6 Data and Economic Democracy

This book has argued that companies are using networked information technologies as tools of class power. Companies are deploying those technologies to displace workers through automation, to reduce the skills required for various tasks, to physically separate workers from one another, to surveil workers more and more intensely, to prevent or suppress organizing, and even to deny workers their basic legal rights. As a result, less-skilled workers are subject to ever-greater market discipline, even as rent-generating innovations and control over data are concentrated in fewer and fewer hands. This book has also argued that such developments reflect deeper structural forces, the most important of which are investors' demands for sustained profits despite lagging productivity growth in many service sectors. Our labor laws have coevolved with and facilitated these efforts, now treating employment much like any other contract, and giving employers near-plenary authority over the workplace and associated data. These trends may even have skewed the development of artificial intelligence (AI), as companies favored devices that would bolster their power over workers.

And yet the future of work and technology is by no means certain. Laws shape companies' decisions and workers' capacities of resistance at nearly every level, and workers and citizens can demand reforms to ensure greater equality and sustainability, more fair uses of technology, and even different paths of development. This final chapter outlines a set of law reforms to do just that. While the agenda sketched here is complex, its overarching vision is clear: it seeks to encourage *economic democracy*, or a political-economic system in which workers and citizens have genuine rights to participate in major decisions that affect their lives.

Before elaborating such reforms, it may help to sketch how they could change work for the better. Chapter 4 discussed the job search of Julia, a

hypothetical worker today or in the near future. Suppose that Julia was hired as an Amazon warehouse worker, and that Congress passed a new set of labor laws in early 2024. Under these new laws, nonunion workers would vote on whether to unionize each year—perhaps right around Labor Day—and if they did unionize, the resulting union would have exclusive bargaining rights at their workplace. Julia and her coworkers voted to unionize the first time they had a chance. At the moment, their union only represents Julia and her coworkers at that particular warehouse. But Julia and her coworkers are considering whether to affiliate their union with a national union, or with other local warehouse unions. To help decide, and to refine their own bargaining strategy, Julia's union is holding a teleconference with other unions at Amazon warehouses and elsewhere.

The first agenda item is a proposal from Amazon's management to track workers' movements through the warehouse using facial recognition devices. The company wants to implement that system at several warehouses in the region, but under the new labor laws it needs workers' sign-off. Julia and her coworkers need to decide whether to reject the proposal, accept it, or agree to it only in exchange for something. After discussion, the various unions determined that the system would deliver few benefits to workers while enabling the company to press for a faster pace of work. They decided to coordinate their bargaining strategies, agreeing to the system only in exchange for higher wages and different scheduling practices.

After that, another warehouse union briefed attendees on a novel strategy to combat wage theft, or nonpayment of all wages owed. That union had bargained for access to Amazon's payroll data and its data on workers' arrival and departure times. The union then analyzed that data to spot instances where workers had been underpaid and pressed Amazon to make them whole. As part of its efforts, that union took advantage of a provision of the new labor laws that allows unions to access employers' public-facing websites and apps for discrete periods each year to communicate with customers. The union told visitors to Amazon's website about the alleged wage theft and provided a link to contact Amazon about the issue. Over 10,000 customers had done so, which moved Amazon to begin settlement talks.

The next briefing came from a union that represents delivery drivers at Amazon. Those drivers had previously been treated as independent contractors, but they were clearly employees under the new laws due to Amazon's surveillance of their work. They had unionized, but in negotiations

Amazon was refusing to budge on surveillance, pay, or schedules. Frustrated, the drivers had begun considering whether to build a delivery cooperative. That approach would let them work with companies other than Amazon, choose their own hours, and select (or refuse) monitoring technologies. A new state agency dedicated to helping workers form cooperatives was giving them technical and financial assistance, as were other new worker cooperatives among taxi drivers, home health aides, and childcare providers.

Finally, the warehouse unions heard from fast food workers who had merged their locals into one bargaining unit across the New York metro area. Since those locals represented 55 percent of regional fast food workers, they were entitled under the new law to negotiate jointly with all major fast food employers for a contract that would become legally binding across the region. The fast food workers were planning their bargaining strategy, including preparations for a strike. While many of the workers were formally employed by franchisors, under the new labor laws they could also take concerted action against fast food brands.

The new labor laws are reshaping work in many ways. Julia and her coworkers obtained bargaining rights without a massive fight, and they are now more likely to share in Amazon's productivity gains. They have a voice in Amazon's technological decisions, and can use some of the company's technologies to advance their own goals. Through their local organizations, they can develop a common understanding of the challenges they face, as well as networks of trust and solidarity within the workplace and across workplaces. By joining with other workers in the same industry, they can also ramp up their power and set regional standards. While this may seem like science fiction, each of these rights has an analogue in existing labor laws in the US or elsewhere. Establishing this new system in the US would nevertheless require substantial reforms, and perhaps even a new political settlement to displace neoliberalism.

The overarching principle behind these reforms is *economic democracy*. Where neoliberalism tended to encase capital's privileges against democratic challenge, these reforms would devolve substantial governance authority to workers.[1] Economic democracy would also differ from industrial pluralism, because it would aim to include all vulnerable workers, ratchet back companies' ability to resist unionization, and give unions a much greater voice in workplace technology. But economic democracy would not entail state socialism, in which productive assets were owned and controlled by

the state and workers and citizens had little real input into the conditions of their lives. As a vision of political-economic governance, it draws from Erik Olin Wright's proposals to subject both the state and companies to "social power," or "power rooted in the capacity to mobilize people for cooperative, voluntary collective actions of various sorts in civil society."[2] As an agenda for labor relations reform, it overlaps with Ruth Dukes and Wolfgang Streeck's recent proposals that labor laws should enable workers to generate shared solidaristic beliefs and translate them into law.[3]

There are many arguments for economic democracy, but the most straightforward is that workers' collective power is the best check on companies' power. In fact, it may be the only sustainable check in the workplace and labor market. Workers are the parties best-positioned to protect themselves against abuse or exploitation, through institutions like unions as well as ground-level practices of solidarity. Legislators can pass minimum wage laws and workplace safety standards, of course. But agencies can be captured by companies, and when workers are demobilized, companies can often evade legal obligations by subcontracting work, implementing new surveillance devices, or terminating worker activists. Effective vindication of statutory rights thus often requires countervailing power. In that respect, these reforms do not envision "democracy" as cool deliberation insulated from collective pressure. Democracy is instead a more agonistic process, including sometimes-heated battles over resources and ideology—the sorts of battles that are typically necessary for subordinate groups to obtain equal standing.

