

Massive Disruption – How Artificial Intelligence & Automation Are Likely to Reshape labor & Employment Law and the Workplace

Kelly Trindel, PhD., Panel Chair

Head of Industrial Organizational Science &
Diversity Analytics, Pymetrics, New York, NY

Dr. Gerlind Wisskirchen

CMS Hasche Sigle, Cologne, Germany

Larry Cary, Esq.

Cary Kane, New York, NY

**Massive Disruption – How Artificial Intelligence &
Automation Are Likely to Reshape Labor & Employment
Law and the Workplace**

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Dr. Gerlind Wisskirchen
CMS Germany
T: +49 221 7716 345
E: gerlind.wisskirchen@cms-hs.com

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A. Introduction

Modern information technologies and the daily use of the Internet have strongly influenced the world of work in the 21st century. Computers and software simplify everyday tasks, and it is impossible to imagine how most of the steps of a procedure could be managed without them. But the use of artificial intelligence and robotics is accelerating and is even revolutionizing the world of work with computers. According to European understanding “**Artificial intelligence (AI) systems** are software (and possibly also hardware) systems designed by humans³ that, given a complex goal, act in the physical or digital dimension by perceiving their environment through data acquisition, interpreting the collected structured or unstructured data, reasoning on the knowledge, or processing the information, derived from this data and deciding the best action(s) to take to achieve the given goal. AI systems can either use symbolic rules or learn a numeric model, and they can also adapt their behavior by analyzing how the environment is affected by their previous actions (<https://ec.europa.eu/digital-single-market/en/news/definition-artificial-intelligence-main-capabilities-and-scientific-disciplines>).

The same applies for **online platforms** who are acting as intermediary between service providers and clients and are the backbone of the gig economy. Under the broadest definition, 33% of adults use/used platforms in the United States and European Union. However, only 1% to 5% of adults in the U.S. and the EU have earned income through platforms. In general, platforms and their users can be categorized. There are different legal challenges in each category:

- Sharing platforms:** tax problems: distinction between private and professional users
- Online marketplaces:** tax problems: how to ensure uniform and general taxation (e.g. in the EU) but also employment status (e.g. Uber)
- Social media platforms:** data privacy issues: how to ensure compliance with restrictive data protection laws and how to avoid fake news and (racial) harassment
- Crowdworking platforms:** labor and employment law: employment status, social protection; but also tax issues: distinction between private and professional users.

The following paper reflects some of the contents of the report on ‘**Artificial Intelligence and Robotics and Their Impact on the Workplace**’ Part I and Part II that I wrote for the IBA Global Employment Institute. Part I was published by the IBA Global Employment Institute on April 2017 and can be downloaded at:

<https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=012a3473-007f-4519-827c-7da56d7e3509>

The second part of the report will be published soon.

The **key messages** of the reports are:

- Digitalization affects the blue-collar and the white-collar sectors alike. Gradual changes will take place in the world of work.
- There will be new company structures, new forms of work and an increase of self-employed persons/freelancers and platform workers.
- Mass unemployment is not an unrealistic scenario in certain branches. Jobs at all levels presently undertaken by humans are at risk of being reassigned to robots or AI.
- Labor and employment laws are lagging behind business reality, and the gap is increasing. Some legislation once in place to protect workers may be no longer fit for purpose.
- The AI phenomenon and its integration into the working world of the future is a far-reaching and varied field of practice, especially for lawyers specializing in labor and employment law in the following issues:
 - Labor relations (cooperation with employee representation and unions),
 - Drafting (employment) contracts,
 - Distinguishing between the various groups of workers,
 - Working hours,
 - Remuneration structures,
 - Data privacy,
 - Protection of know-how and
 - Negotiating agreements for new working forms and lifelong learning

B. Impact on Labor Market

The Future Labor Market will eliminate some jobs completely, but sufficient jobs will be added at the same time. However, only less than 5 percent of occupations can be automated in their entirety, but within 60 percent of jobs, that means at least **30 percent of activities**, could be automated in the US labor market and the **day-to-day nature of work changes for nearly everyone due to AI**. Nearly 40 percent of affected jobs are in occupational categories that could shrink between now and 2030 due to AI (<https://www.mckinsey.com/featured-insights/future-of-work/the-future-of-work-in-america-people-and-places-today-and-tomorrow>).

Concerning the changes in jobs and tasks on the labor market, a distinction can be made between **two types of technologies**: First, there are "**enabling technologies**" that complement and increase the productivity of certain types of skills and thus lead to new jobs. There are also "**replacing technologies**" that perform tasks that were previously performed by employees and replace the employees in question.

