*, BABY CTR., http://www.babycenter.com/0_ending-the-chore-wars-8211-how-to-get-your-mate-to-help-on-t_1425647.bc (last visited Dec. 30, 2015) (reporting a time-use survey performed by the Bureau of Labor Statistics).

in African-American families⁷⁵), has grown skewed by the expectation that women do more housework even when they earn as much as or more than the men they live with. On average, hetero-partnered women who work outside their household with children toil more on housework and child care than the men they live with who do not work outside the home.⁷⁶

This maldistribution has proved stubborn: one cannot expect more jobs to eliminate it. But I do await the creative disruption—I use the term advisedly⁷⁷—that goes with a big increase in the number of jobs, expecting it to spur the kind of changes that in the past have helped to even out drudgework-loads within domestic relationships: Writers who study the phenomenon report that the gender balance of house-toil gets better with awareness and discussion.⁷⁸ More jobs mean more material to start new communications at home.

Jobs to accept, jobs to consider taking or training for, jobs in a different part of town or in another state, advertisements for new jobs: all of them disrupt. Work-related epiphenomena around a marriage or a household influence people inside it, and provide at least conversation fodder for two adults. Changing jobs provides an occasion to renegotiate workloads at home (a renegotiation that can take place with or without a discussion). A shift in power in the workplace offers instrumental value in the worker's personal-sphere dealings.⁷⁹ Increases in her financial clout can give her more power

75. See Dorothy E. Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, 1 AM. U. J. GENDER & L. 1, 17–19 (1993).

76. Judith Shulevitz, *Mom: The Designated Worrier*, N.Y. TIMES, (May 8, 2015), <http://www.nytimes.com/2015/05/10/opinion/sunday/judith-shulevitz-mom-the-designated-worrier.html>.

77. Jill Lepore made mincemeat of “disruptive innovation” in 2014, a year that the term enjoyed much currency. Jill Lepore, *The Disruption Machine: What the Gospel of Innovation Gets Wrong*, NEW YORKER, June 23, 2014, <http://www.newyorker.com/magazine/2014/06/23/the-disruption-machine>.

78. See JOSHUA COLEMAN, *THE LAZY HUSBAND* 25 (2005) (advising the wife-reader that “you will get more out of him by becoming *acutely aware* of what each of you has with which to bargain”); Shulevitz, *supra* note 76 (explaining progress on this front between Generation X to Millennials with reference to more candor and conversation among the younger generation).

79. It's complicated, of course. See, e.g., NAILA KABEER, *GENDER AND SOCIAL PROTECTION STRATEGIES IN THE INFORMAL ECONOMY* 218–20 (2010) (reporting both positive and negative shifts in power and prestige for wives in poor countries when they bring microfinance capital into their households); *What Happens When Wives Earn More than Husbands*, NPR (Feb. 18, 2015), <http://www.npr.org/2015/02/08/384695833/what-happens-when-wives-earn-more-than-husbands> (summarizing findings that wives do more housework than their husbands across the board and do an even bigger share when they earn more).

in her dealings not only with family members but other people around her, like friends and co-workers.

B. Secondary Effects of Higher Wage Income

Back to Econ 101: When wage labor becomes scarce in relation to demand for their work, employers compete by raising pay for the personnel they want,⁸⁰ thereby increasing overall wage levels in response to the increase in Just Jobs that this Article commends. Other things being equal—among these other things, one must consider the risk of pay discrimination—a worker will take home more income in a labor market when that market has more positions available for her and her fellow workers to consider taking. As with the increase of job quantity noted above, the gains for workers extend into multiple sub-benefits.

A worker who gains more pay in her take-home envelope becomes richer in different respects. She sends more dollar volume toward the goods she selects, chooses among more consumer options, occupies more attention from marketing and sales personnel employed by sellers, and has more occasions to think about what she wants in contrast to what she needs. At least under the late capitalism that serves as backdrop for the claim of this Article, she becomes a bigger person—more powerful, more expressive—when the number of jobs and the size of wages get bigger.

These gains are tempered by counterforces, to be sure. Trading in a lower-paying job for a higher-paying one will deliver stresses and disappointments to some fraction of the working population. If some of the pleasure attributable to having more money comes from feeling better off than one's neighbors and acquaintances,⁸¹ then the gain in wealth that Just Jobs anticipates for the population as a whole will exceed the amount of money-related pleasure as actually experienced by individual workers. The rising tide might lift all boats but it also lifts expectations; people who feel frustrated or disappointed by their experiences in the workplace might feel worse rather than better

80. Heidi Shierholz, *Is There Really a Shortage of Skilled Workers?*, ECON. POL'Y INST. (Jan. 23, 2014), <http://www.epi.org/publication/shortage-skilled-workers/> ("If skills are in short supply, the simple logic of supply and demand implies wages should be increasing substantially in occupations where there is a shortage of skilled labor.").

81. Happiness, satisfaction, or something else might be the right word. See Daniel Kahneman & Angus Deaton, *High Income Improves Evaluation of Life But Not Emotional Well-Being*, 107 PROC. NAT'L ACAD. SCI. 16489, 16489 (2010) (analyzing terminology).

knowing that Just Jobs efforts have been introduced to no particular avail for them.

Social science findings by Daniel Kahneman, the acclaimed economist and designer of studies about life satisfaction, warrant attention by policymakers interested in the question of raising aggregate happiness by raising the number of jobs. Kahneman and his co-author Angus Deaton, also an economist, surveyed the effect of more money on what they called “emotional well-being,” meaning the emotional quality of a person’s daily experience, and “life evaluation,” the judgment that persons make about the quality of their life overall, upon reflection.⁸² The authors used a data set of more than 450,000 responses to a daily questionnaire completed by residents of the United States to conclude that “[w]hen plotted against log income, life evaluation rises steadily” (in other words, individuals rate the quality of their lives upon reflection as higher when their income rises), while emotional well-being tops out at an annual income of \$75,000.⁸³

Because it causes wage income to go up,⁸⁴ Just Jobs would aid in the pursuit of both more emotional well-being and higher life evaluation. The \$75,000 threshold point identified by Kahneman and Deaton, after which more money ceases to increase emotional well-being, is well above the national median household income,⁸⁵ and so most workers in the United States would get an emotional raise, so to speak, if their wages rose. The set of people whose life evaluation levels would rise with more income has no limit in the Kahneman and Deaton study. Ogres who want economically vulnerable people to stay miserable excluded, the material consequences of Just Jobs mean more life satisfaction and well-being for almost everyone.

III. COLLECTIVE FEMINIST STAKES

Now that we have considered how workers benefit from more jobs even when they are not seeking new employment, we hone in on positive consequences for the fraction of workers who are women and for anyone who regards gains for women as a positive end.

82. *Id.*

83. *Id.* “Perhaps \$75,000 is a threshold beyond which further increase in income no longer improve individuals’ ability to do what matters most to their emotional well-being,” the authors suggest as a tentative explanation, “such as spending time with people they like, avoiding pain and disease, and enjoying leisure.” *Id.* at 16492.

84. *See supra* note 80 and accompanying text.

85. AMANDA NOSS, U.S. CENSUS BUREAU, ACSBR/13-02, HOUSEHOLD INCOME: 2013, at 1 (2014), <https://www.census.gov/content/dam/Census/library/publications/2014/acs/acsbr13-02.pdf>.

A. How Enhancements to Job Quantity Enhance Job Quality for Working Women

A worker who has more jobs to choose from gains power in her dealings with her employer and prospective employers. Other things being equal, she can ask for more—and not just more money—without facing harsh repercussions in response to her demand, and she is more likely to get what she seeks. Any individual worker might ask her boss for something quirky with little significance for her peers: a second computer monitor, membership in a gym. Understood as part of a cohort, however, she is likely to want quality enhancements that women tend to endorse.

The ingenious construct brought to social science by Albert O. Hirschman in 1970 bears mention here. “Exit and voice” summarizes the options and powers available to discontented persons, Hirschman observed.⁸⁶ The two support each other. Voice, or the articulation of grievances and requests, gains amplification from the risk that the listener hears: if the speaker will exit if she feels enough displeasure. Exit, in turn, can be explained, moderated, retracted, and trumpeted through the use of voice. More jobs means more chances to exit and, from there, a stronger voice to speak about what would make a job better.

Qualitative non-cash gains for women workers can reasonably be expected to follow when the total number of jobs goes up. If I am correct to say that more jobs means more responsiveness from employers to employee interests—they have to please what populates their payroll—then women will receive more of what they want at work. Employers compete for workers with money but not only with money.