Section 6.1 outlines reforms to encourage unionization and collective action, section 6.2 sketches a new regime of workplace data and technology governance, and section 6.3 discusses complementary reforms to welfare state policy and industrial policy. Throughout, the discussion proceeds on the heroic assumption that these reforms will become politically feasible sometime soon. The conclusion, presented in section 6.4, takes up that question and suggests that there is some reason for hope.

6.1 Economic Democracy and Associational Power

As chapter 2 noted, scholars and advocates have studied and debated our labor law's strengths and weaknesses for decades, and they have developed various law reform proposals to rejuvenate worker organizing and

collective bargaining. One set of long-standing proposals would restore workers' rights to organize at the worksite or company level, while a more recent set would encourage workers to build power at scale and bargain at the sectoral level. In important respects, these proposals treat the working class as a class once again, bestowing some legal rights on workers simply by virtue of their position within the division of labor. The discussion that follows draws on such proposals and extends them at times, but it does not rehash them in detail. Instead, it focuses on how they would respond to the transformations sketched in chapters 3–5.

Localized bargaining The failures of the existing National Labor Relations Act (NLRA) regime to deliver on its own promises have been clear for some time. As a robust line of scholarship has shown, and as discussed in prior chapters, fissuring enables companies to deny rights to many workers, our union certification process gives employers far too many tools to delay and resist unionization, and the NLRA regime sharply limits workers' rights to strike.[4] Revising those doctrines would certainly help facilitate unionization and would be an essential first step toward rebuilding workers' associational power.[5]

But even with a more favorable regime for organizing at the local level, workers may struggle to build real power at scale in today's large service sectors. Leading companies in fast food, logistics, retail, and hospitality have organized their business models around a demobilized workforce, and they tolerate substantial turnover each year—or at least they did before COVID. Workers in such circumstances are less likely to organize than workers with deep roots at a company since they have fewer connections to their coworkers. Moreover, since those workers are fairly easy to replace, employers have more latitude to retaliate against them for organizing. The geography of service work also matters. Gig-economy workers may struggle to meet and organize since they are not colocated, and fast food workers are typically employed in small shops, separate from one another. Union victories at Amazon and Starbucks in 2022 suggest that grassroots, worker-driven campaigns can overcome those hurdles at times—but it is not yet clear whether those victories are the first signs of a broad and sustained worker uprising that can build and sustain power at scale.

Moreover, even if Congress revised the NLRA to make unionization easier, companies could still use data-driven technologies to resist organizing efforts. For example, if Congress revised the NLRA to require union certification on

the basis of authorization cards or rapid elections, employers could ratchet up prehire screenings and workplace surveillance to deter unionization campaigns. As chapter 4 argued, such efforts are illegal if undertaken with an anti-union motive, but distinguishing legitimate from illegitimate screenings can be quite difficult, and surveillance itself can be hard to detect. Meanwhile, digital Taylorism gives companies tools to sidestep union threats, such as keeping workers physically separated but closely supervised, and other digital tools facilitate the rapid displacement of incumbent firms. Given our default rule of individual contracting and our lack of "extension" laws that apply the terms of leading union contracts to all competing companies, such displacement almost invariably results in nonunionized workplaces.

Due to the many challenges of organizing today, scholars and some unions have recently advocated more *fundamental* labor law reforms, or reforms to alter core elements of our labor relations regime. For example, some have advocated *guaranteeing* workers a collective voice, cutting out the organizing stage entirely.[6] That could involve weakening or reversing the default rule of individualized employment contracting.[7] Others have proposed that Congress require union elections annually or biannually in all covered but non-unionized workplaces, so that workers have a regular chance to vote on whether to have a union.[8] Ideally under such a system the annual election would cease once workers choose to unionize, though unionized workers would retain the right to petition the NLRB to decertify their union at certain times and with appropriate safeguards to prevent employer domination. Alternately, Congress might mandate forms of workplace codetermination but not collective bargaining, the key difference being whether workers have the right to strike.[9] For example, Congress could declare that key employer policies—around scheduling or around workplace data and privacy—would be legally binding only if developed in consultation with employees. Workers could then refuse to accept a schedule that the employer set unilaterally, for example, without risking discipline. Such collective consultation is unlawful in nonunionized workplaces in the US today due to a provision of the NLRA that promotes unions' independence from management, and any such proposal would need to be carefully designed to prevent cooptation.[10]

New technologies bolster the case for such reforms. When the sociotechnical environment of workplaces is designed to prevent workers from organizing or even meeting, default representation or annual elections would make it far easier for workers to build power. Rather than enduring

a long and painful organizing campaign that may lead to nothing, workers under such a system would have collective representation, or the option to choose such representation, as a right. Even without the broad rights to bargain over data practices discussed in section 6.2, this could enable workers to resist the harms of digital Taylorism. Through new collective bodies, workers could push employers to set reasonable schedules, pay reasonable wages, and share productivity gains. Data-driven technologies also make it easier to launch and manage such a system. For example, if elections were held annually or biannually, Congress could mandate that companies compile data on their populations of workers and their schedules and provide that data in an appropriate form to unions or groups of workers during annual campaigns. Default representation would also make it far easier for workers to build power *at scale*. Organizing one Walmart or McDonald's or Amazon warehouse is already an enormous challenge—organizing thousands of them at once is nearly impossible. Reversing the default would not eliminate that problem, but it would give workers footholds from which they could scale up.