However, it must be noted that current job displacement will mostly take place in the first category where algorithms and production machines become more and more effective. At current technological level, AI-systems are not completed and still need human workers' help carrying out nearly-automated tasks that still need residual human

components. These jobs are generally low-paid, do not need trainings and will disappear in some decades (e.g. truck driver, call-center operators and facial recognition verifiers), but at current level, those jobs are still necessary to be performed (<https://workforceinsights.randstad.com/hr-research-reports-flexibilitywork-2019>).

Whether the structural changes in the labor market will be dramatic, however, is not certain. While especially unions and some politicians are predominantly pessimistic and announce a loss of a lot of jobs, other researchers come to the conclusion that automation has a short negative direct effect on employment that will turn to a positive net effect on jobs in the next years. McKinsey prognoses this result in the US for 2030 (<https://www.mckinsey.com/featured-insights/future-of-work/the-future-of-work-in-america-people-and-places-today-and-tomorrow>). Advancing technologies are likely to increase total employment by around 0,5% annually. Automation reduces prices, leading to additional demand for the goods produced by automating industries. This leads to more labor in industries linked to the automating industry through the supply chain. Technological advances increase consumer's income in general, leading to increasing output and therefore employment in all industries (<https://workforceinsights.randstad.com/hr-research-reports-flexibilitywork-2019>).

Most outcomes of the digital transformation are not sure and differ from company to company and from branch to branch. There is consensus only that the introduction of intelligent systems will radically change the individual occupational tasks and the determining factor whether a job or a task will be displaced is the routine. Jobs will be created in the high skilled programming area as well as in the lower wage service sector, while routine processes performed anonymously will be digitalized in the background, especially in most countries with high labor costs.

C. New Skillset for all employees

The lower the demand for workers due to automation and digitalization, the higher will be the companies' demand for highly qualified employees. Irrespective of the industry, companies need highly qualified and well-trained employees more than ever because AI is not just changing jobs, it is enhancing jobs. In order to remain competitive in the digital fast-moving labor market, companies must regularly rethink their business models and anticipate trends. Since a company's greatest asset is its employees, one of the company's tasks is to constantly recruit innovative employees and adapt its existing workforce to digital trends. On the subject of retraining, the World Economic Forum comes to the conclusion that a large proportion of the workforce, particularly in the Western industrialized countries, will require significant retraining in the next years and could take up to 100 days per year, ie. 50% of the working time (http://www3.weforum.org/docs/WEF_Future_of_Jobs_2018.pdf).

To remain employable as a human worker in future, not just technical skills, but soft skills such as innovative thinking, team spirit, capacity for criticism, assertiveness, creativity, critical thinking, social and communicative skills and good time management, as well as a basic understanding of digital technologies, are more important than any professional knowledge. In addition, creativity and flexibility are becoming increasingly important. In the future, critical and problem-orientated thinking

and independent working is expected by all employees. This requires sound judgment. The expectations with respect to availability will be higher for future employees. Flexible working hours and standby duties will be the rule and no longer an exception in the labor market. Employees will be required to focus not only on one main practice area, but also to take on several multifaceted, sometimes highly complex tasks as necessary, and also to perform as part of a team. Employees are increasingly expected to have non-formal qualifications and the motivation of lifelong learning. These include, for example, the ability to act independently, to build networks, to organize themselves and their teams with a focus on targets, and to think abstractly. Special knowledge or a flair for high-quality craftsmanship will become less important, since this work is likely to be done by intelligent software or a machine. In addition, verbal and grammatical accuracy, as well as spatial imagination or strong memory, are no longer so important due to the use of digital tools. Mere knowledge workers will no longer be required; the focus will rather be on how to find creative solutions to problems or business models.

Decisions are often predetermined by intelligent algorithms, and individual employees work more at their own pace than ever before. Besides these new skill requirements, employees must be able not only to communicate with other people, but also, if necessary, to lead them effectively and coordinate with them and with some intelligent machines or algorithms in the future. Especially, the role of managers is changing from the person who tells you what to do to a motivator, moderator and organizer of clients, AI and internal and external specialists. The increased recourse to freelancers and the coordination of internationally operating virtual teams, who often work in different time zones, presents an additional challenge to managers.

Some companies already realized that even more employees need trainings. Amazon for example spends 700 million USD to retrain about a third of its 300.000 US workers by 2025. Especially warehouse workers are in high demand at the moment. However, no other company automates its warehouses as much as Amazon. Once this automation process is complete, however, new jobs for warehouse workers must be found. Amazon will begin this retraining program for all American workers (including finance, law and IT sectors too) in the next few years (<https://www.nytimes.com/2019/07/11/technology/amazon-workers-retraining-automation.html>).