1. More part-time jobs

Like many other conditions in the American labor market, the phenomenon of part-time work manifests gendered patterns. “Women are nearly twice as likely as men to work part time[,]” reported the U.S. Department of Labor in 2011.⁸⁷ Some fraction of

86. ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY 3–4 (1970).

87. U.S. DEP’T OF LABOR, WOMEN’S EMPLOYMENT DURING THE RECOVERY 1 (2011), http://www.dol.gov/_sec/media/reports/FemaleLaborForce/FemaleLaborForce.pdf [hereinafter WOMEN’S EMPLOYMENT]. For 2012 data reporting twice as many women as men working part time, see *Women More Likely to Work Part Time*, PEW RES. CTR. (Dec. 10, 2013), <http://www.pewsocialtrends.org/2013/12/11/on-pay-gap-millennial-women-near-parity-for-now/sdt-gender-and-work-12-2013-1-05>.

them presumably would prefer the income and other benefits of a full-time job but, according to the Department, only “[o]ne in five women working part-time are doing so because they can’t find full-time work.”⁸⁸

Readers of a law review, whatever their gender, know the upsides of a part-time job: they have met law professors. Part-time employment apparently appeals to women in particular. As parents tasked with a large share of the caretaking work that young children need and as family members also likely to do more than their male relatives when adults in the family need care, women frequently have non-paid as well as paid tasks to get done during their day. The taste for part-time work sounds gendered in a blog post that tells the joys of working part- rather than full-time: “You’ll Save Money,” “You’ll Be Healthier,” “You’ll Worry Less,” eight more.⁸⁹ When accepted reluctantly in place of the full-time job one prefers, part-time work doubtless could be immiserating. Situating part-time employment in a context of Just Jobs—employment expansion rather than contraction—would lessen risks of exploitation and deprivation for the working poor.⁹⁰

The entire category of part-time work could in the near future turn unexpectedly bold and innovative. More than two decades ago, during the Clinton administration’s push for welfare reform that focused on ordering mothers of young children into the workplace, a prescient article pointed out that the distinction between full- and part-time work originated not in some iron law of nature but in government decisions.⁹¹ Policy choices that could change include 40 hours per week as the benchmark for overtime pay and gender-biased

88. WOMEN’S EMPLOYMENT, *supra* note 87.

89. Sophie Lizard, *11 Reasons Why You Should Never Get a Full-Time Job*, LIFE HACK, <http://www.lifehack.org/articles/work/11-reasons-why-you-should-never-get-full-time-job.html> (last visited Dec. 30, 2015).

90. Years ago I was asked by the working-class mother of a high school senior to advise the teenager to please consider enrolling in a community college when she graduated. This teen said she had always hated school and couldn’t wait to leave it; she would have preferred to drop out the year before at 16. I told her I understood college had its drawbacks but she should know that marrying for financial security was not available to her generational cohort and her class. She was probably signing up for a working lifetime of inadequate money, I said. She chose to reject college; she said she understood the risk. I checked in a few years later. The young woman, having worked as a cashier at Walmart all this time, said the one thing she hadn’t foreseen was the difficulty of getting a full number of weekly hours. “Getting” hours, as if Walmart gave and she took; as if standing at a cash register for hours at a shift was a scarce prize that an employer would of course dole out stingily.

91. Hilda Kahne, *Part-Time Work: A Reassessment for a Changing Economy*, 68 SOC. SERV. REV. 417, 425–27 (1994).

beliefs within industry, such as the notion that some workers as non-breadwinners do not need certain benefits.⁹²

Part-time work could, for both sides of the employment relation, do more than subtract hours and persons from the wage rolls. Its assumptions and default rules are negotiable. Governments could reframe it to meet emerging priorities of the working population, employers included. For the buying cohort, part-time work has an obvious lure: Personnel become available on a piecemeal basis. The employer hires what it needs.⁹³ At least some of the time, its inclinations will align with what workers want.

Thus in addition to being desired by individuals for reasons of life-work balance and by employers as a source of payroll savings, the increase in part-time work that female initiative might help generate could prove to have social utility. Below I will discuss the likelihood that the percentage of adults needed to render services for which employers are willing to pay will drop in future years as machine technology grows more capable of historically human tasks.⁹⁴ For now, encouraging both employers and workers to follow the tastes they may have for less paid work by making part-time employment more regular and secure ought to improve both employment levels and the costs of doing business.

2. Less harm from employer misconduct

Increasing the number of jobs would have beneficial effects on the problem of employer misconduct, especially employment discrimination. Consistent with this Article's approach to Just Jobs, in these generalizations about the future I hew to parsimony. We need not suppose that in a world with more jobs employers will feel less inclined to discriminate, that the costs of discrimination will become easier for victims to bear, or that regulatory controls over employer misconduct will keep up with the increase in jobs.

Assume no enhancements on any of these fronts. Negative conditions remain in place; our prototypical female worker does not enjoy equal access to the gains of expansion. She will suffer from at

92. See *id.* at 431–32.

93. Bill de Decker, *Part-Timers Are Good Business*, CONKLIN & DE DECKER, <https://www.conklindd.com/t-parttimersaregoodbusiness.aspx> (last visited Dec. 30, 2015) (“Full time employees are paid on the basis of 2080 work hours per year. Unfortunately, the tasks that a department must accomplish seldom add up to a whole multiple of 2080, or even close to it.”).

94. See *infra* Part IV.D.

least her gender and also from whatever other characteristics she possesses that discriminators hold against workers.

She is by hypothesis nevertheless better off. Although the field she plays on is tilted against her, she has more freedom to protest and quit.⁹⁵ Let us suppose that because discrimination persists, the best of the new jobs are destined to be fed to men, like the fresh-killed gazelles that male lions get to eat first. An employer inclined to discriminate has to hesitate a bit more in a world with higher employment, because valuable workers now cost more. If this employer had in the past counted on female colleagues to do the work, or cover the shortfalls, of underqualified newly hired male workers, then this support for a discriminatory personnel choice is now less available. Voice, like exit, is also now stronger for women. Every protest against discriminatory conditions is a threat to quit whose credibility has gone up.

Moreover, an increase in the ranks of workers itself helps to push back against employment discrimination. Having more co-workers gives an individual more opportunity to express and leverage her self-interested wishes. An enlarged population of workers is more likely than a smaller one to contain at least one effective labor organizer, one savvy user of social media who can retell a telling anecdote about the job, a new friend or two at work standing by to furnish emotional support during a crisis, and a community with more information to share.⁹⁶

In its Table of Contents, one major casebook on employment discrimination law provides a checklist of invidious-discrimination categories that would all be improved by an increase in the total number of jobs.⁹⁷ Chapter 1 of *Employment Discrimination Law* takes up race and Chapters 7 through 15 examine other classifications.⁹⁸ Employers that reject or mistreat workers based on the identities covered in this text—race, sex, pregnancy and family responsibilities, sexual orientation and gender expression, religion,

95. See HIRSCHMAN, *supra* note 86, at 8–9.

96. It is faintly possible, I suppose, that upping the number of total co-workers could make the problem of employment discrimination for women worse rather than better in some workplaces. New arrivals might form a bigoted mob that unites against fairness in the workplace. Or perhaps newcomers, foolish rather than malevolent, could through poor work or the expression of baseless grievances take up the time of well-intentioned managers who had just launched a strong antidiscrimination initiative.

97. DIANNE AVERY ET AL., *EMPLOYMENT DISCRIMINATION LAW* (8th ed. 2010).

98. See *id.*, at xxix, xxxi–xxxv (table of contents).

national origin, age, and disability⁹⁹—would be encouraged to modify their discriminatory practices by their simple need for what corporate America has labeled human resources. Every discrimination category would experience positive impacts from Just Jobs. At full or nearly full levels of employment, the inducements that employers have to give their workforce include lowering the aggregate level of invidious discrimination.

Workplace ills other than discrimination also would receive meaningful redress from an increase in job quantity. Wage theft, for example, is a pricey crime. An important book about the problem quotes an estimate by the business-funded Economic Policy Foundation that unlawfully withheld overtime amounts of \$19 billion a year, a number that may be too low.¹⁰⁰ Wage theft extends beyond overtime that workers earn and do not collect: it includes failure to pay the minimum wage, improper deductions from paychecks, misclassification of employees as independent contractors, and simple refusals to render any payment at all for work performed.¹⁰¹ It would be naïve to expect this ill to go away, or even lessen much, in response to any intervention including the one recommended in this Article: but victims become emboldened to report or protest the theft of their wages when they have someplace else to earn a living.

