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### Searching For Silver Linings During COVID-19

Deepa Das Acevedo

*University of Alabama - School of Law*, [ddasacevedo@law.ua.edu](mailto:ddasacevedo@law.ua.edu)

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# Searching for Silver Linings During COVID-19

Deepa Das Acevedo\*

Draft of April 4, 2020

This short essay responds to currently circulating suppositions about how COVID-19 will impact—specifically, will *improve*—working conditions in America once the pandemic has concluded. I argue that these predictions are cautiously optimistic, rationally deduced from ongoing events, and thoroughly unlikely to be realized. As world-transforming as COVID-19 has already proven to be, I show that both governmental and corporate responses to date do not support optimistic assessments as to the pandemic’s effects on labor and employment law in the United States. I also respond to various analogies that have been drawn to previous world-transforming events as a way of supporting the idea that the pandemic will change working conditions in America for the better, and I show why either those analogies rely on bad history or are simply faulty in the way they compare previous events to COVID-19. The lesson—because even in these difficult times, papers by academics must have lessons—is as grim as the news about the virus itself: America’s problematic labor system is far more resilient than the workers who suffer because of it.

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\* Assistant Professor of Law, the University of Alabama; #319 Law Center, 101 Paul W. Bryant Drive, Tuscaloosa, AL 35487; [ddasacevedo@law.ua.edu](mailto:ddasacevedo@law.ua.edu). This is an early commentary on a rapidly and drastically evolving situation; feedback is very welcome. Errors are mine alone.

## Introduction

This is not an academic paper in the traditional sense, because nothing we are experiencing or doing right now is traditional. Even for those of us who spend considerable time searching for ways to achieve voluntarily what is now mandatory—an open-ended expanse of time to work from home—the circumstances created by COVID-19 make it difficult to go on as before. As an untenured member of a roughly Top-30 law school, I write from a position of relatively extreme privilege: I have money, stable housing, more-stable-than-most employment, work—that I enjoy—that *can* be done from home if need be (teaching) and that I *prefer* to do from home (research and writing). My family is healthy so far, and lives in an environment that is conducive to maintaining social distancing in considerable if not extravagant comfort. We have it pretty good.

And yet, like virtually everyone I know and don't know, I am consumed with worry and being slowly eroded away by an unceasing torrent of news that is not only grim but also incomplete and conflicting. Worry, like the virus itself, is not rational and does not observe boundaries of class, sex, race, or geography. Consequently, I am more than usually willing to entertain wishful thinking that goes beyond hoping for an end to the historical moment we are currently occupying and instead begins to articulate, in cautiously roseate terms, a new and better historical moment that is to come.

Yet some things still go too far. What follows is a response, not quite analytical, not quite epistolary, to some of the more wishful prognostications I have encountered about the world (specifically, the *American* world) after COVID-19. Since one of my selves is a student and teacher of labor and employment law, these responses are limited to prognostications about how we will work differently in a post-pandemic country. There are plenty of those, right now. Since another one of my selves is an anthropologist, I will continue to write in the first person as a way of acknowledging my own role as both a participant and an observer in the events I discuss, and I will (most likely) refrain from offering premature policy prescriptions. What I *will* say, moreover, is not likely to make anyone, including myself, feel better, and unfortunately this is my goal: searching

for silver linings in life is well and good but in law—and especially in moments of crisis—it breeds complacency we can ill afford.

I begin with a quick overview of COVID-19 developments *generally* (this section will naturally be well out of date by the time it is read) and with developments that are specifically relevant to a reconceptualization of working in America. Then, I will describe some of the silver lining predictions that have surfaced in my newsfeed, email inbox, and conversations. Each one of these predictions is cautiously optimistic, rationally deduced from ongoing events, and thoroughly unlikely to be realized. The final section will remain a work-in-progress. Three weeks ago I planned to be sitting by a pool in Southern California with my infant son during my university's spring break;<sup>1</sup> today my son and I cross the street when we encounter neighbors during our daily walks in Tuscaloosa so as to respect mandatory social-distancing rules that have (thankfully) been imposed on us by our mayor. Endings, even to non-paper papers, are beyond my present predictive powers.