D. Company Structures

Everything that is part of a routine and does not correspond to the core competencies of a company will be digitalized or outsourced. This will be done in future via platforms, which will replace the previous commercial outsourcing agents or other intermediaries and reduce the number of coordinators within the company. This consolidated outsourcing process will also lead to an altered corporate philosophy characterized by the increased instruction of external service providers instead of the employment of permanent staff with the necessary skills. Companies whose focus to date has been less on the IT and data processing sector must also adapt to the technical innovations in order to stay competitive in the long run. Big data analyses, automated production processes and preprogrammed decisions by intelligent algorithms are indispensable for bringing about a tangible increase in efficiency. Flat hierarchy levels are necessary, too,

in order to react quickly to trends, because only the first developer can make big gains in a fast-paced market.

On the other hand, ever more companies are involving external employees in new projects in order to nurture creative ideas. These include hobby programmers (prosumers), platform workers (crowdworkers), customers (open innovation) or competitors (joint ventures). Virtual working groups, project teams or Scrums are increasing internally. Instead of traditional corporate structures under corporate law, complex matrix structures are forming in order to organize globally interconnected groups. From an internal point of view, agile methods and an increased flexibility of companies reacting on digital trends will win over fixed business plans with fixed budgets for the next years. For agile work, new internal methods are necessary. Resolute changes in fixed paradigms are unavoidable. Some of these trends include:

- Abolish a culture of presence and promote a culture of results
- Allow failure
- Segmentation of the big picture into individual problems
- Reliable short-term results and employee satisfaction are not mutually exclusive.
- Focus on service and actively involve customers.
- Using alternative forms of work for the company (e.g. Virtual working groups, project groups, agile teams, Scrum, Crowdfunding)

E. Labor and Employment Law Issues

Newly evolving employment structures require new reactions from the lawmakers. Companies will outsource as much work as possible because traditional employment leads to high wage costs in western countries. Additionally, the borderlines between digital workers' professional and private life are becoming blurred. The breakdown of boundaries also makes it difficult for the employer to check how many hours the employee actually worked. There is no factor linking the time/wage system. In the future, elements of performance-linked payment will be used increasingly also with regard to non-executive employees. If the place of work, in addition to working time, becomes more flexible, it will become harder to **distinguish between an employee and an external freelancer** (e.g. crowdworker) and the risk of false self-employment including fines for hirers increase. Furthermore, the future work will be characterized by the use of connected technical wearables and the employees' own devices (e.g. data glasses or fitness trackers). With regard to the processing of the data of European customers or employees, **strict European data protection rules have to be respected**. In contrast to employees, self-employed contractors are not released from liability and are responsible for their own social security contributions.

Besides this, the implementation of technical innovations and AI or innovative working time models will not be possible without the **employee representatives' consent** in most cases. Employee organizations have realized that new challenges are in store for employees from all professional and social classes and put pressure on employers establishing AI.

I. Classification of Platform workers

The increasing number of platform workers leads to more judgement regarding the classification of workers in Europe. As in the US, the number of court decisions on the classification of platform workers is increasing in Europe, too. Amongst others, the **European Court of Justice (ECJ, - 20 December 2017 - C-434/15)** classified **Uber** as a transport service subject to authorization. The mediation service is "an integral part of a comprehensive service consisting mainly of transport services".

In this context, the ECJ also notes that the drivers working on the platform do not carry out autonomous activities that are independent of the platform. On the contrary, this activity exists solely on the basis of the platform, without which the activity of the drivers would make no sense. The ECJ also points out that controls over the economically important aspects of the urban transport service offered through its platform:

- On conditions that drivers must meet in order to take up and perform the activity;
- By rewarding drivers who accumulate a large number of journeys and informing them of where and when they can rely on a high volume of journeys and/or advantageous fares (which allows them to adjust their supply of demand fluctuations without imposing formal constraints on drivers);
- Over controls the quality of the work of the drivers, which can even lead to the exclusion of drivers from the platform, and
- By specifying the price of the service and settling the payment. All these characteristics mean that Uber "cannot be considered merely a mediator between driver and passenger."

The decision of the ECJ is of particular importance for the complete gig economy in Europe and also has implications for employment law. With the help of this dependency of the "independent" drivers on "Uber", which has now been established in the final instance, it will hardly be possible to maintain a position as a freelancer. Among other things, the ECJ used the same arguments as, for example, the London Labor and Appeals Court, which has already granted 40,000 English drivers a claim to the statutory minimum wage in the UK in 2017 regarding Uber drivers.