3. Employee benefits related to care work

Workers made more confident by job creation about their opportunities to take new posts are more likely to assert their interests regarding their caregiving obligations. They could press for change not only in their dealings with their employers but as citizens petitioning the government: Congress has for many decades manifested awareness that employer-supported child care makes working life better for workers who have custody of children or child care obligations.¹⁰² In 1969, it amended the Labor Management

99. *Id.*

100. KIM BOBO, WAGE THEFT IN AMERICA 8 (2009).

101. See ANNETTE BERNHARDT ET AL., BROKEN LAWS, UNPROTECTED WORKERS 49 (2009) http://nelp.3cdn.net/1797b93dd1ccdf9e7d_sdm6bc50n.pdf; see also WARREN, *supra* note 14, at 14 (suggesting that reforms, if installed, could recover \$13.8 billion of stolen wages).

102. See Zachary A. Goldfarb & Juliet Eilperin, *Child-Care Issues Move to Political Forefront as Both Parties Position for Midterms*, WASH. POST (June 23, 2014), https://www.washingtonpost.com/politics/child-care-issues-move-to-political-forefront-as-both-parties-position-for-midterms/2014/06/22/01db633c-f986-11e3-a3a5-42be35962a52_story.html (illustrating how members of Congress recognize the

Relations Act to encourage the rendering of this benefit to employees.¹⁰³ Today most two-parent families that include young children also include two jobs outside the home.¹⁰⁴ Because child care obligations fall more heavily on women than men, it is likely that large numbers of female workers wish for more help and accommodation to support the child care they render than their employers now provide.¹⁰⁵ Evidence suggests that onsite child care can be profitable for employers, making the idea palatable in business terms.¹⁰⁶

Related to child care, the stock of paid family leave as a workplace issue appears to be rising among policy proposals. A cohort of workers empowered by more jobs might unite around this goal, which now enjoys discernible (if guarded) endorsement from leading politicians and increasing public support.¹⁰⁷ The United States remains one of only a small number of countries whose laws do not guarantee paid leave for new parents.¹⁰⁸ An increase in employment levels would enlarge the roster of individuals motivated to push the government to mandate it, while economies of scale would lower the cost per head needed to fund the initiative: paid leave is easier for a workplace to provide when more numerous co-workers can pick up the leave-taker's tasks.

need for employer-supported child care and discussing bills and strategies to fix this problem).

103. Carol Ann Diktaban, Note, *Employer Supported Child Care as a Mandatory Subject of Collective Bargaining*, 8 HOFSTRA LAB. L.J. 383, 387 (1991).

104. See *id.* at 412.

105. But see ELINOR BURKETT, THE BABY BOON 33-34 (2002) (suggesting that large numbers of female workers, notably women of color, do not want more employer support for child care).

106. See RACHEL CONNELLY ET AL., KIDS AT WORK 21-22 (2004) (stating economic benefits the employer will receive).

107. Goldfarb & Eilperin, *supra* note 102 (noting that President Obama has said "that paid leave 'should be available to everyone,' but he has not publicly backed the leading national paid-leave proposal, which would offer the benefit" on a capped basis and be funded by an increase in payroll taxes, and that a leading presidential candidate has endorsed guaranteed paid leave, "although she said it would take time before the federal government could move forward on the idea").

108. *Id.*

*B. An Instance of Applied Feminism.¹⁰⁹ “Shovel Ready” Jobs
Funded by the American Recovery and Reinvestment Act of 2009*

In 2008, when a newly elected president announced his intention to stimulate the American economy by generating millions of new jobs, he combined job creation with a plan to honor two of his campaign promises. He would invest in the national infrastructure and also, by creating green jobs, work to reduce global warming.¹¹⁰ President Obama used the phrase “shovel ready” to modify the jobs he said he would create.¹¹¹

Feminist listeners found the announcement of interest. “[T]he macho stimulus plan,” said economist Randy Albelda.¹¹² A month later Linda Hirshman, known for her enthusiasm about paid work for women,¹¹³ echoed the same concern:¹¹⁴ Neither construction nor green jobs put large number of women to work, except indirectly and secondarily. Serving food or benefiting from the influx of cash into a regional economy happens to women and men alike.¹¹⁵ ARRA appropriations, however, favored men.¹¹⁶

Both critics spoke about occupations away from construction that a statute like ARRA could fund. Teachers and home-attendant caregivers led their lists. “Caring for those who cannot care for themselves, healthcare, and primary education . . . are as vital to our long-term economic health as airports, highways, wind turbines, and energy-retrofitted buildings,”¹¹⁷ Albelda wrote. Hirshman added that libraries continue to close at an alarming speed while initiatives like

109. The Center on Applied Feminism at the University of Baltimore School of Law applies “feminist insights to legal practice and the policy arena,” focusing on how “feminist theory can benefit legal practitioners.” *Center on Applied Feminism*, UNIV. OF BALT., <http://www.law.ubalt.edu/centers/caf/> (last visited Dec. 30, 2015).

110. Linda Hirshman, *Where Are the New Jobs for Women?*, N.Y. TIMES (Dec. 9, 2008) http://www.nytimes.com/2008/12/09/opinion/09hirshman.html?_r=1&.

111. Manuel Roig-Franzia, *Obama Brings ‘Shovel-Ready’ Talk Into Mainstream*, WASH. POST (Jan. 8, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/01/07/AR2009010703662.html>.

112. Randy Albelda, *The Macho Stimulus Plan*, BOS. GLOBE (Nov. 28, 2008), http://www.boston.com/bostonglobe/editorial_opinion/oped/articles/2008/11/28/the_macho_stimulus_plan/.

113. See LINDA HIRSHMAN, *GET TO WORK* (2006).

114. Hirshman, *supra* note 110.

115. Albelda, *supra* note 112.

116. Hirshman, *supra* note 110 (“The bulk of the stimulus program will provide jobs for men, because building projects generate jobs in construction, where women make up only 9 percent of the work force.”).

117. Albelda, *supra* note 112.

the Harlem Children's Zone, dedicated to improving the quality of life for children, need more appropriations to continue.¹¹⁸ The "shovel ready" description has several attractive aspects, including an implicit promise of promptness, but it does not apply to the jobs most women have a realistic chance of securing.

Expanding, or abandoning, the shovel metaphor to include women workers would acknowledge that much as the nation needs new (and old) buildings and thoroughfares, it also needs efforts of upkeep. "Diaper ready" jobs, one might propose. Child ready, care ready, next-generation ready.

A Brookings report published soon after the enactment of ARRA defends the infrastructure emphasis favored in the statute, noting progressive aspects of these jobs.¹¹⁹ They pay under-educated workers relatively well, dominate in sectors projected to prosper (moderately) in the near future, tend to be located in cities that offer high multiplier effects for dollars invested, and have good connections to labor unions.¹²⁰

Yet even granting the correctness of the Brookings position, feminist possibilities remain. First, investments in construction jobs could compliment—they need not preempt—investments in jobs that provide teaching and caregiving.¹²¹ Second, as the Brookings approval of construction-job funding points out, improving the American infrastructure demands more than hardhats and shovels: "Too often, calls for infrastructure investment only focus on the jobs involved at the beginning of a project's lifecycle."¹²² A more gender-friendly approach to revitalizing roads, bridges, ports, and other national assets would consider operations and repurposing, not just the rollout of heavy machinery.

Critiques of "shovel ready" as a guiding principle of infrastructure investment, in sum, are not only correct but also compatible with

118. Hirshman, *supra* note 110.

119. JOSEPH KANE & ROBERT PUENTES, BROOKINGS METROPOLITAN POL'Y PROGRAM, BEYOND SHOVEL-READY: THE EXTENT AND IMPACT OF U.S. INFRASTRUCTURE JOBS 2 (2014), <http://www.brookings.edu/~media/research/files/reports/2014/05/09-infrastructure-jobs/beyond-shovel-ready.pdf>.

120. *Id.* (noting enthusiasm for job creation as expressed by presidents Ronald Reagan and George H.W. Bush).

121. A working paper argues that government investment in the creating of care-work jobs has important multiplier effects for the larger economy. Rania Antonopoulos & Kijong Kim, *Public Job-Creation Programs: The Economic Benefits of Investing in Social Care Case Studies in South Africa and the United States* 15 (Levy Econs. Inst. of Bard Coll., Working Paper No. 671, 2011), http://www.levyinstitute.org/pubs/wp_671.pdf.