## I. A Brief and Increasingly Unnecessary Primer on COVID-19

A coronavirus is a type of virus that typically causes respiratory illnesses in human beings; the name *corona* (“crown”) is a Latin reference to the virus’ appearance.<sup>2</sup> The common cold is caused by a type of coronavirus.<sup>3</sup> The *novel* coronavirus currently circulating around the world first emerged in Wuhan, China, in late 2019.<sup>4</sup> (The irony of referring to anything so destructive by a genial adjective like *novel* seems to have received little commentary so far, no doubt because we are all more in search of good humor than capable of it.) The disease caused by this virus, called COVID-19,<sup>5</sup> is suspected to have some origin in an animal virus, but as

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<sup>1</sup> I began writing this essay on April 1, 2020.

<sup>2</sup> *Human Coronavirus Types*, CENTERS FOR DISEASE CONTROL AND PREVENTION <https://bit.ly/2UG6aJh> (last visited Apr. 1, 2020).

<sup>3</sup> *Common Human Coronaviruses*, CENTERS FOR DISEASE CONTROL AND PREVENTION <https://bit.ly/3bPitZu> (last visited Apr. 1, 2020).

<sup>4</sup> *Frequently Asked Questions*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://bit.ly/3e0zXEj> (last visited Apr. 1, 2020).

<sup>5</sup> *Id* (noting that “‘CO’ stands for ‘corona,’ ‘VI’ for ‘virus,’ and ‘D’ for disease”).

of this writing it has consistently and devastatingly transferred between human beings for over three months.<sup>6</sup> At present, over 935,000 people have been infected with the virus worldwide, and nearly 50,000 have died.<sup>7</sup> Infected persons may range from being thoroughly asymptomatic, having mild cold or flu-like ailments, experiencing severe fever and shortness of breath, or—in most fatal cases—experiencing complete respiratory failure.<sup>8</sup> Symptoms, where they exist, usually surface 2-14 days after infection, so an individual may be entirely asymptomatic for the duration of their infection and yet spread the virus to dozens or hundreds of others who suffer more extensive harm.<sup>9</sup>

The coronavirus is estimated as being both more *infectious* (referring to “the average number of people who catch the virus from a single infected person”) and more *deadly* (referring to the mortality rate among infected persons).<sup>10</sup> Because of this, the primary worry for many government officials and healthcare providers is not the “seriousness” of COVID-19 (which in ordinary conversation usually refers to the disease’s mortality rate) but its ability to suddenly overwhelm medical facilities that are not prepared for an onslaught due to shortages of personnel, beds, or equipment.

The first instance of coronavirus infection in the United States was identified in Washington state on January 21, 2020.<sup>11</sup> Since then, over 300,000 cases of infection have been identified and over 8,000 people have died.<sup>12</sup> The number of infections is likely grossly understated, both because of the extent to which the virus can spread asymptotically and because of the paucity of testing

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<sup>6</sup> *Situation Summary*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://bit.ly/39KmnBg> (last visited Apr. 1, 2020).

<sup>7</sup> *COVID-19 Coronavirus Pandemic*, WORLDOMETER, <https://www.worldometers.info/coronavirus/> (last visited Apr. 1, 2020).

<sup>8</sup> *Symptoms of Coronavirus*, CENTERS FOR DISEASE CONTROL AND PREVENTION <https://bit.ly/2V4uzaa> (last visited Apr. 1, 2020).

<sup>9</sup> *Id.*

<sup>10</sup> Rachael Rettner, *How does the new coronavirus compare with the flu?* (Mar. 24, 2020), <https://bit.ly/3bOvgeH> (last accessed Apr. 1, 2020).

<sup>11</sup> Elena Renken, *Map: Tracking The Spread Of The Coronavirus In The U.S.* (Apr. 1, 2020), <https://n.pr/2Ulwltn> (last accessed Apr. 1, 2020).