Anything else could apply only to the sharing of accommodation. In the case of "AirBnB", "Wimdu" and "9Flats", a form of joint consumption of already existing consumer goods actually takes place, whereas in the case of the mediation of driving services (Uber, Lyft, Wunder) the focus is not on community consumption, but rather on the mediation of additional journeys, which otherwise would not have taken place at all. The main reason why more and more drivers are complaining is the lack of social protection for drivers in Europe (e.g. in the event of a lack of orders or illness, or in old age). It is advisable to use models such as those in Spain, in which "solo self-employed persons" must also pay social security contributions (pension and sickness insurance) in whole Europe.

II. Classification of YouTube-Partners

While the employee representatives' power concerning co-determination issues become stronger, classical union memberships decrease all over the world. The number of freelancers is increasing, and they are not represented by works councils or unions in general. However, unions still want to remain the main player to fight for workers' rights (e.g. avoid dismissals, more training to achieve digital literacy, better working conditions), and they will expand their constituency by also representing the increasing number of freelancers in the Gig Economy. In this regard, German union IG Metall started a fight against crowdworking platforms last year and recently start fighting YouTube. This shows that unions are rethinking their roles. They move away from their core clientele and start taking care of platform workers and support new forms of work.

According to their video, YouTube is too powerful and favors YouTubers with advertising-friendly content and arbitrarily changes rules that everyone has to follow without having any influence on them. The business practices are not transparent at all. From a labor and employment laws' point of view, many YouTubers would have to be considered disguised employees of the platform they said. Under German law, this would mean that between YouTube and its "partners" a permanent employment relationship with all protective rights such as protection against dis-missal, paid leave and continued pay during absences due to illness would be established and the platform would have to withhold income tax and social security contributions for YouTubers. This would also mean considerable fines for the false classification of YouTubers.

Under German law, the risks of a false self-employment exist only where crowdworkers are dependent on one client or one platform and receive precise instructions from the platform and/or client about the way in which their work is to be performed and the platforms and/or clients must therefore be considered employers.

The chances for a successful lawsuit in Germany are to be assessed as low. The better arguments indicate that the YouTubers should not be classified as employees of the platform, because, amongst others, the YouTubers are free to:

- essentially organize their working hours and place of work,
- decide on the content of the videos,
- choose their own operating resources and are not required to use any operating resources specified by YouTube,
- record videos and actions for different clients/platforms,
- terminate the monetization at any time and delete their contents,

In addition, YouTube – in contrast to Uber – offers numerous contents provided by hobby users besides the monetarized contents of its "partners". The platform serves other purposes too and is only paying YouTubers on the basis of their performance (clicks) and not for the time spent creating the content.

This does not, however, prevent unions or individual YouTubers from bringing actions in other member states, such as the United Kingdom. The chances of success are higher

there, at least to be classified as "workers". Under UK law, a worker is a hybrid between self-employed and employed; they are entitled to paid breaks, paid leave and the UK minimum wage.

III. AI Law

Regarding AI, legislative activities differ between Europe and the USA. While in the USA laws are created for the handling of AI systems, the European legislator restricts itself to issuing non-binding ethical guidelines. The EU will facilitate and enhance cooperation on AI across the Union to boost its competitiveness and ensure trust based on EU values. In its proposal, the EU Commission points out 7 key requirements that AI systems should meet in order to be deemed trustworthy (<https://ec.europa.eu/digital-single-market/en/news/ethics-guidelines-trustworthy-ai>):

- Human agency and oversight:** AI systems should empower human beings, allowing them to make informed decisions and fostering their fundamental rights. At the same time, proper oversight mechanisms need to be ensured, which can be achieved through human-in-the-loop, human-on-the-loop, and human-in-command approaches
- Technical Robustness and safety:** AI systems need to be resilient and secure. They need to be safe, ensuring a fall back plan in case something goes wrong, as well as being accurate, reliable and reproducible. That is the only way to ensure that also unintentional harm can be minimized and prevented.
- Privacy and data governance:** besides ensuring full respect for privacy and data protection, adequate data governance mechanisms must also be ensured, taking into account the quality and integrity of the data, and ensuring legitimised access to data.
- Transparency:** the data, system and AI business models should be transparent. Traceability mechanisms can help achieving this. Moreover, AI systems and their decisions should be explained in a manner adapted to the stakeholder concerned. Humans need to be aware that they are interacting with an AI system, and must be informed of the system's capabilities and limitations.
- Diversity, non-discrimination and fairness:** Unfair bias must be avoided, as it could have multiple negative implications, from the marginalization of vulnerable groups, to the exacerbation of prejudice and discrimination. Fostering diversity, AI systems should be accessible to all, regardless of any disability, and involve relevant stakeholders throughout their entire life circle.
- Societal and environmental well-being:** AI systems should benefit all human beings, including future generations. It must hence be ensured that they are sustainable and environmentally friendly. Moreover, they should take into account the environment, including other living beings, and their social and societal impact should be carefully considered.
- Accountability:** Mechanisms should be put in place to ensure responsibility and accountability for AI systems and their outcomes. Auditability, which enables the assessment of algorithms, data and design processes plays a key role therein, especially in critical applications. Moreover, adequate an accessible redress should be ensured.