122. KANE & PUENTES, *supra* note 119, at 15.

sound negotiation strategies for feminists. Activists can press for both a fairer gender-share of appropriations and a bigger pie. Just Jobs calls for fairness *and* enlargement, quality *and* quantity.

C. Coalition Politics

A droll example of how feminists can join other groups to achieve social gains, or at least make a point in protest, talks about coalition politics using what a portmanteau coinage calls “snark.”¹²³ “She singlehandedly united us all,” wrote one activist about a state prosecutor: “Thanks, Angela Corey!”¹²⁴

By “us” this writer meant groups focused on “domestic violence, women of color, justice reform and more.”¹²⁵ Million Hoodies Movement for Justice, the activist group for which author Annie Schoening works, identifies young people of color as its constituency.¹²⁶ It emphasizes the dangers of mass incarceration and gun violence.¹²⁷ Angela Corey, the Florida state attorney, “united us all” when she pushed hard to incarcerate an African-American mother of three who had shot a gun in what she said was self-defense, hitting nobody and repelling the intruder. Corey also led the failed prosecution of George Zimmerman in a more notorious Florida trial.¹²⁸ The coalition called Free Marissa Now united activists dedicated to redressing injustices based on race, gender, class, and social hierarchies.¹²⁹ Its inclusive perspective on activism could provide a model for Just Jobs.

Scholars and activists alike agree on the value of enlisting multiple groups to work on shared progressive ends.¹³⁰ What a coalition can

123. *Snark*, URB. DICTIONARY (Feb. 9, 2004), <http://www.urbandictionary.com/define.php?term=snark> (“Combination of ‘snide’ and ‘remark’. (sic) Sarcastic comment(s).”).

124. Annie Schoening, *Thanks, Angela Corey!*, FEMINISTING (Feb. 2015), <http://feministing.com/2015/02/05/thanks-angela-corey/>.

125. *Id.*

126. MILLION HOODIES FOR JUSTICE, <http://www.millionhoodies.net/about/> (last visited Dec. 30, 2015).

127. *Id.*

128. I refer to the killing of young, unarmed Trayvon Martin. See Mary Anne Franks, *Real Men Advance, Real Women Retreat: Stand Your Ground, Battered Women’s Syndrome, and Violence as Male Privilege*, 68 U. MIAMI L. REV. 1099 (2014); Anita Bernstein, *What’s Wrong with Stereotyping?*, 55 ARIZ. L. REV. 655, 691–92 (2013) for discussions on the right to use violence in self-defense as limited by the defender’s race and gender.

129. FREE MARISSA NOW, <http://www.freemarissanow.org/> (last visited Dec. 30, 2015).

130. See, e.g., Gara LaMarche, *The New Left Revitalization*, NATION, Sept. 1, 2014, at 28; Amy Dean & David B. Reynolds, Speech, *A New, New Deal*, 39 SOC. POL’Y 15

achieve exceeds the results of more solitary activism. The agenda may be more likely to succeed from the start, because observers can see variety in the people who are investing in the effort and from there conclude that it has already won at a preliminary level. Multiple ownership within political change adds legitimacy as well.¹³¹

Just Jobs provides an occasion for solidarity and complementary activism. A feminist perspective on the Just Jobs coalition would recognize that an increase in job quantity benefits women in particular—in ways not limited to what this Article has already considered—and, at a general plane, it also benefits all persons who work or wish to work.¹³² Allies in coalition politics include groups that identify themselves as focused on race, class, union membership, ability and disability, sexual orientation, parental status, and national origin. All these assemblages have a stake in employment levels. Some members of these groups know that they are better off with more jobs in the United States even if their members do not wish to take these jobs—retired persons, for example, who favor the continued funding of Social Security through payroll taxation. A small number of progressive cohorts have experienced disagreement with aspects of jobs-activism,¹³³ but it is fair to suppose that most of them accept the importance of job creation and job security as foundational.

The coalition politics that this Article envisions would place labor unions at the center. Unions deserve credit for numerous social improvements that extend beyond their own ranks. They built on the biblical idea of resting on one day out of seven by creating a workday of limited hours with breaks, got rid of child labor, brought health

(2009) (arguing for regional cooperation as providing building blocks for a new progressive era in the U.S.); James Gustave Speth, *Letter to Liberals: Liberalism, Environmentalism, and Economic Growth*, 14 VT. L. REV. 547, 43 (2011) (urging liberal and environmental groups to work together).

131. So I argue in Anita Bernstein, *Diversity May Be Justified*, 64 HASTINGS L.J. 201 (2012).

132. See *supra* Part II.

133. Immigrants might question whether increasing the number of jobs would include them, and the interests of unions and environmental groups have occasionally clashed. See, e.g., Steven Greenhouse, *AFL-CIO Backs Keystone Oil Pipeline, if Indirectly*, N.Y. TIMES (Feb. 28, 2013), <http://www.nytimes.com/2013/02/28/business/energy-environment/afl-cio-backs-keystone-oil-pipeline-if-indirectly.html> (reporting one such division).

care to millions of workers,¹³⁴ and are now leaders in workplace safety.¹³⁵ These days organized labor faces the existential threat of plummeting membership, most dramatically in the private sector but also at the public side.¹³⁶ According to labor scholars Bill Fletcher, Jr. and Richard W. Hurd, unions need to make as their first priority “a culture of inclusion”—of “women, people of color, immigrants, and lesbians and gays”—if they want to survive.¹³⁷ Alliances between feminists and the labor movement have achieved gains; they could accomplish more if that effort were expanded.¹³⁸

Modernizing and widening key goals of the American labor movement, the head of the labor federation AFL-CIO has acted in response to this priority. His supra-union has reached out to new allies and priorities—among them immigration reform, so that more persons working in the United States would enjoy legal protections at work; criminal justice initiatives focused on the problem of over-incarceration of African-American men; and “alt-labor” cohorts, such as groups that organize workers outside conventional union structures and progressive allies generally, like the Sierra Club.¹³⁹ Under progressive leadership of this stripe, the labor movement could welcome feminists into its job-creating and -protecting initiatives.

Ground held in common between racial-justice activism and the labor movement is especially instructive. Organized labor, especially the Congress of Industrial Organizations, identified alliances and gains from solidarity between racial justice and the interests of all workers long before other left-leaning sectors joined the fight for

134. *Four Reasons Everyone Should Thank Unions on Labor Day*, THINK PROGRESS (Sept. 3, 2012, 2:01 PM), <http://thinkprogress.org/economy/2012/09/03/789301/reasons-thank-unions-labor-day/>.

135. See Erik Loomis, *Workplace Safety*, LAWYERS, GUNS & MONEY (Feb. 9, 2015), <http://www.lawyersgunsmoneyblog.com/?s=unions+safety&x=0&y=0>.

136. Jason Russell, *Union Membership on the Decline*, WASH. EXAMINER (Jan. 23, 2015, 12:53 PM), <http://www.washingtonexaminer.com/union-membership-on-the-decline/article/2559167>.

137. Bill Fletcher, Jr. & Richard W. Hurd, *Is Organizing Enough? Race, Gender, and Union Culture*, 6 NEW LABOR F. 58, 60 (2000). See also GILL KIRTON & GERALDINE HEALY, *GENDER AND LEADERSHIP IN UNIONS* (2013).

138. See generally Eileen Boris & Annelise Orleck, *Feminism and the Labor Movement: A Century of Collaboration and Conflict*, 20 NEW LABOR FORCE 33, 33–34 (2011) (reporting both successful alliances and underdeveloped opportunity).

139. Amy B. Dean, *A Bigger Tent: Can Richard Trumka Save the Labor Movement?*, BOS. REV. (Feb. 2, 2015), <http://bostonreview.net/books-ideas/amy-dean-richard-trumka-labor-movement>.

civil rights;¹⁴⁰ in turn, African-American workers brought strength to the labor movement when they migrated from the agrarian south and joined struggles to unionize work sites in the Northeast.¹⁴¹ Feminists have learned from racial-justice achievements in the past:¹⁴² they have more to learn ahead.