<sup>12</sup> *Coronavirus Live Updates: With Over 300,000 Cases and 8,000 Deaths, the U.S. Braces for Still More*, NEW YORK TIMES, <https://nyti.ms/34aYzW5> (last accessed Apr. 4, 2020).

facilities in the United States. All 50 states, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands have reported cases of COVID-19.<sup>13</sup>

The pace at which law and policy have changed in response to the spread of COVID-19, although widely decried as monstrously slow, is so rapid that it has been dizzying to experience and is difficult to capture on paper without risking hyperbole. At first—meaning, approximately 4-6 weeks ago—government officials in the United States and in many parts of the world spoke of “containment.” This language reflected a belief that it was possible to identify and quarantine individuals who had been exposed to the coronavirus and, moreover, that doing so was a plausible way of avoiding a thorough breakdown of medical facilities. For at least 2-3 weeks, the conversation in many parts of the world, and in the United States in particular, has shifted to “mitigation,” which does not seek to prevent the transmission of the disease by isolating infected individuals so much as it seeks to slow the rate of transmission in order to—again—avoid overburdening medical facilities.<sup>14</sup>

Mitigation, though widely accepted by the medical community as an effective tool, has undeniably brought with it many non-medical ills. Foremost among the non-medical (or *indirectly* medical) costs of mitigation is a set of broad, deep, and often surprising impacts on the labor force.<sup>15</sup> People have been fired, furloughed, inadequately compensated, and inadequately protected from newly arising work-related hazards. It is these costs for which various commentators have sought to find corresponding silver linings. In the next section, I outline a few different types of work-related harms that have occurred as a result of American

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<sup>13</sup> *Id.*

<sup>14</sup> Stephen M. Parodi & Vincent X. Liu, *Viewpoint: From Containment to Mitigation of COVID-19 in the US*, JAMA (March 13, 2020. doi:10.1001/jama.2020.3882) (arguing, as late as March 13, that “It is critically important that the strategy for slowing the spread of the COVID-19 pandemic change from containment to mitigation”).

<sup>15</sup> Naturally, these economic harms immediately or eventually bring with them medical harms: stress, inadequate nutrition, and inadequate treatment for non-COVID-19 ailments among the foremost of them.

efforts to mitigate the spread of COVID-19. But first, an acknowledgement and quasi-apology:

By limiting my discussion to the United States I by no means intend to suggest that this country's response or its sufferings are unique. Others have been more prepared (Australia),<sup>16</sup> more unified (Canada),<sup>17</sup> more reluctant (Britain),<sup>18</sup> more obstinate (Brazil),<sup>19</sup> and more draconian (China, India), as the case may be.<sup>20</sup> Yet, after the manner of all anthropologists, I am limited by two things. The first is my own skill set: although I have learned a smattering of labor law in other jurisdictions, I am really only fluent in the law governing American workers. The patterns and problems I see are dependent on this training; other problems will appear to other eyes. The second limitation is of the field site itself: despite rather anxiously following the news in Canada (where I was born) and India (where my family is from, and where I do much of my research), as well as reading and listening to news on Britain, France, Germany, Spain, Italy, Brazil, China, Singapore, South Korea, the Philippines, and South Africa—because, after all, there is little else to do these days—I have not yet come across much in the way of silver lining prognostications outside the United States. Anthropological problems, like mountains waiting to be climbed, invite interest simply because they *are* there—and only when they are, in fact, *there*.

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<sup>16</sup> Damien Cave, *Tom Hanks Got Sick in Australia, Where Coronavirus Testing Isn't Such a Hassle*, NY TIMES (Mar. 12, 2020), <https://nyti.ms/3dNXIEG> (last accessed Apr. 1, 2020).

<sup>17</sup> See, e.g., *First Ministers discuss collective efforts to address the impact of COVID-19*, Government of Canada (Mar. 13, 2020), <https://bit.ly/2JGvgBi> (last accessed Apr. 1, 2020).

<sup>18</sup> David J. Hunter, *Perspective: Covid-19 and the Stiff Upper Lip — The Pandemic Response in the United Kingdom*, NEW ENGLAND J MEDICINE (March 20, 2020) DOI: 10.1056/NEJMp2005755).