Multiemployer and sectoral bargaining A complementary set of recent proposals would address such problems of scale by encouraging bargaining at the multiemployer or industry level, such as bargaining among all fast food workers and all fast food employers.[11] Such "sectoral bargaining" or "social bargaining" is common in Europe, and US unions have built such bargaining structures when possible in the past.[12] Social bargaining has various benefits, especially when coupled with robust local bargaining structures. The most important involve wage equality. As alluded to in chapter 2, there is extensive evidence, cutting across nations and time periods, that localized bargaining correlates with greater wage inequality, and more centralized bargaining correlates with higher wages for low-skill workers and greater income equality overall.[13] One reason for that pattern is that social bargaining takes wages out of competition, so unions are not constantly fighting to protect their gains. Another is that social bargaining is often a tripartite process where the state—under pressure from unions—may push employers for wage concessions where possible.[14] More centralized bargaining structures also seem to encourage unions to represent working-class interests more generally rather than defending their existing members' sometimes-parochial interests.[15]

Social bargaining would also help workers respond to recent technological changes. For example, it could discourage or at least mitigate the harms

of fissuring. If social bargaining processes could establish and enforce minimum standards for subcontracted workers like janitors, security guards, or other maintenance workers, principal firms would have less power to force contractors to compete with one another and reduce wages. Social bargaining could also leverage recent market consolidation for workers' benefit. As discussed in chapter 5, many of today's megafirms built market share quite rapidly by using new technologies to build production networks or to optimize supply chains. Now a handful of major players dominate some sectors, which would make it logistically easier—if politically more difficult—to establish tripartite bargaining structures and to extend the terms of agreements across sectors. Social bargaining around privacy and data practices could also limit digital Taylorism and perhaps encourage technological diffusion in some sectors. This possibility is discussed in section 6.2. Finally, unions and regulators could use data-driven technologies to enforce social bargaining agreements. Lead firms could be required to share data on their suppliers' compliance, and regulators could use data on supply-chain relationships to define sectors and employment relationships for purposes of bargaining. Those possibilities are also discussed in section 6.2.

Implementing full-fledged sectoral bargaining from scratch is basically impossible since unions are social organizations as well as legal entities, and workers need to construct them on the ground. But Congress could facilitate social bargaining in various ways. For example, the FLSA, as originally passed, created a system of tripartite "industry committees" empowered to set wages at the sectoral level and designed to complement enterprise-based collective bargaining,[16] but the provision was eliminated in 1949.[17] Congress could revise the FLSA to create a new industry committee system, perhaps targeting today's largest low-wage sectors.[18] Alternatively, Congress could make it much easier for unions to build multiemployer bargaining structures, or grant unions sectoral bargaining rights in stages based upon their support among the workforce, or both.[19] To ensure that such bargaining structures are not captured by companies, it is essential that workers retain real rights to strike, to take other concerted action, and to choose their own representatives without employer interference.[20]

Congress could further bolster worker power at scale through other administrative levers. In some European nations, unions design and administer benefits that are jointly funded by the government, which gives them a means of reaching and engaging workers.[21] Congress could encourage

those sorts of arrangements at the federal or state level. Congress could also weave workers into policymaking processes, which again is common in nations where workers have better sustained their associational power. It is perhaps best illustrated by European "social dialogue," in which some states and the European Union devolve some policymaking authority to "social partners" (i.e., unions and employer organizations).[22] At the European level social dialogue processes have recently addressed the COVID response and workplace safety, while a longer-term dialogue has addressed minimum wages.[23] In Germany, meanwhile, the state drove a strategic initiative known as "Industrie 4.0" to discern the best uses of emerging information technologies.[24] In the US, workers have standing representation on certain advisory bodies to administrative agencies (e.g., around workplace safety, pensions, and trade policy).[25] But our labor law is largely sealed off from welfare, social insurance, and industrial policy, limiting unions' ability to decommodify work.

The proposals sketched here have a common core: they would reallocate decision-making rights in ways that bolster workers' associational power. Actual practices on the ground would emerge over time amid negotiation and contestation, and the ultimate shape of workers' bargains with capital would depend on their abilities to organize, mobilize, present a compelling message, and build public support. The law nevertheless shapes unions' and workers' abilities to do so in profound ways, and these reforms certainly would help to rebalance workplace and economic power.

6.2 Democratizing Workplace Data Governance

Alongside such reforms to workplace bargaining structures, lawmakers could subject workplace data to more democratic control and oversight. There are several compelling reasons to do so. Devolving governance authority over workplace data to workers can fill some of the regulatory gaps in this field since lawmakers are often slow to respond to emerging technologies.[26] More important, individual legal entitlements such as new personal privacy rights may be insufficient to address the characteristic harms of inductive learning technologies. As discussed in prior chapters, such technologies often draw statistical inferences from very large data sets, which companies use to categorize people at a population-wide level. In the labor context, a major effect of such technologies is to render workers visible to a central

authority, and therefore amenable to management or discipline—in other words, such technologies enable companies to view and manage workers as a class.