IV. QUALMS

Downsides to Just Jobs as a strategy are few, but they do exist. I consider four here. The first presents a risk for feminist activists in particular; the other three broach general misgivings that fall into the grim trio Albert Hirschman aptly named “perversity, futility, jeopardy.”¹⁴³

A. The Risks of Coalition Politics

At one level, strength through unity is an unassailable slogan. Anyone can accept it in principle. Difficulties arise when activists face scarcity and tradeoffs. Coalitions with other progressive groups might, for feminists, have minuses as well as plusses. Perhaps there are good reasons that this uniting hasn’t happened more and accomplished more.

The danger I have in mind is that coalitions that include but are not limited to women and feminism might expect their female participants to supply unrewarded toil and take orders rather than give them. Sexism in leftist movements that pursued important goals like stopping the Vietnam War and combating the ills of racism notoriously subordinated women, who were denied full access to leadership roles and told that their liberation would have to wait.¹⁴⁴ While New Left-style sexual exploitation of young women can no

140. TRACY ROOF, AMERICAN LABOR, CONGRESS, AND THE WELFARE STATE 1935-2010, at 23-25 (2011).

141. Forbath, *supra* note 46, at 702.

142. See SERENA MAYERI, REASONING FROM RACE: FEMINISM, LAW, AND THE CIVIL RIGHTS REVOLUTION 51-55 (2011) (giving examples from litigation strategies).

143. ALBERT O. HIRSCHMAN, THE RHETORIC OF REACTION: PERVERSITY, FUTILITY, JEOPARDY 7 (1991).

144. Michael S. Foley, *The “Point of Ultimate Indignity” or a “Beloved Community”?* *The Draft Resistance Movement and Gender Dynamics*, in THE NEW LEFT REVISITED 178, 185-89 (John McMullian & Paul Buhle eds., 2003); Charles Payne, *Men Led, But Women Organized: Movement Participation of Women in the Mississippi Delta*, in WOMEN IN THE CIVIL RIGHTS MOVEMENT 1-2 (Vicki L. Crawford, Jacqueline Anne Rose, & Barbara Woods eds., Ga. St. Univ. 1990).

longer occur the way it did in the 1960s¹⁴⁵—modern feminism has arisen to stymie the worst abuses—it remains true that women are expected to put themselves second more than men are.

A notion that oppression based on class or race is more important than oppression based on sex and gender helps to support this edict of mandatory self-abnegation. So, for example, when the radio personality Don Imus slurred a team of female college athletes as “nappy headed hos,” listeners interpreted his insult as racism rather than—not in addition to—sexism.¹⁴⁶ Apartheid in South Africa drew outrage and unrelenting international activism until a racist regime threw in the towel, while the strain of Islam that limits the movements of women in Saudi Arabia makes for business as usual in relations between its government and the United States. As for class, recall Ralph Nader’s sneer about “gonadal politics” mattering less than the economy and international trade, and the notion that Marxism and feminism cannot coexist because they disagree about which social division is the most fundamental, class or gender.¹⁴⁷ Friedrich Engels, explaining and expanding Marxism, took the position that women were subjugated only after, and because of, the invention of private property and class division.¹⁴⁸ Heirs of these spokesmen continue to proceed as if women’s liberation is less urgent than the class struggle.¹⁴⁹ These views do not admit parity: they demand hierarchy, placing women below.

145. One famed civil rights activist infamously joked that the only place for women participants in the movement was “prone.” PENIEL E. JOSEPH, *STOKELY: A LIFE* 305–06 (2014).

146. On May 19, 2015, I typed “don imus racist” and “don imus sexist” separately into Google search boxes and got 113,000 and 39,000 hits respectively. Attentive to both oppressions, one scholar suggests that the remarks “were aimed at black women participating in and excelling at collegiate athletics. Such women arguably exist as an affront to male notions of sports performance.” Lolita Buckner Inniss, *A ‘Ho New World: Raced and Gendered Insult as Ersatz Carnival and the Corruption of Freedom of Expression Norms*, 33 N.Y.U. REV. L. & SOC. CHANGE 43, 82 (2009) (footnote omitted).

147. TONY CLIFF, *CLASS STRUGGLE AND WOMEN’S LIBERATION: 1640 TO TODAY* 7–8 (1984).

148. See SHARON SMITH, *WOMEN AND SOCIALISM: ESSAYS ON WOMEN’S LIBERATION* 132–35 (2005).

149. See, e.g., *id.* at 57 (arguing that “women’s oppression can only be ended when the relations of production on which it is based are overthrown”); LEON FINK, *IN SEARCH OF THE WORKING CLASS* 238 (1994) (concluding that for labor historians, “class always comes first” in relation to gender).

Consider one essay arguing plausibly for unity on the axes of race and gender in struggles related to minority businesses.¹⁵⁰ “Minority- and female-owned businesses should . . .,” it begins, “accept” seven truths or propositions.¹⁵¹ Second on the list: “Accept that white women will always have unique relationships with major decision-makers . . . because of family connections.”¹⁵² Maybe they will: but this foray into Oppression Olympics¹⁵³ mentions no rifts in the coalition other than unearned white-female goodies—six out of the seven propositions are all about the unity—and although the author does not say exactly which consequences follow from the “unique relationships” that originate in family relations, I read the statement to imply unmerited advantage.¹⁵⁴

Unmerited advantage is not all that white-female business owners get from their family members. The “connections” these relatives offer might (or might not) offer could also deliver detriments like intrafamily condescension, skepticism, resentment, or perception of the government grant as not belonging to the woman named on it.¹⁵⁵ A participant in this unity-strategy urged to “accept” dogma about her undeserved holdings when no other group has to affirm anything of the kind might wonder whether she is a real member of the coalition, entitled to share in the benefits that her comrades have come together to pursue. The credo seems divisive rather than unifying,¹⁵⁶ even if all white women really are exceptionally privileged among recipients of minority business grants. Its call for female sacrifice toward the greater good sounds familiar.

Yet even though feminists have reasons for wariness about coalition politics—just as many other activists, feminists included, have reasons for wariness about feminism without coalitions—Just Jobs has better prospects of unity than most alliances. Unlike many other coalitions that progressive groups might form, this one keeps the problem of scarcity front and center. All participants know that too few jobs harms the body politic, and share a commitment to

150. James H. Lowry, *Women, Minorities Should Work Together*, DIVERSITY EXECUTIVE (Dec. 30, 2013), <http://www.talentmgt.com/articles/women-minorities-should-work-together>.

151. *Id.*

152. *Id.*

153. Russell K. Robinson, *Marriage Equality and Postracialism*, 61 UCLA L. REV. 1010, 1045–57 (2014) (using Oppression Olympics to mean “ranking forms of oppression”).

154. Lowry, *supra* note 150.

155. Microfinance grants that go to women have encountered obstacles like these. See Anita Bernstein & Hans Dieter Seibel, *Reparations, Microfinance, and Gender: A Plan, With Strategies for Implementation*, 44 CORNELL INT’L L.J. 75, 90–94 (2011).

156. Robinson, *supra* note 153, at 1057.

enlarging the total number of jobs. Quarrels over how to allot whatever gains will result can be bracketed and postponed.

B. The Danger that Job Quantity and Quality Cannot Both Increase

Could there be an inverse relationship between quantity and quality on the jobs front—in other words, a risk that when a legal mandate makes employment conditions more appealing for workers, employers might choose to hire fewer employees? Writers have said so.¹⁵⁷ Conditions that are bad for workers are good for the businesses that hire them and vice versa: what employees experience as job security, for example, can feel like inflexibility to employers. The idea is that planners can emphasize quality or quantity in the workplace but not both. Good conditions for workers make employment more costly on the payroll; bad working conditions make workers cheaper, or easier to fire, or some other condition convenient for the employer class, and so a business would be willing to take on more of them.

Maybe—but probably not, at least in the United States, as evidenced by developments concerning the minimum wage circa 2014. Quality and quantity come together at this endeavor. The midyear election brought progressive setbacks but also minimum-wage victories in several states.¹⁵⁸ For many years economists divided on the possibility of an inverse relation between the minimum wage and employment levels. It seemed reasonable to suppose that if workers cost an employer more, the employer would

157. For example, a Wall Street Journal story about high unemployment for European youth reported that parents of young people enjoy comfort and security in the labor market, with their advantages coming at the price of high payroll taxes that discourage hiring. Ilan Brat & Giada Zampano, *In Europe, Job Protections for Older Generation Are Barriers for Younger Workers*, WALL ST. J. (Aug. 8, 2014, 7:58 PM), <http://www.wsj.com/articles/in-europe-job-protections-for-older-generation-are-barriers-for-younger-workers-1407541533>.