<sup>19</sup> Ernesto Londoño, Manuela Andreoni & Leticia Casado, *Bolsonaro, Isolated and Defiant, Dismisses Coronavirus Threat to Brazil*, NY TIMES (Apr. 1, 2020), <https://nyti.ms/2X89HS9> (last accessed Apr. 1, 2020).

<sup>20</sup> Consider the lockdown that was in effect in China's Hubei province (affecting some 60 million people) and the lockdown currently in effect across India (affecting some 1.3 billion people).

## II. What Happened (is Happening, will Happen) to American Workers

The short version of this section is “Plenty.” Too much, in fact, to be able to adequately describe in the space of a few short sentences, or even a few long ones, and virtually all of it is negative in a way that not even American workers (accustomed as they are to being squeezed by their employers and unprotected by their government) have witnessed or experienced, despite the all-too-recent ravages of the Great Recession. In the generational yearbook we compulsively pass around every December 31 and at the end of every crisis in order to reflect on how we all fared, the one where Baby Boomers like my parents and in-laws are captioned “Most Likely to Have Lived Well and Legislated Shrewdly,” and in which the alphabet soup of generations comprising my husband and I—and, now, our son<sup>21</sup>— all figure as “Variously Damaged,” there is nothing in any of our portraits to suggest the economic hardship that has unfolded and that continues to unfold. Thirty years from now, my son and his friends will tease myself and my friends for still making our time’s equivalent of Hoover Stew—Trump Wraps?—because the loss of livelihoods will continue to define our psyche every bit as much as the loss of lives.

But let us be more specific. As I write, the Bureau of Labor Statistics announces that “[t]otal nonfarm payroll employment fell by 701,000 in March, and the unemployment rate rose to 4.4 percent.”<sup>22</sup> Of course, as the *New York Times* rather chillingly notes, this “data was mostly collected in the first half of the month, before stay-at-home orders began to cover much of the nation.”<sup>23</sup> Around 10 million people have filed for unemployment insurance in the last two weeks, and millions—tens of millions—will do so in the weeks to come as sectors that

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<sup>21</sup> Apparently, the smallest Acevedo belongs to Generation Alpha. Caroline Bologna, *What’s the Deal With Generation Alpha?*, THE HUFFINGTON POST (Aug. 11, 2019), <https://bit.ly/347Uy4G> (last accessed Apr. 3, 2020).

<sup>22</sup> *Employment Situation Summary*, BUREAU OF LABOR STATISTICS (Apr. 3, 2020), <https://bit.ly/2JDlKhD> (last accessed Apr. 3, 2020).

<sup>23</sup> Nelson D. Schwartz & Patricia Cohen, *Decade of Job Growth Comes to an End, Undone by a Pandemic*, NEW YORK TIMES (Apr. 3, 2020), <https://nyti.ms/3dQdOZ9> (last accessed Apr. 3, 2020).



were not or would not view themselves as immediately impacted by COVID-19 come to terms with the primary economic consequences of mitigation: people can't work, and people can't pay for work to be done.

The acidic shock of these developments is already evoking comparison to other devastating world-historical moments, only a couple of which have really been experienced by the comparators themselves. I have seen allusions to the Spanish Flu (1918-20), the Great Recession (2007-09), September 11, and even World War II. Somewhat surprisingly, I have *not* seen as many commentators reaching to either the Great Depression (1929-some time before World War II) or the most famous instantiation of the Bubonic Plague, the Black Death, which reached its European peak between 1347-51. These more severe comparisons will surely come.

Analogies proliferate because they offer hope. An increasingly popular and modern equivalent of Rumi's adage has been *We got through that, so we can get through this*. Others have argued that *Things happen cyclically* (an attitude that is especially appealing to a mind raised in no small part on *Amar Chitra Katha*<sup>24</sup>). And of course, *Some good can come out of this*. The Recession spurred consumer protection reforms (never mind that an increasing number of those reforms are defunct today). World War II led to a burst of industrial and scientific development, to say nothing of social transformation, that has arguably yet to be matched. The Great Depression gave Americans their most significant labor reforms since the Emancipation Proclamation and the passing of the 13<sup>th</sup> Amendment. And the Black Death showed European aristocrats the value of peasant labor.