This section proposes a set of reforms to data practices that would help alter such class relations. They fall into three categories: some would ban data collection and usage in particular instances, others would subject data practices to bargaining, and still others would place data sources or technologies under public or social control. Stated as a slogan, this would involve *abolishing*, *bargaining*, and *socializing* data, data practices, and workplace technology.[27] While these reforms would entail substantial changes to workers' and companies' rights, the strategies themselves are not new: existing labor law already utilizes all three strategies to govern data and technology to some extent. As with the discussion in the prior section, the discussion that follows proceeds at a fairly high level, in part because the terrain is developing and changing so rapidly.

Dedigitization—or data abolition A first set of proposals borrows from social movements' demands to dedigitize various spheres of social life. As Ben Tarnoff has put it, some technologies—such as predictive policing and police-controlled facial recognition—mainly exist to enact "relationships of domination," and dismantling those technologies can create space to develop new and more democratic social relations.[28] The goal here is simply to end the gathering and use of certain types of data. Activists in many cities have thus sought to reduce video and other surveillance of communities of color, welfare recipients, and political activists. For instance, the Movement for Black Lives has taken up that issue, calling for the elimination of "gang databases and related information sharing," as well as surveillance, data-gathering, and algorithmic rankings of individuals seeking public benefits and health care.[29] Those demands overlap with demands for intelligence and law enforcement agencies to stop accumulating data on citizens and travelers and to provide notice and due process to anyone on "no-fly" lists or similar databases that limit access to basic privileges of citizenship.[30]

The notion that certain technologies should be simply abolished runs directly counter to much technology policy and ideology in the US. Unlike in the case of drug regulation, for example, companies face no requirements that they preclear novel information technologies before deploying them in consumer markets or workplaces.[31] Practically, companies have incentives to deploy them quickly and at scale, in hopes that they will become "socially

locked," shaping consumers' and citizens' practices and expectations and generating barriers to regulation.[32] As discussed in chapters 2 and 4, whether a practice is seen to violate privacy laws frequently depends on whether a complainant had a "reasonable expectation of privacy" in the activity in question.[33] Yet common usage is a major factor in determining whether such an expectation existed, so well-established practices are often insulated from legal scrutiny. Our notice-and-consent model of data privacy regulation, as discussed in chapter 4, also encourages quick deployment of new tech. Few if any consumers (or workers) have the capacity to review and understand companies' data-gathering and -usage policies; as a result, data-intensive companies have every incentive to use "broad consent provisions systematically as a way of circumventing" any such limitations.[34] As also discussed in chapter 4, companies can do all sorts of end runs around even those restrictions, discerning additional and undisclosed information about individuals.

And yet dedigitization has been a fairly common regulatory modality in the employment context, where legislators have often banned certain forms of information and data gathering. An early wave of privacy legislation in the 1980s, for example, regulated employers' use of drug tests.[35] At the federal level, Congress passed the Genetic Information Nondiscrimination Act in 2008, banning employers and health insurance companies from gathering or using human deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) in decisions around employment and health insurance coverage, even though there was not much evidence that companies were using genetic material in that way.[36] State legislatures in many states have also prohibited employers from requiring employees and applicants to provide their social media passwords.[37]

The case for preemptive abolition of some surveillance and data gathering is especially strong today, given the one-sided arms race between employers' technological capacities and workers' associational power. To identify technologies that are candidates for abolition, it may help to consider privacy protections in concentric circles around a data subject, as discussed in chapter 4. Each individual needs a core of dignity rights in the workplace, which are today protected by the tort of intrusion upon seclusion and various statutory protections, such as restrictions on drug testing—which, as noted previously, themselves involve abolition. Moving outward from there, workers need a core of individual autonomy rights, including protections against employer access to social media through legislation like the state laws just mentioned, as well as protections against employer access to private email

accounts, as is currently provided by the Stored Communications Act.[38] Then workers need collective autonomy rights, such as protections against employer surveillance of or interference in union organizing efforts.

In each case, we have existing regulations that could be expanded and strengthened to prevent particular forms of data gathering. And yet there may be diminishing returns to such a strategy: As chapter 4 discussed, companies can at times end-run privacy regulations by aggregating data from multiple sources to discern key facts about workers, individually or collectively. Policymakers may therefore need to consider broader prohibitions on data gathering, including bans on some forms of workplace surveillance that are today long established and uncontroversial, such as the monitoring of workers on the shop floor as they perform work tasks. As discussed in several of the chapters of this book, companies have had the right to surveil the performance of work for generations, despite—or because of—the fact that such surveillance is an important means of class power. Through such surveillance, companies can force a faster pace of work and replicate some of workers' tacit knowledge. Given the significant class-based harms that are emerging from the combination of pervasive surveillance and inductive learning, it may be time to consider ratcheting back employers' surveillance rights even in that context.

Indeed, advocates have begun discussing approaches to workplace data that involve a degree of abolition. Researchers at the University of California Berkeley Labor Center, for example, developed a set of recommendations around workers' technology rights following broad consultation with scholars, unions, and others. Their report proposed a ban on worksite facial recognition or the use of algorithms to try to discern workers' emotions, as well as restrictions on employers' collection of worker data that is not "necessary and essential for workers to do their jobs."[39] That same report proposed that employers should use electronic surveillance only where "strictly necessary to enable core business tasks, to protect the safety of workers, or when needed to comply with legal obligations," and that companies be forbidden from using algorithms to make employment decisions around hiring, firing, and discipline without the involvement of a human supervisor.[40]

Abolition may be the most effective way—or the only way—to protect workers against certain data-driven harms. Framed in terms of Helen Nissenbaum's "data food chain,"[41] when companies cannot collect much data

at all and can neither transfer it to others nor aggregate it with other data pools to infer novel facts about workers, they will be much less able to develop end runs around statutory worker protections, or to undermine workers' organizing efforts. While cutting off the supply of workplace data would presumably carry some costs in terms of lost innovation, those may be counterbalanced by the benefits of greater worker autonomy, as well as reductions in private domination. Such policies could be rendered still more effective by requiring what we might call "compliance by design," a variant of "privacy by design."[42] For example, natural-language-processing software that is used to monitor workers' chats on employer platforms could be designed to be incapable of spotting terms that are often associated with workers' collective action. Or it could be required to enable private worker chats that would not be visible to the employer. Such redesigns of technology could help ensure that a minimum amount of data is collected and that such data is used only in appropriate ways.