158. Kenneth T. Walsh, *Obama's Unpopularity Affected Democrats in Midterm Elections*, US NEWS & WORLD REP. (Nov. 5, 2014, 1:16 A.M.), <http://www.usnews.com/news/articles/2014/11/05/obamas-unpopularity-affected-democrats-in-mid-term-elections>; David Nather & Darren Samuelsohn, *Democrats Fret over Obamacare as 2014 Looms*, POLITICO (Apr. 30, 2013, 2:39 P.M.), <http://www.politico.com/story/2013/04/obamacare-democrats-2014-90780.html>. On minimum wage increases in 2014, see *State Minimum Wages: 2015 Minimum Wages by State*, NAT'L CONF. OF ST. LEGIS. (June 30, 2015), <http://www.ncsl.org/research/labor-and-employment/state-minimum-wage-chart.aspx> (noting that Connecticut, Delaware, Hawaii, Massachusetts, Michigan, Minnesota, Rhode Island, Vermont, West Virginia, and D.C. all voted for increases in 2014).

hire fewer of them. Although some expert opinion still links a higher minimum wage with lower employment, more authority identifies no detriment to workers when the minimum wage goes up.¹⁵⁹ Minimum-wage increases around the country at the city as well as the state level have produced beneficial effects without harm to the local economy in general or employment levels in particular.¹⁶⁰

It seems to me that job quantity and job quality support each other rather than compete in a zero-sum struggle, but I admit that this opinion might be influenced by, or even come straight from, my liberal bent. Fortunately we need not put faith in my optimistic take on the quantity-quality tradeoff. Convenient metrics are at hand for job quantity—government studies keep good track of jobs numbers—and observers can monitor job quality by following the data on whichever conditions appear of interest: wages, opinion polls, vocational-education choices, or any other marker. Let us American taxpayers give Just Jobs a try. If it proves to have pernicious effects, we can drop it.

C. Activism Meets the United States Border

While my suggestions for American feminists do not embrace nationalism or the nation-state directly, they do more or less stop at the U.S. frontier, and any focus on job creation through law and policy necessarily enlists the nation-state. Transnational feminism, as summarized by one feminist philosopher, tends to reject nationalism and the nation-state as antithetical to the goal of women's liberation.¹⁶¹ Accordingly, Just Jobs might conflict with feminism of the transnational flavor. Even if there's no theoretical problem of this

159. See *Minimum Wage Mythbusters*, U.S. DEP'T OF LAB., <http://www.dol.gov/minwage/mythbuster.htm> (last visited Dec. 30, 2015) (research shows that raising the minimum wage had no discernable effect on employment); *2014 Job Creation Faster in States that Raised the Minimum Wage*, CTR. FOR ECON. & POL'Y RES., <http://www.cepr.net/blogs/cepr-blog/2014-job-creation-in-states-that-raised-the-minimum-wage> (last visited Dec. 30, 2015); see also Pierre Cahuc & Philippe Michel, *Minimum Wage Unemployment and Growth*, 40 EUR. ECON. REV. 1463 (1996) (theorizing that raising the minimum wage lowers demand for unskilled labor, and so workers have an incentive to augment their human capital, causing positive effects for the economy).

160. Josh Harkinson, *As Cities Raise Their Minimum Wage, Where's the Economic Collapse the Right Predicted?*, MOTHER JONES (Apr. 16, 2015, 9:15 AM), <http://www.motherjones.com/kevin-drum/2015/04/economic-collapse-prediction-minimum-wage-raise>.

161. Ranjoo Seodu Herr, *Reclaiming Third World Feminism, Or Why Transnational Feminism Needs Third World Feminism*, 12 MERIDIANS: FEMINISM, RACE, TRANSNATIONALISM 1, 13 (2014).

kind, a core difficulty remains: Do feminist activists really want to proceed as if women are not suffering outside the United States?

Nationalism does permeate the argument broached in this Article, at least implicitly: I own it.¹⁶² For better or worse, job creation and protection programs work within the parameters of the nation-state, including the limits of its imagination; and so the alternative to blinkered bias in favor of the country I live in becomes no Just Jobs initiative at all. The perfect makes too convenient an enemy of the enemy of good.

That said, my not-perfect notion offers affirmative gains to workers outside the United States: it does not inflict zero-sum harm on them. Even when an American job saved is an Indian or Filipina job forfeited,¹⁶³ protectionist measures do more than just favor insiders at the expense of everyone else. For instance, insisting on minimum labor and environmental regulation as a condition for allowing manufactured goods to enter the United States not only favors American jobs and job-holders but can help raise standards at foreign worksites.¹⁶⁴ Feminist participation enhances discussions about trade regulation just as it enhances discussions of public policy generally.

And job creation as transnational policy provides a location for feminist voices to speak where they might not have been asked to join a conversation. Consider for example the Immigrant Investor Program, established by a 1990 statute, that allows foreign nationals to live lawfully in the United States if they invest \$500,000 in a new business that creates ten new jobs in a location designated as either low-employment urban or rural.¹⁶⁵ Hundreds of millions of dollars have been poured into New York real estate under these auspices;¹⁶⁶ actual job creation following the sale of these visas is not much

162. I thank my colleague Rebecca Kysar for a valuable conversation on this point.

163. See *supra* notes 36–37 and accompanying text.

164. See, e.g., DAVID VOGEL, *TRADING UP: CONSUMER AND ENVIRONMENTAL REGULATION IN A GLOBAL ECONOMY* 259–60 (1995) (describing “the California effect,” whereby American regulations governing the importation of goods increase labor and environmental standards abroad); David A. Gantz, *Labor Rights and Environmental Protection Under NAFTA and Other U.S. Free Trade Agreements*, 42 U. MIAMI INTER-AM. L. REV. 297, 306 (2011) (identifying “opportunities for major improvements”).

165. Peter Elkind & Marty Jones, *The Dark, Disturbing World of the Visa-for-Sale Program*, *FORTUNE* (July 24, 2014, 7:30 AM), <http://fortune.com/2014/07/24/immigration-cb-5-visa-for-sale/>.

166. Julie Satow, *Want a Green Card? Invest in Real Estate*, *N.Y. TIMES* (May 15, 2015), <http://www.nytimes.com/2015/05/17/realestate/want-a-green-card-invest-in-real-estate.html>.

monitored.¹⁶⁷ Feminists, habituated to ask *Cui Bono?*,¹⁶⁸ might wonder about the gender of the tycoons and oligarchs with half a million dollars to spare, and whether immigrants who enter the United States under EB-5 contribute to the quality of life in the states and cities that house their investments.¹⁶⁹

D. Is the Job as We Know It Doomed?

My final qualm is that this Article may have chosen to make an issue of something obsolete. In the benign version of the obsolescence scenario, machines set human beings free. We soon will live in leisure. At the scarier end of the possibility spectrum, capital has almost no use for human labor: enter a post-employment apocalypse that may have taken irretrievable form, similar to the nightmare-scenario version of climate change that best efforts can no longer reverse or even slow. A combination of technological advances and antipathy toward the working population could have doomed the job as we know it. Holders of wealth can decide to purge their payrolls, causing employment to plummet without regard for the costs of their actions.

For job-optimists, a famous anecdote still repeated (especially in union circles) tells how labor leader Walter Reuther wiseguyed an auto executive, perhaps Henry Ford II, on the subject of robots. Ford pointed with pride at machinery on his shop floor as he challenged Reuther, in an *aha!* tone, “How will you get robots to pay union dues?” to which Reuther retorted, “How will you get robots to buy

167. Elkind & Jones, *supra* note 165; Jack Sullivan, *Sketchy Federal Program Sells Citizenship*, COMMONWEALTH MAG. (Apr. 14, 2015), <http://commonwealthmagazine.org/economy/sketchy-federal-program-sells-citizenship/> (“Federal officials release almost no information about the program and the investments it subsidizes. The Inspector General for Homeland Security said in late 2013 that the administrators of the program have no documentation to back up their numbers on foreign investment or jobs.”).

168. Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 829, 837 (1990) (advocating “asking the woman question”); Anita Bernstein, *Gender in Asbestos Law: Cui Bono? Cui Pacat?*, 88 TUL. L. REV. 1211 (2014).