Good news for workers is particularly welcome right now because of the unprecedented—a generally overused superlative that may actually be appropriate today—way in which mitigation is impacting the labor market. Health and Work, both crucial, both capitalized, are the two great worries of this moment. Not only are *more* people simply being fired, furloughed, or placed on

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<sup>24</sup> Amar Chitra Katha is a publishing house founded by Anant Pai that, when it began, largely produced comic book versions of the Hindu epics that continue to be loved and collected and critiqued. AMAR CHITRA KATHA, <https://bit.ly/34bUbpY> (last accessed Apr. 3, 2020).

reduced work schedules, but this is happening at a *faster* rate than America has likely experienced since the Great Depression, and these impacts are *spread* across industries in a way that holds little precedent in contemporary memory. First went travel, tourism, retail, entertainment, athletics, hospitality (including food), and various blue- or pink-collar service sectors. Now going are manufacturing (including automakers and technology), oil & gas, shipping, and various white collar sectors (including legal services and education). The ordering and breadth are both striking. Nobody was prepared for this because there was no slow economic downturn eating away at jobs; job loss is an outgrowth of the risk inherent in simply standing next to another human being.

In this moment, it is entirely understandable for us to want to imagine the good that is yet to come—that perhaps *would not have come* but for the trauma surrounding us. Surely, as has so often happened in the past, the powers that be will come to a better realization of the negative, sometimes downright cruel, ways in which their laws and policies impact the common person. *Any* rational person would see this. *Any* rational person would, from self-interest if not from compassion, do what is needed to keep painfully needed and obsessively analyzed “essential services” running. These aspirational assumptions are themselves deeply rational and a signal reminder of the way in which ordinary Americans have been reared in the church of *homo economicus*. In what remains of this section, let me outline four types of predictions, explicitly or implicitly apparent in current public discourse and frequently alluding to previous world-historical moments, that imagine how COVID-19 will improve conditions for American workers once the pandemic is over. To be clear, not all of these (to my knowledge and as of this writing) have been explicitly articulated exactly as I articulate them here. They are all, however, circulating with enough regularity in the subtext of the news articles I read, the emails I receive, and the conversations I have that I can and will respond to them here.

First, there is a hope that the plight of those who have lost their jobs as well as the conditions of those who must continue working will lead our governing officials to expand benefits and protections *within* our current regulatory

system.<sup>25</sup> For instance, in this scenario, the United States would cease being the only major developed country without paid sick leave but it would offer that leave through the employer-employee relationship in the way that it offers many other benefits. Similarly, federal and/or state authorities would see fit to increase the minimum wage because they would have come to appreciate that \$7.25 an hour (the federal floor for untipped workers), \$2.13 an hour (the federal floor for tipped workers), or whatever-an-hour (if you live in one of the 29 states that have enacted minimum wage thresholds above the federal floor) is not enough to save money, and without saved money one cannot pay for rent, food, and other basic necessities in times of unemployment. There are other variants of this particular hope: for example, relating to the amount, duration, and ease of receiving unemployment benefits (some of which has indeed been temporarily addressed via the CARES Act that was signed into law on March 27); the hope that gig workers—many of whom perform services that essential in practice if not in name—will be considered be “employees” rather than “independent contractors”;<sup>26</sup> and the hope that that Congress will enact stricter regulations concerning workplace health and safety (or, at least, will get the Occupational Safety and Health Administration to do its job by conducting COVID-19 enforcement<sup>27</sup>). All of these predictions suggest that post-pandemic American labor and employment law will be the same, but better.