Bargaining rights around technology A second set of reforms would require or facilitate bargaining or consultation around workplace technology. Those would work in tandem with the new protections for worker association discussed in section 6.1, as well as with the socialization and abolition efforts just discussed. Prohibiting off-duty monitoring and facial recognition, for example, would help facilitate interworker deliberation.

Yet bargaining approaches may be preferable to bans and mandates in certain cases. For example, bargaining might be preferable to bans where companies have a colorable argument that the technology at issue will enhance productivity. Indeed, perhaps bargaining should be the default approach, given the state's epistemic limits. Technological progress often requires extensive trial-and-error, and the ultimate shape of technologies only beomes clear over time as they are deployed in social and economic contexts and in turn affect social and economic relations.[43] An outright ban on new workplace monitoring devices could therefore thwart some beneficial innovations, such as efforts to optimize delivery routes. Conversely, requiring bargaining could encourage companies to design or use technologies in ways that do not harm workers, without necessarily foreclosing innovation. Moreover, giving workers the capacity to block or delay technological changes that will erode their associational power should incentivize employers to adopt productivity-enhancing rather than power-augmenting technologies.

Perhaps most fundamentally, bargaining can enhance individual and collective self-governance.[44] The utility of bargaining as a regulatory modality in the workplace reflects an important difference between privacy and technology in the workplace versus the consumer context: while workers face significant collective action problems, they remain less severe than the collective action problems faced by consumers, an enormously diffuse group with less of a tradition of organized representation. Indeed, there are many examples of workers organizing to protest certain uses of technology in the past. Moreover, since workplace technologies embed power relations, bargaining mandates may be necessary for workers to participate meaningfully in setting the rules that structure their lives. This is abundantly true with respect to novel information technologies, which often operate in ways that are inscrutable to line-level workers. Workers today are not just governed by their employers' choices of technology—they are also governed in arbitrary and unforeseeable ways by those technological choices.

The key reforms are straightforward to articulate, although their exact operations would need to be worked out in practice. As discussed in chapter 2, our collective bargaining laws require companies to bargain with unionized workers over technological changes that will alter disciplinary policies, but they also give companies broad powers to implement technologies that will displace workers.[45] Nonunionized workers, meanwhile, have no rights to bargain or consult around workplace technology at all. Congress could alter those rules by making workplace technology a mandatory subject of bargaining in the unionized sector, such that an employer's refusal to bargain is an unfair labor practice.[46] In conjunction with the reforms discussed in this chapter to make it far easier for workers to organize, such reforms would give workers substantial capacity to resist power-augmenting uses of technology. Alternatively, or in conjunction with the reforms sketched in section 6.1, Congress could guarantee all covered workers consultative rights around technological changes regardless of their unionization status.[47] Many German workers have such rights through bodies known as "works councils," which have rights to consult with management over technological and other issues at the workplace level, but do not have rights to strike.[48]

In fact, unions have demanded a voice in workplace technology in several recent strikes. A major issue behind the 2018 West Virginia teachers' strike was the state's effort to establish a new health-care plan that would

give teachers premium rebates if they wore Fitbit-type devices that tracked health metrics.[49] The teachers were upset both by the invasion of privacy and by the school district's continuing efforts to push health-care costs onto them. Similarly, when Marriott hotel workers went on strike in 2018, they demanded a voice in how the company used technology to manage them. Cleaners had complained about the company's development of a new app that assigned them to clean rooms, and desk staff had concerns about the company's development of check-in and related apps.[50] The eventual contract gave their union the right to be consulted early about the development and adoption of new technologies.[51]

These examples suggest that bargaining and consultative rights—a form of institutionalized associational power—would enable workers to protect themselves against many harms associated with digital Taylorism, fissuring, and new methods of surveillance. Workers' optimal bargaining strategy when an employer seeks to implement a new technology would vary based on the circumstances. Following standard practice in industrial relations, bargaining mandates in this context could include information-sharing mandates, so that companies would have to disclose proposed and current uses of algorithmic techniques and the like. Depending on the technology at issue, unions might work with the employer to make the innovation as productive as possible, accept the innovation as is but press to ensure that productivity gains are shared via higher wages, or simply refuse to cooperate in the employer's plan to deploy the technology. For example, Amazon warehouse workers might welcome the integration of new robotic systems, and fast food workers might welcome tablet-based ordering systems. But if given the power to bargain over the issue, they could ensure that the company shares the productivity gains with them through higher wages or a more reasonable pace of work. Indeed, in optimal conditions, where labor and management have some common trust (which often develops in collective bargaining), and where workers are protected against sudden job losses, workers may want to *facilitate* forms of task automation that displace boring or dangerous tasks.[52] What's more, bargaining efforts would have a feedback effect on employers' strategies over time. As workers build the associational power necessary to block power-augmenting technologies, employers will have incentives to collaborate with them while developing new technologies, and to favor productivity-enhancing innovations.

The case for bargaining rights is even stronger with regard to algorithmic management. After all, in many cases, employers implement new forms of worker supervision and discipline *in order to* augment their power over workers. Workers with real bargaining rights over such issues, therefore, may require companies to codetermine the inputs to algorithmic management techniques, as well as performance standards. Ride-sharing drivers might permit company-provided global positioning system (GPS) guidance, for example, only if they are free to deviate from a proposed route or have means of communicating that the guidance is somehow flawed. Bargaining in this context may also lead companies to engage workers around technological deployment to unlock productivity gains. For example, hotel cleaners in the Marriott strike argued that the company's app that assigned them to particular rooms when guests checked out disregarded various facts about particular hotels—such as the location of supply closets—and therefore wasn't as efficient as advertised.[53] Engaging the cleaners during the app design could have mitigated that problem since the best way to travel through a particular hotel is the sort of localized knowledge that is difficult for companies to grasp centrally or via inductive learning.