169. On intersections between feminism and communitarianism see generally Susan H. Williams, *A Feminist Reassessment of Civil Society*, 72 INDIANA L.J. 417 (1997), for a defense of strands of communitarianism in response to feminist critiques, and Orit Kamir, *To Kill a Songbird: A Community of Women, Feminist Jurisprudence, Conscientious Objection and Revolution in A Jury of Her Peers and Contemporary Film*, 19 L. & LITERATURE 357 (2007), finding feminism and communitarianism in *A Jury of Her Peers* by Susan Glaspell.

cars?”¹⁷⁰ Wise capitalists know about the value of customers—not to mention the modicum of political stability that a working population brings to the nation-state—but when they conclude that they no longer need workers, they will not carry a big payroll voluntarily. And so automation under capitalism ushers in the end of employment even when capital holders have good intentions. Benign or malevolent, a no-jobs future for the United States could put any Just Jobs initiative out of business before it starts.

The metaphor of a buggy whip, possibly misplaced,¹⁷¹ can apply to not only machines but occupations. Live long enough and you’ll watch jobs disappear, mostly due to technological shifts. A 2014 photo-essay called “11 Jobs That No Longer Exist Today”¹⁷² surveyed job-forfeiture by gathering examples that put women, men, and children out of work.¹⁷³ A few of the eleven lost jobs seem agreeable.¹⁷⁴ Some look frighteningly grim.¹⁷⁵ The technologies vary. Radar killed the job of listening for enemy aircraft; electrification of street lamps got rid of the lamplighter; refrigeration ended the occupations of milkman and ice cutter.

Taken together, the past seems prologue here in the early twenty-first century, when job titles like bank teller and travel agent and supermarket cashier, and paid tasks like pumping gas at a filling station, still exist but have gone into retreat. Educated elites may suppose that the phenomenon is not coming for them, but they would be wrong: late twentieth-century automation made it possible for the

170. The story, with attention to possible apocrypha, is reported at “*How Will You Get Robots to Pay Union Dues?*” “*How Will You Get Robots to Buy Cars?*,” QUOTE INVESTIGATOR (Nov. 16, 2011), <http://quoteinvestigator.com/2011/11/16/robots-buy-cars/>.

171. Randall Stross, *Failing Like a Buggy Whip Maker? Check Your Simile*, N.Y. TIMES (Jan. 9, 2010) <http://www.nytimes.com/2010/01/10/business/10digi.html> (observing that the buggy whip is not a good historical exemplar of a business plan that failed to adapt).

172. *See 11 Jobs that No Longer Exist Today*, VIRAL FOREST, <http://www.viralforest.com/11-jobs-longer-exist-today/> (last visited Dec. 30, 2015).

173. *Id.* Bowling pin setter for children; switchboard operator for women; log driver for men. *Id.*

174. *See id.* I wouldn’t have minded earning my living as a “lector,” a person who entertained or enlightened factory workers by reading to them, and the lost job of street lamplighter offered fresh air, exercise, and immediate positive feedback. Rain too, I guess.

175. E.g., rat catcher, ice cutter, and resurrectionist, a euphemism for a person who dug corpses from graves for medical studies. *Id.*

work of American lawyers, radiologists, and software designers, among others, to go offshore.¹⁷⁶

Hard to guess which changes in technology will prove significant disruptors of current patterns in the world of work: a few developments on the horizon look to me like potentially significant job-killers. Additive manufacturing, also known as 3D printing, could repeal or at least weaken the eighteenth-century manufacture-tenet of economies of scale if it takes off. The ability to make the object one wants at an offsite fabrication machine means that whole cohorts of jobs, from line workers at a factory to retail clerks, become at least less necessary if not superseded. Three-dimensional printing, as an *Economist* story noted with dry understatement, “is less labour-intensive than standard manufacturing.”¹⁷⁷

Or consider the self-driving car, an innovation associated with the visionary non-manufacturer Google but also on the drawing boards of auto makers around the world. The Boston Consulting Group reported in 2015 that consumers can expect access to this product that year or 2016.¹⁷⁸ This estimation sounds a bit optimistic, but the technology is well underway. Particularly worrisome as a source of job loss is a development that can roll out relatively soon: the dedicated lane on a highway, populated only by driverless vehicles.¹⁷⁹ This technology offers advantages to the movement of durable goods that traditional trucks, freight rail, and cargo shipping cannot deliver—and does so with far fewer human beings at the wheel or helm. Other jobs are at risk when the rail and trucking industries contract. Just as the decline of Detroit dragged down suppliers of component parts,¹⁸⁰ a smaller transportation sector would mean less revenue and opportunity for the business of accidents: repair shops,

176. Barbara Ehrenreich, ‘*Rise of the Robots*’ and ‘*Shadow Work*,’, N.Y. TIMES (May 11, 2015), <http://www.nytimes.com/2015/05/17/books/review/rise-of-the-robots-and-shadow-work.html>.

177. *Print Me a Stradivarius: How a New Manufacturing Technology Will Change the World*, ECONOMIST (Feb. 10, 2011), http://www.economist.com/node/18114327?story_id=18114327.

178. Xavier Mosquet et al., *Revolution in the Driver’s Seat: The Road to Autonomous Vehicles*, BOS. CONSULTING GROUP (Apr. 21, 2015), <https://www.bcgperspectives.com/content/articles/automotive-consumer-insight-revolution-drivers-seat-road-autonomous-vehicles/>.

179. RANDAL O’TOOLE, GRIDLOCK: WHY WE’RE STUCK IN TRAFFIC AND WHAT TO DO ABOUT IT 192 (2009).

180. See *In re General Motors Corp.*, 407 B.R. 463, 477 n.6 (S.D.N.Y. 2009) (“More than 500,000 workers are employed by companies in the U.S. that manufacture parts and components used by automakers.”), *enforcement denied by In re Motors Liquidation Co.*, 529 B.R. 510 (Bankr. S.D.N.Y. 2015).

towing services, personal injury law, and insurance.¹⁸¹ The driverless car threatens other sectors of the American economy, including automotive finance, rental cars, and commercial parking garages.¹⁸²

Fewer taxis signify fewer jobs, not only because of self-driving replacements, but taxi driving is among the jobs imperiled in the emerging “sharing economy.”¹⁸³ Uber, Lyft, and Airbnb¹⁸⁴ are business names that may look buggy-whippy by the time you read these words but, as this Article goes to press, have made important inroads into the taxi and hotel sectors respectively. Lodging and transport in the sharing economy do not entirely eliminate the jobs of yore, to be sure. Beds get made, rides hailed. Tech-cleverness on the apps front presumably lures at least a few new customers or makes it easier for current ones to consume more. But sharing-economy businesses employ fewer workers—chambermaids, dispatchers, bartenders, front desk and restaurant staff—than do their unsharing-economy counterparts.

Technologies to do repetitive work—such as drones, robots, and voice recognition software—threaten the job as we know it in that they lower the value of what an unskilled worker brings to the labor market but generate opportunities for other people: inventors, engineers, entrepreneurs. One San Francisco inventor, talking about his “Momentum burger-bot” that takes ten seconds to prepare a fresh hamburger, told an interviewer his machine “isn’t meant to make employees more efficient,” but “to completely obviate them.”¹⁸⁵ Obviating employees demands and creates work for obviators, however: someone has to decide whether to buy a burger-bot, how to repair it when it breaks down and figure out upgrades, and when to throw it away.

The Internet pioneer Marc Andreessen has put a positive spin on technological advancements that move existing occupations and sources of income to the past: “I don’t believe robots will eat all the

181. Mosquet et al., *supra* note 178.

182. Zack Kanter, *Autonomous Cars Will Destroy Millions of Jobs and Reshape the US Economy by 2025*, QUARTZ (May 13, 2015), <http://qz.com/403628/autonomous-cars-will-destroy-millions-of-jobs-and-reshape-the-economy-by-2025/>.

183. *Id.*

184. Jason Tanz, *How Airbnb and Lyft Finally Got Americans to Start Trusting Each Other*, WIRED (Apr. 23, 2014, 6:30 AM), <http://www.wired.com/2014/04/trust-in-the-share-economy/>.