Second, there is the hope that work-related benefits and protections will expand in a way that exceeds, up-ends, or otherwise conflicts with our current regulatory system. In mid-March, *Politico* magazine ran a Friday feature titled, “Coronavirus Will Change the World Permanently. Here’s How.”<sup>28</sup> It included

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<sup>25</sup> The USA is remarkable among developed countries for the number of benefits and protections it channels through—and *only* through—the work relationship. For a list of these benefits and protections, see Deepa Das Acevedo, *Unbundling Freedom in the Sharing Economy*, 91 S. CAL. L. REV. 793, 799-800 (2018).

<sup>26</sup> Courtney Brunson & Jon Levitan, *The Instacart Strike and Worker Power Amid the Pandemic*, ONLABOR.ORG (Mar. 31, 2020), <https://bit.ly/3bVt9FN> (last accessed Apr. 3, 2020).

<sup>27</sup> Deborah Berkowitz, *Worker Health is Public Health*, ONLABOR.ORG (Mar. 30, 2020), <https://bit.ly/2yA0VIQ> (last accessed Apr. 3, 2020).

<sup>28</sup> *Coronavirus Will Change the World Permanently. Here’s How.*, POLITICO (Mar. 19, 2020), <https://politi.co/2xSsCFS> (last accessed Apr. 4, 2020).

predictions from 34 “big thinkers” that were almost entirely positive depending on one’s political priors, including the idea that Americans would finally come to appreciate the need for a universal system of family care.<sup>29</sup> Several news sources have been following protests by non-essential(-essential) workers like delivery persons and warehouse staffers, who often lack of safe labor conditions and adequate personal protective equipment, and have run features whose latent triumphalism implies either that workers are showing employers who’s really the boss, or that workers are finally waking up to the fact that they *are* the boss. Scratch the surface of these pieces, and a heady whiff of sectoral coordination or non-unionized collective activity, both mainstays of American labor law scholarship by scholars looking wistfully towards Europe, comes forth. The idea that our work law infrastructure is too ill to be triaged and simply demands to be taken off life support is by no means the exclusive byproduct of COVID-19: Harvard Law School’s “Clean Slate Project” spent the last couple of years ginning up a wholly new system of work regulation in the belief that “the time for tinkering with the law had long passed and that only by writing on a statutory clean slate could meet these challenges.”<sup>30</sup> But the pandemic and its drastic and highly differentiated implications for workers have made it easier to imagine, if only yet tentatively and inexactly, that a wholly new beginning is indeed and at last upon us.

Third, there has been a growing sense that mitigation-induced isolation ought to permanently impact gender dynamics outside the work relationship as well as facilitate gender-sensitive laws for the (non-digital, non-home) workplace.<sup>31</sup> According to this view, when men have to take care of children, or at least *see* children being taken care of hour after hour, they are more likely to appreciate this work and perhaps even to continue engaging in it once they are no longer trapped at home. Similarly, once employers have to learn how to function

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<sup>29</sup> Ai-Jen Poo, *An opening for stronger family care*, POLITICO (Mar. 19, 2020), <https://politi.co/2xSsCFS> (last accessed Apr. 4, 2020).

<sup>30</sup> About Clean Slate for Worker Power, <https://www.cleanslateworkerpower.org/about> (last accessed Apr. 4, 2020).

<sup>31</sup> Titan Alon et al, *The Impact of COVID-19 on Gender Equality*, Working Paper (Mar. 2020) (on file with author).

remotely they are more likely to permit remote work once circumstances no longer demand it, and this added flexibility will redound to the greater benefit of women.

Finally, there has been a sense—or perhaps just a sigh—for the idea that this experience may lay bare the true value of labor for employers who have in spirit advanced little from the days of yellow dog contracts and company towns. Employers will cease firing workers for alerting them to issues of workplace safety, they will want to protect workers from undue suffering because their labor provides the profits funding annual bonuses and shareholder happiness (perhaps even because it is the right thing to do), they will recognize that work that does not require a degree is nonetheless *not* unskilled and often *is* essential, courageous, and profitable. Employers, in other words, will remember that workers are humans. And should they fail at this, government will at long last see fit to remind them.