While **flexibility and adaptability to the changing reality in labor and employment law** would be desirable, **internationally consistent rules** should be established with regard to **digitalization-related labor and employment law**. Until this situation has changed, one of the greatest challenges facing labor and employment lawyers will be how to make **efficient use of existing technical possibilities and new business models in compliance with the labor and employment law**.

F. Summary and Outlook

Several million jobs are jeopardized worldwide. A high level of unemployment in some sectors will almost be unavoidable. The consequence of these risks would be a wide gap between the salaries of well-educated employees and the salaries of less educated employees, which, in turn, can result in social tensions. The question arises as to what the future world of work will look like and how long it will take for this to happen in each branch.

At the same time, the major share of the jobs will be shifted to a different area of work, mainly to the service sector, and new service models will be created (e.g. sharing economy, gig economy, crowdworking). AI will result in growth and prosperity: employees will benefit from flexible solutions concerning working time and workplace caused by the introduction of AI as well. Human beings are adaptable and will have an enhanced control function in the production sector.

It is definite that both blue- and white-collar sectors will be affected to the same degree and that the digitalization (and automation) of services is a global phenomenon. This phenomenon is a far-reaching and diversified field of advisory services, however, particularly with regard to labor law and employment. It would be desirable if future laws, which will hopefully be secured on the international level by uniform standards, will be geared to the technological developments and the increased need for flexibility. In European countries, co-determination rights and restrictive laws (e.g. data protection laws, occupational safety regulations or the European working time directive) have to be observed during the companies' transition to a modern world of work of tomorrow. Especially for larger companies, the following points are important:

- The use of robots and AI does not release companies from **legal responsibility** for their actions.
- Crowdworkers may be **qualified as employees**, which is why companies should be prepared for the legal consequences of employee status, such as sick pay or leave entitlements. In France, for example, at the beginning of 2018 a legal definition was introduced for workers using an electronic placement platform.
- According to the new European data protection law (General Data Protection Regulation, GDPR), **any handling of employee or customer data** (such as the creation of an internal leave schedule, the inclusion of the customer address in a directory or the transfer of data within the group) must be documented, communicated to the person concerned and permitted by law or by the consent of the person concerned.

- When flexible working hours are used, **maximum limits of working hours** must not be exceeded; despite the fact that employees can be reached online, employees must be granted **time for rest and privacy**.

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Universal Basic Income

Larry Cary

Cary Kane LLP
1350 Broadway, Suite 1400
New York, NY 10018
212.871.0531
lcary@carykane.com

A Universal Basis Income (“UBI) is generally defined as a periodic cash payment from the state to every adult which is unconnected to work, the inability to work or the desire to work, the entitlement being unconditional and made regardless of wealth or income. By contrast, the dominant social welfare programs of today are means-tested and often made conditional on being available for work. Other social insurance programs like Social Security or Medicare have participants pay into the system to qualify for a later benefit.

Material for this paper is based on three books: (1) Andy Stern’s *Raising the Floor, How a Universal Basic Income Can Renew Our Economy and Rebuild the American Dream*, published in 2016. As he was the former head of the SEIU, a union of 2 million, and favored the concept, as a labor lawyer, it seemed I should begin with his view of the subject. Not willing to be limited to his opinion, I decided I should read other proponents, including (2) Annie Lowery’s *Give People Money, How a Universal Basic Income Would End Poverty, Revolutionize Work, and Remake the World*, published in 2018. In contrast to Stern, who is about my age and spent a lifetime in the labor movement, Lowery is 35 and therefore she is a voice for a younger generation. She is a contributing editor for *The Atlantic* and studied English and American Literature as an undergraduate at Harvard. A former writer for the *New York Times*, the *New York Times Magazine*, and *Slate*, among other publications, Lowery is a frequent guest on CNN, MSNBC, and NPR.

The third book I reviewed was (3) *Basic Income, A Radical Proposal for a Free Society and a Sane Economy*, co-authored by Philippe Van Parijs, the Hoover Chair of Economic and Social Ethics at the University of Louvain (Louvain-la-Neuve) and Yannick Vanderborght, Professor of Political Science at Université Saint-Louis (Brussels) and the University of Louvain. Published in 2017, this is a scholarly treatment of the issue drawing on intellectual sources of every description.

In simple terms, the problem to be solved and the goals to be attained by having UBI differ among the three sources while overlapping to some degree.