185. Jason Dorrier, *Burger Robot Poised to Disrupt Fast Food Industry*, SINGULARITY HUB (Aug. 10, 2014), <http://singularityhub.com/2014/08/10/burger-robot-poised-to-disrupt-fast-food-industry/>.

jobs," he wrote.¹⁸⁶ Even if they do, new ones will take their place: "We have no idea what the fields, industries, businesses, and jobs of the future will be. We just know we will create an enormous number of them."¹⁸⁷

Pessimism-and-optimism on the disappearing jobs question could reasonably lead an activist to question the pursuit of job creation: *Who knows whether employment as we know it will disappear, she might conclude. Even if the optimism camp is right enough to predict that innovation won't "eat all the jobs," we're dealing in deep uncertainty. I'd rather work on a goal whose relevance and necessity I feel sure of.*

Yet the possibility of obsolescence means all the more reason to keep going with Just Jobs, in my view. No question that many occupational categories of the past—bowling alley pinsetters, human alarm clocks, ice cutters, rat catchers, milk deliverers, log drivers—ceased to exist because of technological change,¹⁸⁸ and that the blacksmiths, coopers, switchboard operators, and classified-ad managers for newspapers who still make a living are vanishingly small in number. Nor can one easily defend the social utility of retaining mind-numbing work that a machine could do faster and better. And, as was mentioned, educated workers ignore the phenomenon of job automation at their peril.¹⁸⁹ Obsolescence as a corroder of jobs calls for responses aimed at enhancing human welfare—if for no other reason that however doomed they may be, jobs will not vanish in an instant.

Their disappearance will occur gradually, and under political conditions. Just Jobs would gain from all the energy and particulars

186. Marc Andreessen, *This is Probably a Good Time to Say that I Don't Believe Robots Will Eat All the Jobs . . .*, PMARCA BLOG (June 13, 2014), <http://blog.pmarca.com/2014/06/13/this-is-probably-a-good-time-to-say-that-i-dont-believe-robots-will-eat-all-the-jobs/>.

187. *Id.* Bringing specifics to his optimism, Andreessen added that human beings appear committed to populating their worlds with value rooted in scarcity:

[W]hen automation is abundant and cheap, human experiences become rare and valuable. It flows from our nature as human beings. We see it all around us. The price of recorded music goes to zero, and the live music touring business explodes. The price of run-of-the-mill drip coffee drops, and the market for handmade gourmet coffee grows. You see this effect throughout luxury goods markets—handmade high-end clothes. This will extend out to far more consumers in future.

Id.

188. See 11 *Jobs that No Longer Exist Today*, *supra* note 172.

189. See *supra* note 176 and accompanying text.

that activists can bring. If it came to enjoy the support of a progressive consensus, it would influence policy; from there the diminution or disappearance of particular types of work—and of paid labor generally—would occur in a setting that prioritizes what human beings need. The retraining of workers, for example, might require a push to draw investments from the state. Coalitions could assess ways to prop up employment by dividing one job into two or three, so that multiple individuals could hold a share—and, consistent with the Reuther-Ford anecdote, take home enough spendable cash to maintain the national economy. Carrots and sticks that result might come to push employers toward choices that extract less work per employee.¹⁹⁰

As governments steer the slow transition between needing all hands for subsistence to strengthening social welfare in a way that calls for fewer hours of labor, workers ought to articulate their own interests. Their efforts would expand concern about what people want in their lives. Feminists ought to sit at this table.

CONCLUSION

Listening to American politicians talk about jobs, one might think that everyone likes them and wants more of them. The appeal of Just Jobs can sound bipartisan: Liberals express concern about the unemployment rate and labor market participation; conservatives join in the consensus of praise for employment,¹⁹¹ and some describe rich persons as job creators, a term that might sound pro-plebe.¹⁹²

Earlier in this Article, renewing job-creation actions and rhetoric at the state level, I recalled the claims of a conservative Texas governor.¹⁹³ The discourse is national, however. “President Obama

190. See *supra* notes 30–31 and accompanying text (describing proposals like mandatory paid vacation and a lower age for Medicare eligibility to encourage earlier retirement).

191. KANE & PUENTES, *supra* note 119.

192. The Urban Dictionary starts with “[e]uphemism for rich person” and then goes on at more length:

A creative euphemism used to describe the elite business executive, investment banker or otherwise disgustingly rich person; a type of creature which might possibly spend additional revenue created by tax breaks on slave labor in India or China, but will most likely utilize the money to give other business executives absurdly large bonuses and buy yachts made out of solid gold.

Job Creator, URB. DICTIONARY (July 19, 2011), <http://www.urbandictionary.com/define.php?term=Job%20Creator&defid=5964128>.

193. See *supra* notes 60–63 and accompanying text.

has decided to attack success,” complained another Republican during the 2012 presidential campaign.¹⁹⁴ “It’s no wonder so many of his own supporters are calling on him to stop this war on job creators.”¹⁹⁵ The “job creator” label makes reference to tax policy. Perhaps tax cuts really do increase the number of jobs, although there is little reason to think so.¹⁹⁶ What’s of interest in this remark, for purposes that this Article has identified, is how easy it makes the Just Jobs undertaking look. All the politicians like it; everyone wants it. What could go wrong?

Having argued that American feminists with an interest in policy activism ought to pursue not only better and fairer jobs for women but also more jobs for all persons in the United States, I may have incidentally exposed a challenge that this agenda faces. If it is correct to say, as I have said in this Article, that a larger number of jobs would make women better off at both material and non-material levels, then opponents of making women better off can be expected to dig in against job creation. Leftists have long believed that capital prefers to keep labor docile, frightened, and deeply thankful for the jobs they precariously hold.¹⁹⁷ Opponents of freedom for women presumably feel the same way about the people that this Article has set out to empower and enrich. We can expect the struggle for Just Jobs to go on.

Feminist activists who agree with the thesis of this Article can support a variety of efforts to increase the total number of jobs in the United States. My stance here has favored the most direct source, interventions modeled on precedents like the Emergency Relief Appropriation Act of 1935 and the American Recovery and Reinvestment Act of 2009, which appropriated federal monies for job creation.¹⁹⁸ Less direct approaches to job creation are also on the policy menu. All interventions jockey for attention and acceptance under conditions of scarcity; every strategy to increase the number of jobs has implications for feminists to consider.

194. Burns, *supra* note 72.

195. *Id.*

196. A Forbes editorial gathers the data to say no. See Peter Cohan, *Do Tax Cuts Create Jobs?*, FORBES (May 3, 2011, 9:09 AM), <http://www.forbes.com/sites/petercohan/2011/05/03/do-tax-cuts-create-jobs/>.

197. See, e.g., David Boje, *Globalization Antenarratives*, in ORGANIZATIONAL BEHAVIOUR IN A GLOBAL CONTEXT 541 (2007) (“docile workers are good for business”); ROBERT MICHAEL SMITH, FROM BLACKJACKS TO BRIEFCASES: A HISTORY OF COMMERCIALIZED STRIKEBREAKING AND UNIONBUSTING IN THE UNITED STATES (2003).

198. See *supra* notes 26–27.

Take for example the idea that the federal government can create new jobs by investing in particular sectors of the global economy where the United States competes well.¹⁹⁹ Or the 2009 announcement by the President of the United States that the nation would soon install new “shovel-ready jobs.”²⁰⁰ Take tariffs, take trade policy, take changes to laws about foreign investment in the United States. They all affect women. Feminist voices in debates around suggestions like these would furnish valuable information to policymakers and improve the inevitable logrolling.

Advocates bring value to the discussion about which policies to choose by keeping women and gender justice up front. Few other interested parties will maintain this priority, after all. A strategy aimed at creating jobs might in a feminist analysis appear too risky, or not likely enough to make women better off, or too feeble to warrant scarce energies and time. Ideas that fit other criteria of Just Jobs, conversely, will likely sound good for women and feminism too.

As an agenda, Just Jobs helps to reshape activism itself. This Article has proposed two movements from a periphery to a center. Starting with the observation that job creation appears to be outside the core of feminist engagement,²⁰¹ I recommended to feminists that they move jobs closer to the center of what they pursue. The second relocation that I have endorsed in this Article, with a couple of reservations,²⁰² would bring feminists into a job-creation coalition.

All persons who work or who depend on the work of others—that is, almost everyone—would benefit from an increase in the number of jobs.²⁰³ Women benefit in particular. Uniting job creation with feminism would build on shared priorities that grow ever more urgent.

199. The sectors that Fareed Zakaria identifies are popular culture, costly medical treatments, and tourism. *See supra* note 29.

200. *See supra* Part III.B.

201. *See supra* notes 10–13 and accompanying text.

202. *See supra* Part IV.

203. An increase in the number of jobs is necessary to make the American workplace healthy, but far from sufficient. *See generally* PAUL OSTERMAN & BETH SHULMAN, GOOD JOBS AMERICA: MAKING WORK BETTER FOR EVERYONE (2011) (calling on regulatory law to set minimums for job quality and opportunity). *See also supra* note 16.