These predictions (aspirations, assumptions...) are, as I have already suggested, eminently reasonable. They are in many ways based on lessons learned from analogies to previous traumatic events. They *ought* for the most part to come to pass. And yet, I do not think that they will. Absent even more drastic reversals of fate than those that are already expected to befall us—and acknowledging that it is increasingly foolhardy to claim certainty on any matter, to any degree—there are reasons to think that either the analogies buttressing these predictions rest on bad history, or that events have already proven that these predictions are moving beyond our reach. Taking comfort in them now will only ensure that they continue speeding away from us.

### III. Cumulonimbus

American labor and employment law scholarship is marked by a kind of determined idealism. *We will hope and plan for better days.* Scholars have eagerly followed unusual worker campaigns in the hopes of identifying a novel (positivity intended) approach to collective action; stated reassuringly that “the labor movement lives”; stated less reassuringly that even if the labor movement lives

precariously there is widespread desire for its convalescence; developed and critiqued approximately 670,934,578 new “classification tests” that will prevent employers from stripping workers of the benefits associated with employee status; explained why *all* workers need health coverage, paid sick leave, and retirement planning assistance; explained how employers who would rather not provide those benefits can nonetheless give partial versions of a few of them to a select group of workers without inconveniencing themselves *too much*; carefully analyzed the laws of half a dozen countries on multiple continents to show why selecting virtually any feature from any of them would measurably improve America’s work law infrastructure; and crafted model statutes, model policies, and even (as with “Clean Slate”) entire model systems. We are not a people given to Cassandra-like croakings. And yet...

COVID-19 is not like World War II. There is no identifiable, evil, human enemy to fight or feel superior to. There is no declaration of war (there have barely been declarations of a pandemic until very recently) after which those who are governing and those who are governed can, equally, prepare mentally and logistically for a long engagement.

COVID-19 is not like September 11, Hurricane Katrina, or other isolated traumas. These horrible events happened, and then they stopped happening. They happened in one part of the country, and then the other parts watched, sympathized, sent aid. They certainly changed our world, to say nothing of the worlds of those whose loved ones and loved things were heart-wrenchingly destroyed, but their worst damage was far more contained.

COVID-19 is not like the Spanish Flu—which, out of respect and sympathy for the Spaniards I will reiterate was about as Spanish as the coronavirus is Chinese. The Flu came on the heels of a Great War, at a time when there was so much death and destruction in the world that a not-so-little bit more (some 17 to 50 million deaths, depending on who you ask) could be forgotten within the century.

COVID-19 is not like the Black Death. It is far less lethal, with or without treatment. Treatment, such as it is and notwithstanding the global shortage of

medical or protective equipment as well as the absence of a vaccine, is much better. We know to want masks even if we can't get our hands on them.

And lastly, though perhaps least clearly, COVID-19 is not like the Great Depression. We *will* surely experience a new great depression, and its depth, breadth, and sudden onset bears a striking resemblance to that earlier sorrow. But the Great Depression was an entirely economic event that obviously demanded an economic solution. The pandemic is endangering a legal and economic infrastructure that the vast majority of Americans—lawmakers refusing to issue isolation orders, golf course owners and craft store CEOs deeming themselves essential businesses—want desperately to hold on to.

Because of the inapposite nature of these analogies and because of developments that have already taken place, the silver lining predictions are inapposite, too. World War II may have caused a sea change in gender dynamics, but there was a sea change available to be made: women working or not working outside the home. Women who had no idea what it was like to go to work experienced it and found they liked it or its affordances. Women went to work *in solidarity*—with their men who were fighting, with their nation that was struggling, against an enemy who was identifiably and satisfyingly evil. Men who perform serious childcare for the first time during this pandemic neither experience something that they were previously discouraged from experiencing nor do so in the service of a greater good.