Sectoral or social bargaining could also help to reshape the politics of workplace technology. For example, retail and food-service workers with social bargaining rights might aim to set scheduling policies at the sectoral level, given the prevalence of algorithmic scheduling in both sectors and its negative effects on workers. That may mitigate retailers' and food-service companies' incentives to reduce labor time to an absolute minimum. Indeed, companies themselves may prefer sectoral standard-setting once workers build sufficient associational power, so that enterprise-level bargaining around data practices does not place them at a competitive disadvantage. At the federal administrative level, worker organizations could be woven into the oversight of new technologies, perhaps including new administrative preapproval processes for workplace algorithmic governance methods. In the US context, there are models for such efforts in the literature on participatory budgeting and neighborhood governance, which could be adapted to matters of workplace technology policy.[54]

Socialization approaches A final set of reforms would give workers, the public, or both greater control over data and related technologies: socializing them in the sense of treating them like a public resource. Because contemporary AI has been developed within private companies and public

security agencies, there aren't many real-world examples of democratic data governance today—and yet there is nothing new about socialization approaches. An example that predates modern inductive technologies comes from certain welfare states, which have long utilized population-level data to ensure adequate health, housing, and other social outcomes.[55] Data trusts are a promising emergent example. Those are "structure[s] whereby data is placed under the control of a board of trustees with a responsibility to look after the interests of beneficiaries."[56] Those could be used to gather and hold particular kinds of data—such as health data useful for medical research or data on companies' workforce practices—subject to strict privacy controls.[57] In 2022 the European Commission also proposed a Digital Services Act, which would require digital platforms to make data available to independent researchers who can use it to discern, for example, how those platforms are affecting citizens' privacy or limiting the spread of illegal materials.[58]

Another analog comes from scholarship on the platform economy, where K. Sabeel Rahman has argued that platforms such as Amazon, social media companies, and broadband companies "provide a core, infrastructural service upon which other firms, individuals, and social groups depend."[59] They have become essential means of accessing other resources, including employment, government services, important consumer goods, communications with friends and family, and news media. In some cases, Rahman argues, the public might best be served by converting the provider to a public utility.[60] As with data trusts, this would involve building institutions that enjoy some property rights in data but that are not privately controlled.

There are many possible socialization approaches in the workplace. Those could build on the proposals noted here, as well as those given in chapter 5 to leverage companies' new surveillance capacities to ensure compliance. As a first step, regulators could require companies to share much more of the data they gather on workers and work processes for regulatory purposes. This is hardly a novel proposal: Disclosure of workforce data is already required of many companies in order to ensure compliance with certain laws, including antidiscrimination laws.[61] With such data, regulators could develop algorithmic means of spotting basic labor law violations, such as wage and hour noncompliance or patterns of hiring discrimination. Regulators could also use that data to map companies' power over workers. For example, given the prevalence of fissured employment today and the fact that companies often monitor fissured employees quite closely, legislatures could rewrite statutory

definitions of employment to take data-driven monitoring into account. In the case of Uber or McDonald's, for example, evidence that the companies monitor how work is performed or help to screen or schedule workers could be presumptive evidence of employment status.

Regulators could also use data on supply-chain governance to help develop social bargaining processes. The key innovation here would be to use those technologies, and the underlying data gathered by companies that use them, to group workers together *across* companies based on their common interests. For example, regulators and unions could benefit by having an accurate list of all active fast food workers in particular regions, their typical schedules, their pay, and the companies (whether franchisors or franchisees) that control their work. In other cases, such a mapping would be helpful in discerning how companies' supply and distribution networks overlap and interpenetrate one another. That is common in logistics and for the myriad firms that supply, for example, hotels and restaurants with food, uniforms, and linens. Such a mapping could be used to design sectoral bargaining units.

Second, public agencies could develop new technological platforms for worker organizing and deliberation, ideally in conjunction with worker organizations. As discussed previously, workers today frequently seek to organize in part via social media and employer communications platforms, but their capacity to do so is limited by the fact that companies can spot such efforts and retaliate. If a system of default or guaranteed collective representation (as discussed in section 6.1) were established, it would be worth considering whether the National Labor Relations Board (NLRB) or another agency could develop online or app-based platforms for worker deliberation and organizing that management cannot access. For example, in a system of default or guaranteed representation, all companies could be required to give the NLRB contact information for all their workers annually, as is now required once the Board has ordered a union election.[62] The agency could then use that information to give workers access to the platform for nominations, campaigning, and elections, and perhaps to give unions some means of contacting workers on those platforms—all with design-based safeguards to deter or prevent employers from accessing the platform. Those would never be foolproof, and companies would get *some* access through illicit means. But such a platform could still facilitate the sorts of worker deliberation and organizing that are already occurring through

some social media platforms—albeit with more significant privacy protections for workers.