Stern

Stern is concerned about the coming Armageddon of half of our jobs disappearing because of Artificial Intelligence (“AI”) and automation and the need to provide for an income that is independent of work because, without it, society will become ugly and revolution becomes a possibility. He writes,

If there are significantly fewer jobs and less work available in the future, how will people make a living, spend their time, and find purpose in their lives? Also, how can we keep the income gap from growing so vast that it erupts into social discord and upheaval?

Stern at 13.

Technological unemployment threatens our economy, and also our American way of life. An underclass of youth without hope and jobs is capable of becoming violent and spawning terrorists. [T]echnological unemployment is a national security issue.

Stern at 185.

He believes we are at a strategic inflection point, where change has become inevitable but is not discerned by most. There was a time, in the 1950s, when a middle-class standard of living was possible for working people due to the rise of productivity and strong unions. In the last 30 years, we have seen the decline of unions, stagnating wages, and the growth of precarious employment, for example, contingent, part-time, free-lance, and payment free internships. He notes that only 1/4 of the world’s workers have permanent jobs – that 3/4 work in temporary jobs or have a short-term contract or no contract of employment. And while automation in the 1950s led to greater productivity which created the economic conditions for higher living standards, today's AI and automation will not result in the creation of enough new types of jobs to keep masses of people employed and earning a middle-class standard of living. He sees the United States as having become a low wage nation which will get worse as time goes by. Since AI will eliminate many jobs requiring human interaction and skill, the destruction of social relations will reach high into the middle class. Income inequality has already reached the point where the top 1 percent now own more than the bottom 90 percent, and it will get worse. And we now see the rise of substantial new companies which dominate industries, like Uber, Facebook, and Airbnb that, respectively, don't own cars, create content or own real estate.

Stern proposes a UBI of \$1,000 per month for all adults between 18 and 64 and to top off social security payments to bring the recipient up to \$1,000 per month. He believes this is enough for most Americans to maintain a minimum standard of living. He expects it will cost between \$1.75 trillion and \$2.5 trillion per year. Paying for it will require gutting federal and state welfare programs as well as make "adjustments" to the entitlement of future social security recipients as well as create a new non-employer based national health insurance system, a redirection of unnamed government spending and taxation expenditures and increased revenue from unnamed sources. Stern at 201-201.

Lowery

Lowery describes UBI in terms that many would find jarring:

The money would be enough to live on, but just barely. It might cover a room in a shared apartment, food, and bus fare. It would save you from destitution if you had just gotten out of prison, needed to leave an abusive partner, or could not find work. But it would not be enough to live particularly well on. Let's say that you could do anything you wanted with the money. It would come with no strings attached. You could use it to pay your bills. You could use it to go to college or save it up for a down payment on a house. You could spend it on cigarettes and booze, or finance a life spent playing Candy Crush in your mom's basement and noodling around on the Internet. Or you could use it to quit your job and make art, devote yourself to charitable works, or care for a sick child. Let's also say you do not have to do anything to get the money. It would just show up every month, month after month, for as long as you lived. You would not have to be a specific age, have a child, own a home, or maintain a clean criminal record to get it. You just *would*, as would every other person in your community.

This simple, radical, and elegant proposal is called a universal basic income

Lowery at 4.

She acknowledges Stern's argument about the need for UBI to ameliorate the coming future where robots may take half of humanity's jobs, but she does not believe there will be an Armageddon. After discussing the sharp drop in manufacturing jobs in the 1970s and 80s, she dismisses the idea that there will be a no-jobs future.

The point is economies grow and workers survive regardless of the pain and churn of technological dislocations. **** When manufacturing went from more than a quarter of American employment to just 10 percent, mass unemployment did not result. Nor did it when agriculture went from employing 40 percent of the workforce to employing just 2 percent.

Lowery at 18.

Opening a discussion about UBI as a solution to a world with far less demand for human labor feels wise, but insisting the discussion needs to happen now and, on those terms, seems foolish and myopic.

Lowery at 35.

Her argument for UBI focuses more on its effects at eliminating poverty and the government bureaucracy currently employed in providing social service benefits to the poor and retired. "Hello UBI, good-bye to the Departments of Health and Human Services and Housing and Urban Development, the Social Security Administration, a whole lot of state and local offices, and much of the Department of Agriculture." Lowry at 7. She sees developments in technology as creating more and "crummier" jobs with low wages and deadening repetition of tasks. She notes that the era of the white male high school graduates in the Midwest having a path to the middle class is now closed off. Corporate monopoly power is on the rise. And we now have the precariat, which combines "precarious" with "proletariat," in the form of non-regular and non-full-time employment, e.g., contingent and temporary employees in all its forms.