The CARES Act and FFCRA notwithstanding, work-related benefits and protections will likely not permanently expand inside or outside our existing regulatory structure. The paltry two weeks of paid sick leave offered by the FFCRA invited well-worn arguments about “incentivizing people to not show up for work”—which, we should remember, was the point—and it does not apply to businesses with fewer than 50 employees, or religious or non-profit organizations.<sup>32</sup> The additional unemployment insurance supplied by the CARES Act is notoriously difficult to access; in some states (Florida) this is because

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<sup>32</sup> Amanda Terkel, *Conservatives Worry Too Much Coronavirus Relief Will Make People Lazy*, HUFFPOST.COM (Mar. 17, 2020), <https://bit.ly/2Xbbkie> (last accessed Apr. 4, 2020).

unemployment assistance was *designed* to be difficult to access, difficult to retain, and inadequate while you have it,<sup>33</sup> while in other states (New York) it is because of systemic neglect that has left government officials using technology that is older than I am.<sup>34</sup> These are not signs of a system that is moderating itself with important if incremental adjustments, nor are they signs of a system on the verge of collapse and rebirth. They are signs and artifacts of ideological and institutional stasis. When the purveyors of silver linings point (as they will do) to the surging price of labor after the Black Death, they should remember that as soon as scarcity brought risk to England's nobles, its Parliament responded with the Ordinance (1349) and Statute (1351) of Labourers to set price controls. Indeed, across Europe, new labor laws "did not flow logically from the new post-plague demographics and economics.... [i]nstead, the new municipal and royal efforts to control labour and artisans' prices emerged from fears of the greed and supposed new powers of subaltern classes."<sup>35</sup>

Most dishearteningly and most unsurprisingly, employers are not learning anything except the maximization of pandemic profit. When grocery shoppers for the gig company Instacart went on strike to demand hazard pay, paid sick leave, higher default tips, and cleaning supplies, the company promised them a 3-ingredient safety kit comprising a reusable cloth mask, hand sanitizer, and a thermometer.<sup>36</sup> Instacart is aiming to hire an additional 300,000 people. When an Amazon worker staged a 15-person walkout protesting the inadequate protective measures at the company's fulfilment warehouses, he was fired. Amazon is aiming to hire an additional 100,000 people. When a Navy captain wrote a letter urging

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<sup>33</sup> Gary Fineout & Mark Caputo, *'It's a sh-- sandwich': Republicans rage as Florida becomes a nightmare for Trump*, POLITICO (Apr. 3, 2020), <https://politi.co/2yzVqUd> (last accessed Apr. 4, 2020) (noting that "Privately, Republicans admit that the \$77.9 million system that is now failing Florida workers is doing exactly what Scott designed it to do — lower the state's reported number of jobless claims after the great recession.").

<sup>34</sup> Patrick McGeehan, *He Needs Jobless Benefits. He Was Told to Find a Fax Machine*, NEW YORK TIMES (Apr. 4, 2020), <https://nyti.ms/2JBJe7C> (last accessed Apr. 4, 2020).

<sup>35</sup> Samuel Cohn, *After the Black Death: labour, legislation and attitudes towards labour in late-medieval western Europe*, ECONOMIC HISTORY REVIEW 60(3): 457-485 (2007).

<sup>36</sup> Jessica Bursztynsky, *Instacart to provide workers with safety kits following strike over coronavirus protections*, CNBC.COM (Apr. 2, 2020), <https://cnb.cx/2Rb7IZC> (last accessed Apr. 4, 2020).



his superiors to allow infected sailors to disembark his docked vessel as a way of protecting the almost 5,000 crew members around them, he was fired. When a *doctor* protested the lack of adequate infrastructure—designated areas for emergency doctors to disinfect themselves before they go home, permission for nurses to wear masks while treating patients—he was fired. The revolution is not upon us.

## Conclusion

Anthropological conventions require me to produce a grand theory explaining the phenomena I've described, but I don't have one. Legal conventions require me to offer a solution. I don't have one. My son and I are still crossing the street on our daily walks. Theory demands a measure of distance I don't yet have, while solutions demand a degree of brilliance I'll never possess.

What I do know is this: as much as we may want to think that the economic devastation currently walking alongside biological devastation must needs produce some good for the common worker, there is nothing *necessary* about those improvements and indeed a great deal mobilizing against them. Silver linings come to those who pick up a pen and sketch them in.