Similarly, Congress or the NLRB could expand workers' rights to access their employers' proprietary technologies and data sources to bolster organizing efforts. Gig-economy workers, for example, have at times turned off their apps en masse to protest companies' policies.[63] Those protests could be more effective and potent if the workers and organizers could use the apps themselves to contact and mobilize coworkers.[64] Many service workers today—in the gig economy, fast food, retail, logistics, and hospitality—would likewise benefit from being able to communicate directly with customers about their concerns via their companies' apps or websites. As noted in chapter 4, this would be a digital analog of the picket line, where in the past workers would directly speak to or otherwise communicate with potential customers outside a struck business. Now that so many transactions take place in online spaces, workers may need such rights to effectively reach consumers and build power.[65]

Third and finally, regulators could do much more to encourage worker-owned cooperatives, which could then have control rights over data and workplace technologies. Cooperatives may be especially promising in sectors where innovation proceeds more slowly, where there is less need for physical capital, and where there is demand for high numbers of workers. There are quite a few low-wage sectors with those characteristics, including home cleaning, home care and childcare, and taxi-type services. Workers and unions have already formed numerous cooperatives in those sectors,[66] many of which operate via online platforms.[67] The role of the state here would be to help cooperatives in areas where they have struggled historically. For example, it can be difficult for them to obtain financing as compared to for-profit businesses, which banks and lenders understand better.[68] Moreover, cooperative businesses are run on the basis of democratic member control,[69] which can make it difficult to compete with larger companies whose operations are geared toward the accumulation of capital. The growth of online platforms can mitigate some of those concerns by making it easier both for workers to join cooperatives and for consumers to purchase cooperatively provided services. This will not happen at scale, however, without substantial support from government agencies. Local, state, and federal governments can encourage cooperatives by preferring them in procurement and by assisting with financing on favorable terms.[70] Such support can help

insulate cooperatives against price competition from for-profit enterprises, as well as escalating pressure from investors for high returns.[71] In sectors like home care, where there are huge numbers of workers paid directly or indirectly through public health programs, states could either encourage worker cooperatives or a hybrid of cooperative and public employment.

As with the dedigitizing and bargaining strategies discussed in this chapter, many of the details around socialization need to be worked out in practice. Moreover, any large-scale data-gathering and -sharing efforts managed by the public and civil society organizations would need to be developed with appropriate safeguards to prevent data breaches, not to mention the coercion of workers by state authorities. But the core idea is clear enough: data should often be treated as public or social property, not as companies' private property.

6.3 Complementary Reforms: Algorithmic Accountability, Universal Benefits, and Industrial Policy

While the reforms sketched thus far are essential, they would ideally be coupled with other reforms to ensure workplace equality and basic material security, as well as to move us toward a green economy. This section briefly discusses a few of the most important of these. Such ideas have been widely mooted in recent years as part of debates regarding the so-called future of work, so this discussion will be brief. It focuses both on their merits and on how they would relate to or complement reforms to rejuvenate collective bargaining and to democratize data governance.

A first set of proposals aims to ensure "algorithmic accountability" in hiring, promotion, and management processes; some of those proposals were discussed in chapter 4.[72] The basic idea is that individuals who lose opportunities due to algorithmic analyses should have due process rights, such as notice of the data that was gathered and analyzed about them, as well as an opportunity to correct any false data and to challenge the underlying decision. Such reforms are absolutely warranted, and in 2021 the federal Equal Employment Opportunity Commission announced a broad effort to study the effect of AI on employment.[73] But these reforms are not my focus here, for reasons noted in chapter 4: even if algorithms were to measure workers' or citizens' skills or aptitudes accurately, that may do little to address labor

market inequalities since individuals' skills are in part a function of their background opportunities.[74] Real equal employment opportunity requires not just procedural justice that takes as a given the existing division of labor and the existing class structure, but also a more thorough reshaping of the labor market and political economy. That would include policies to address racial disparities in education, housing, criminal justice, and other fields; affirmative steps to empower women workers, including but not limited to socialized childcare and eldercare; and the sorts of labor law reforms sketched in section 5.2.

Recent technological changes have also led to a resurgence of interest in an unconditional or universal basic income (UBI). The idea is simple: all those who are eligible would receive monthly grants from the state that would be sufficient to meet their basic needs, regardless of whether they work.[75] UBI has garnered attention from a wide array of commentators, and not all arguments for the policy are remotely convincing. Some on the political right, including Charles Murray, see it as a means of eliminating other welfare or social insurance programs.[76] Others see it as a means of heading off a populist revolt. For example, one Silicon Valley UBI advocate has enthused that the policy would allow entrepreneurs to get "as rich as they f***ing want" since workers and the unemployed would at least not starve.[77] Such arguments can be set to the side since they do not take economic equality seriously.[78] Many others have suggested that UBI will become necessary due to automation.[79] Those arguments can be discounted, since as argued in chapter 3, the automation threat has been significantly overstated.

The more compelling arguments for a UBI see it as one of a number of tools to advance economic and political equality in the wake of the service transition. As has been clear for decades now, a core redistributive institution of the postwar era—collective bargaining in industrial production—depended on compounding productivity gains in manufacturing, which are simply harder to come by in the services industry. As a result, today we cannot rely solely on collective bargaining or statutory wage regulations to ensure income equality, much less a minimum standard of living for all. A UBI would certainly help fill that gap. As important, it would delink welfare from work, enabling all recipients to enjoy a "socially acceptable standard of living independently of market participation."[80] That would represent a major shift in our welfare policy, which historically has been borderline

punitive, pushing recipients into work, doing little to decommodify goods like health care and childcare, and giving social services agencies broad authority to police recipients' family lives.[81] A UBI (or cognate policies) could also do a tremendous amount to help those tens of millions of adults who cannot work full time due to disability or caregiving responsibilities. Such burdens cut on racial and gendered lines, and a UBI would encourage greater equality on those lines. Perhaps most important, a UBI would empower workers to quit or strike more easily, which would put upward pressure on wages and working conditions.[82] In late 2021, something like this may have occurred in the labor market, as many workers refused to accept jobs at or near their former wages. While the root causes are not yet clear, generous COVID-era unemployment benefits may have raised workers' expectations and given them an economic cushion and more bargaining power.