In the end, she believes that UBI would end poverty because it would empower the poor and "would act as a kind of twenty-first-century union, returning power to workers and radically redefining them as an investment for businesses, not just a cost to them. With a basic income, workers could refuse to take a job with low pay **** [and] demand better benefits." Also, she sees UBI as a form of welfare for middle-class wages instead of a subsidy for poverty wages, which exists under the present system of social service benefits.¹

She points out that there are 40,000,000 people in America living in poverty. And here in the US, "the social stigma of poverty and the high cost of basic goods and services like health care and housing might make extreme poverty [here] feel worse than in the developing world." Lowery at 116. For example, she says that she

believe[s in our present society] there is a moral difference between taking a home mortgage interest deduction and receiving a section 8 housing voucher. We judge, marginalize, and shame the poor for their poverty – to the point where we make them provide urine samples, and want to force them to volunteer for health benefits. As such, we tolerate levels of poverty that are grotesque and entirely unique among developed nations.

Lowery at 127. UBI would eliminate the stigma.

She disagrees with Stern's view that social service programs should be completely eliminated but believes they need to be carefully evaluated for elimination or the introduction of UBI could lead to more poverty and inequality.

¹ An example of the latter principle is Walmart, where employees frequently qualify for food stamps - this indirectly subsidizes Walmart's ability to pay substandard wages.

She points to racism and the lack of ethnic homogeneity as a significant impediment in America to having a European style welfare state and suggests that UBI is a way out of this problem because of its universal nature. She also points out that UBI solves for the growing problem of women working in the home not receiving pay for their work. She notes that a third of stay-at-home moms fall below the poverty line today, compared with just 14 percent in 1970.

She also sees UBI as ameliorating the post-Trump political polarization in our society because it will make people feel more secure than they now do.

She calculates that giving \$1,000 a month to every American citizen would cost \$3.9 trillion and be equal to a fifth of the American economy, and equal to everything the federal government spends. Elimination of all means-tested programs to help pay for UBI at this level would result in some people who currently receive health care, not receiving it. But in the end, she believes that the money is there and that having UBI would only bring the US tax burden in line with the European social democracies. At the same time, reflecting “very modern tax theory” (my characterization) she questions whether UBI needs to be paid for at all, as we can deficit spend. She suggests that payment would not have to be solely through income taxes but include a carbon tax, a value-added tax, and a wealth tax which would generate significant money.

Parijs and Vanderborght

Parijs and Vanderborght (hereafter PV) see UBI as fostering freedom. It will promote “a world of freedom – real freedom, not mere formal freedom, and for all, not just for the happy few.” PV at 1. The authors discuss philosophy, politics, history and economics as they compare the idea of a basic income with rival ideas past and present for dealing with poverty and unemployment. But the normative standard to be used in their opinion is “the standard of freedom – more precisely, of real freedom for all and not just for the rich.”

PV accepts the view that there will be a significant loss of work due to AI and automation and posits that there are two alternatives for dealing with it – guaranteed minimum income schemes which foster dependency because people lose their benefit if they go to work and a UBI which has no such impediment and thereby encourages participation in the labor market.

PV expands the definition of UBI by considering the territorial and extraterritorial aspects of the issue in their description of UBI. In addition to universal periodic guaranteed payments from the state, the recipients

must be members of a particular, territorially defined community. In our interpretation, this condition must mean fiscal residence rather than [a] permanent resident or citizenship. This excludes tourists and other travelers, undocumented migrants, and also diplomats and employees of supranational organizations, whose earnings are not subject to the local personal income tax. It also excludes people serving prison sentences, whose upkeep costs

more than [a] basic income, but who should be entitled to it from the minute they get out.

PV at 8-9.

PV also consider the international implications of UBI, where, because of different standards of living and various economic resources, a UBI in different countries might be of differing amounts. They are adamant that an immigrant, undocumented worker is not to receive UBI. They categorically state that "there is no fundamental human right of free movement that must be enforced at the cost of crushing existing redistributive systems." PV at 221. They suggest a compromise can be reached between interfering with the right of free movement and the expansion of freedom occasioned by a UBI by imposing a waiting period before UBI kicks in. But ultimately, PV believes that there needs to be a global UBI funded by auctioning off the right of corporations to expel carbon dioxide into the atmosphere but only to the extent that it is determined scientifically not to cause more climate change.

PV believes that:

Egalitarian social justice must apply on a global scale.

[O]ur conception of justice as real freedom for all requires an unconditional basic income to be introduced and sustainably maximized at the world level. Such a basic income, funded on a global scale, would be required to distribute more fairly the gifts or opportunities that people today enjoy to extremely unequal extents across the globe."

PV at 217.