That being said, it may be more effective to ensure a minimum standard of living through policy mechanisms other than a UBI. For example, policymakers could decommodify many in-kind goods that are often unavailable at reasonable prices in the US, including decent health care, childcare, housing, transportation, food, education, and job training. Those efforts could be coupled with unconditional cash assistance, especially to families with children, perhaps in the form of a permanent child tax credit similar to the one included in the 2021 American Rescue Plan. Such a suite of reforms may also be more politically plausible than a pure UBI because they would build on established programs at the federal and state levels. By socialising care work—especially health care and childcare—such reforms would also improve care jobs by walling them off from demands for profitability, which tends to suppress wage growth.[83] While this approach requires high levels of taxation, citizens may be willing to tolerate those taxes in exchange for high-quality services.[84]

It is also unclear whether a stand-alone UBI or cognate reforms would significantly bolster workers' ability to organize. The reason is that workers' associational power is shaped not just by their material resources but also by our labor laws, which discourage or forbid many sorts of collective action, as discussed in several prior chapters. Meanwhile, passing and defending a generous and universal welfare state will likely require enormous mobilization along class lines. Wealthy individuals would foot much of the bill via higher taxes and lower profits, and they would be expected to resist both the passage and the implementation of such programs. This

all strongly suggests that an organized and mobilized working and middle class may be necessary to secure ambitious new welfare and social insurance programs—and that would-be reformers should prioritize fomenting workplace and economic democracy as well as establishing new social benefits.[85]

A final set of proposed reforms would encourage a shift in national industrial policy, especially as part of a green transition.[86] Various economists and others have suggested that policymakers should promote the development and diffusion of highly efficient technologies across our economy, and should encourage the development of technologies that will complement rather than displacing workers.[87] Such proposals overlap with calls for a "Green New Deal" that would include massive public investment in green technology and carbon reductions.[88] There are many sound arguments for these efforts. Reallocating workers toward the care and social reproduction areas is desirable for climate-related reasons since those jobs are not nearly as carbon-intensive as low-wage jobs in luxury hotels and restaurants, the gig economy, and other delivery services.[89] Creating more jobs in manufacturing can also help mitigate the cost disease. Affecting such a substantial shift in our economy would require action in many policy domains, including intellectual property (IP), tax, public finance, and even professional ethics. I'll set those to the side for now so I may emphasize that reforms to rebuild workers' associational power would complement these efforts. On a day-to-day basis, organized workers can foreclose the low road of low-skilled, low-wage, low-innovation production. That can encourage companies to focus more on productivity-enhancing investments and can ensure that workers share in such productivity gains, which would make it easier to achieve broadly shared prosperity.[90]

6.4 Conclusion

This is a very ambitious agenda, and whether it is feasible in the near term is far from clear. The most obvious impediment is that neoliberalism has both bolstered and entrenched capital's power, creating many barriers to these sorts of reforms. As a result, there is no obvious agent or agents with the capacity to advance this sort of program today. Actual existing labor unions are in many cases fighting for their survival, and many unions are firmly opposed to sectoral bargaining. Any reforms to private-sector collective

bargaining rights would also need to pass through Congress rather than the states, which makes such reform more difficult given the antidemocratic nature of the Senate.

But a number of trends in our politics may be cause for optimism. Workers and the general public are increasingly concerned about the power of the tech sector and invasions of privacy, which may generate constituencies for some of the abolition and socialization approaches discussed in this chapter. Meanwhile, workers have been striking or protesting in much larger numbers recently, as noted in several chapters. The trend seems to have begun with the 2018 teacher strikes; continued through COVID in the form of many small protests, often by nonunionized workers; and then ballooned in 2021 with a bona fide strike wave among unionized workers,[91] and a wave of new organizing at companies including Amazon and Starbucks. In other words, decades of neoliberal policy may be sparking a real countermovement, and real class-based mobilization. If so, workers may soon be in a position to push for broad labor law reforms. One strategy would be to prioritize reforms that enable workers to build substantial power in the short term, setting the stage for more ambitious reforms down the line.[92]

In those efforts, workers may also find the public more supportive of their efforts than they had been before 2018. Many of the post-2018 teacher's strikes garnered broad support from parents, in part due to teachers' unions making demands—such as for smaller class sizes, social workers in schools, and even rent control in Chicago—that would benefit parents and their children too.[93] More generally, the broader public seems attuned to the miserable working conditions endured by today's working class in the wake of COVID, and unenthusiastic about returning to unrewarding jobs with long hours. Middle-class families are also increasingly frustrated by the difficulty of finding decent and affordable childcare and health care, and younger generations are particularly concerned about climate change. Those groups could be allies in the fight to modernize our welfare state and to encourage a transformative green industrial policy. All such efforts would also be more plausible with the passage of reforms to enhance democracy in our political process, including voting rights reforms.

What's more, the goals behind such reforms have broad appeal. Most of us would like to earn more and work less, to enjoy respect and dignity in our dealings with management, and to count on privacy both at work and in our personal lives. All those goods are far too rare today. The aspiration

of this set of reforms is not just to make work more humane, nor even to change the balance of power in our political economy. The aspiration is also to change work relations at a more molecular level—to make contemporary capitalism as democratic as possible. Rather than being subject to arbitrary and sudden discipline, and rather than laboring in isolation from one another, workers would build norms and practices of solidarity, which would in turn inform the law. Workplace surveillance practices would come more into line with common-sense privacy norms, and relentless downward pressure on wages would ease. Workers would have a real voice in the workplace and beyond it. The road to this better future of work will be long, difficult, and uncertain. But the alternative is quite clear, and far less desirable.

Data and Democracy at Work

Advanced Information Technologies, Labor Law, and the New Working Class

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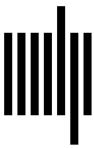

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