Within each nation-state, the local UBI would be funded by a tax on all workers either directly or indirectly. They argue for a flat tax for everyone (at about 35 percent) beginning with the first dollar of income. To hold individuals who are taxed at a higher rate than what they could expect if they relocated to a different country with a lower tax rate, PV suggests that we encourage patriotism but also point out that one could prohibit taking one's wealth with them when they leave.

PV traces the history of ideas and social policy to the development of social services and insurance schemes. They also acknowledge the UBI's antecedent idea found in the writings of many economists, intellectuals and others, including Ricardo, Robespierre, Paine, and Locke. My favorite quote from the past about a foundational concept for UBI is by Bertrand Russell who writes in *Roads to Freedom*, published in 1918, that:

Anarchism has the advantage as regards liberty, socialism as regards the inducement to work. Can we not find a method of combining these two advantages? It seems to me that we can....

Stated in more familiar terms, the plan we are advocating amounts essentially to this: that a certain small income, sufficient for necessities, should be secured to all, whether they work or not, and that a larger income, as much larger as might be warranted by the total amount of commodities produced, should be given to those who are willing to engage in some work which the community recognizes as useful.

PV at 78.

Put in other words by Russell, UBI would be a vagabond wage, enough for existence but not for luxury.

Analysis

The arguments supporting UBI include the additional freedom it would give to recipients to do whatever they wanted to do, that it would subsidize the young embarking on the world of work which is today dominated by minimum wage jobs or free labor, and that it would cushion dramatic transitions such as an unworking battered spouse having to leave the home. Since every adult would receive it, there would be no social stigma like there is today with social services. But, ironically, the elimination of the bureaucracies currently providing benefits would cause unemployment, a problem intended to be ameliorated by instituting UBI. And it must be noted that the social cohesiveness fostered by having governmental employment would be eliminated as well. On the other hand, since means-testing is eliminated, its recipients, unlike current recipients of social services, would have no disincentive to work and earn money.

The proposed \$12,000 a year is simply too little to provide a decent standard of living. In NYC, for example, the median annual wage is about \$50,000, and a living wage requires earnings of at least \$36,000 a year, before taxes. The numbers suggested for UBI are, in Russell's terms, a vagabond wage. Freedom to sleep under the Brooklyn Bridge is not, in my opinion, maximizing "freedom" in our society.

The \$12,000 benefit level is far below the levels paid in current social service programs. For example, in most states unemployment insurance compensation pays a benefit of as much as \$450 a week, which is about twice as much as the proposed UBI.

The wholesale elimination of social programs currently in place is also something that needs to be considered. While some workers would receive more from UBI than what they get from Social Security others would receive less. According to Social Security, the average monthly benefit amount in 2019 is \$1462, and the maximum retirement benefit at normal retirement age is \$2861. While these amounts are substantially more than what UBI would pay, these sums are insufficient for many if not most retirees who wish to maintain their quality of life.

Paying for UBI is expensive. I reject the notion that it need not be paid for, that we simply could have huge deficits going out forever in time.

About the impending problem of IA and automation causing no paid work for large numbers of workers, there can be steps taken to hold our society together and mitigate the pain. For example, when the longshoremen were confronted by containerization, their union negotiated guaranteed lifetime payments. While not a perfect solution, as health outcomes were negatively affected, it did allow the men to continue to provide for themselves and their families. For this to happen in a widespread way, unions would need to grow considerably and regain power in their dealings with employers and the government.

While I do not question the good intentions of the proponents of UBI, I do worry that the rationale for doing so can become the excuse for gutting the social service safety net that is currently in place.

Andrew Yang, a democratic candidate for president, advocates UBI, calling it the “Freedom Dividend.” He would give recipients of social services a choice between continuing to receive what they currently get or becoming entitled to receive \$1,000 UBI in cash each month forever. He believes that most would opt for the cash and he may be right. But an individual’s exercise of choice does not eliminate the impacts on society of destroying the social service system.

He also advocates that under his proposal UBI would be stacked on top of what a retiree receives from social security. Again, while this makes the proposal more palatable, it does not thoughtfully consider the economic feasibility of doing so nor its long term political impact on the future of social security. I believe it would spell the eventual death of the program.

I am not overly worried that Andy Stern’s worst fears will be realized, and that massive loss of hope will turn young people into terrorists. If it did, the repressive forces of the government would be stepped up, and if necessary, there would be greater legal freedom to use drugs to blunt anger and purposeful misconduct. And if worst comes to worst, like the Roman Empire, which gave free grain to the masses in Rome, some amount of social service payment, whether means tested or not, would likely be paid to mollify the young masses. We might also have a very different society with mandatory conscription and public service sucking up excess labor and directing it to some generally good purpose. Hopefully, this shall not come to pass because enough new jobs will be created to prevent our society from going off the cliff. But in any event, UBI sounds simply too good to be true.