What Might Replace the Modern Corporation? Uberization and the Web Page Enterprise

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INTRODUCTION

The number of public corporations in the United States has been in decline for almost twenty years. Alternative forms of organization, from LLCs and benefit corporations to Linux and Wikipedia, provide robust competition to traditional corporations, while short-lived, project-based enterprises that assemble supply chains from available parts are increasingly cost effective. Yet our understanding of corporate governance has not kept pace with the new organization of the economy and we continue to treat the public corporation with dispersed ownership as the default form of doing business. Meanwhile, many of the corporations going public in recent years have abandoned traditional standards of corporate governance and give their founders extraordinary voting shares that effectively guarantee their control in perpetuity. The public corporation

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seems to be an increasingly anachronistic form of enterprise in the United States.[1]

Nikefication turned the corporation into a nexus-of-contracts, organizationally separating design from production and distribution.[2] Entrepreneurs grew skilled at assembling contractors into a virtual enterprise. More recently we have seen Uberization, which allows on-demand labor to be contracted by the task via online platforms. Uberization threatens to turn jobs into tasks, to the detriment of labor. Every input into the enterprise becomes possible to rent rather than to buy, and employee-free organizations are increasingly feasible. Enterprises increasingly resemble a web page, a set of calls on resources that are assembled on demand to create a coherent performance.

In Part I of this Article, I first summarize evidence on the declining number of public corporations in the United States and suggest that it is not regulations that are responsible but the changing nature of production. I also summarize some of the atavistic governance practices of recent IPOs and predict that they will not survive long. In Part II, I describe how Jensen and Meckling's contentious 1976 article came to prominence and ultimately provided a rationale for Nikefication. In Part III, I describe how Uberization—making labor inputs available on demand—removes one of the last remaining rationales for the corporation, and indicates that it may usher in a new dark era for labor.

I. THE VANISHING PUBLIC CORPORATION

Public corporations have been vanishing in the United States since the turn of the twenty-first century. The number of American corporations listed on U.S. stock markets dropped by fifty-five percent between 1997 and 2012.[3] With about 4,000 companies left, American markets are at the lowest number of listings in decades, while India surpassed the United States in listings in 2003.[4] In the past several years, we have seen the disappearance from the markets of corporations in nearly every industry, from electronics to retail to investment banking. Some of the de-

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1. The arguments in this section are fully documented in GERALD F. DAVIS, THE VANISHING AMERICAN CORPORATION: NAVIGATING THE HAZARDS OF A NEW ECONOMY (forthcoming May 2016).

2. Nike pioneered a model of designing and marketing athletic shoes by contracting out production to suppliers in East Asia. "Nikefication" describes the widespread adoption of this model.

3. *See* Gerald F. Davis, *The Twilight of the Berle and Means Corporation*, 34 SEATTLE U. L. REV 1121, 1130–35 (2011).

4. *World Development Indicators*, WORLD BANK, http://databank.worldbank.org/data/reports.aspx?source=world-development-indicators (for "Country", select "India" or "United States" ; then for "Series", select "Listed domestic companies, total") (last visited Nov. 7, 2015).

cline in numbers is due to industry consolidation, as in banking, but much is due to bankruptcies and liquidations (e.g., Enron, WorldCom, Lehman Brothers, Circuit City, Eastman Kodak) and "going private" transactions. Some eventually list their shares again on the stock market, but most do not. This is a long-term secular shift in the nature of corporate capitalism in the United States.

The established corporations that remain are splitting up and buying back their own stock at an impressive rate. Announced split-ups in recent years include Hewlett-Packard's plan to split in two; eBay's divestiture of Skype and PayPal; Time Warner's separation of its publishing, media, and cable businesses; Alcoa's announced bifurcation; and GE's wholesale abandonment of finance, once its largest source of profit.[5] These companies and their peers have been buying back their shares in bulk. The 100 largest members of the S&P 500 bought back roughly $1 trillion of their own shares between 2008 and 2013.[6] Due to share buybacks, IBM's shares outstanding dropped from 2.3 billion in 1993 to 1.1 billion twenty years later; one commentator noted that at this rate, IBM will have no shares left by 2034.[7] Presumably, these firms find shrinking their share bases to be a better investment than researching new products or investing in new plants and equipment. Perhaps they know something we do not.

While the biggest corporations are disappearing, splitting up, and buying back shares, they are not being replaced by new entrants. The going public fad of the 1990s is now long gone. It has been almost twenty years since the peak of the 1990s IPO wave, but there is no reason to expect a revival. There were fewer IPOs in the six years from 2009 to 2014 than there were in 1996 alone.[8] Although some in the venture capital community would blame the IPO drought since 2000 on Sarbanes-Oxley, Dodd-Frank, or other manifestations of an intrusive

5. *See* David Gelles, *Breaking Up Is the New Thing to Do in Silicon Valley*, N.Y. TIMES (Oct. 6, 2014), http://dealbook.nytimes.com/2014/10/06/breaking-up-is-the-new-thing-to-do/; Leslie Picker, *Alcoa to Split Into 2 Companies*, N.Y. TIMES (Sept. 28, 2015), http://www.nytimes.com/2015/09/29/business/dealbook/alcoa-to-split-into-2-separate-companies.html; James B. Stewart, *Do-It-All Era Ending as G.E. Returns to Core*, N.Y. TIMES (Apr. 10, 2015), http://www.nytimes.com/2015/04/11/business/dealbook/do-it-all-era-ending-as-ge-returns-to-core.html.

6. Dennis K. Berman, *Does IBM Love or Hate Itself?*, WALL ST. J. (Jan. 21, 2014), http://www.wsj.com/news/articles/SB10001424052702304027204579334081811064124.

7. *Id.*

8. *See* JAY R. RITTER, INITIAL PUBLIC OFFERINGS: UPDATED STATISTICS (Aug. 26, 2015), *available at* https://site.warrington.ufl.edu/ritter/files/2015/09/IPOs2014Statistics.pdf.

nanny state,[9] they would be wrong. The number of listed companies began to decline several years before the dot-com collapse. Even the JOBS Act of 2012, which greatly reduced the regulatory hurdles for small firms going public, has had only a trivial impact on the number of IPOs.[10] So-called unicorns (companies privately valued at $1 billion or more) are staying private in spite of a booming market. Going public seems to have lost its appeal.[11]

The few companies that are going public often ignore the most basic standards of corporate governance—such as one share/one vote—and their long-term staying power is open to question. The eighty-four companies listed in Table 1 all went public since 2010 with dual-class voting rights that gave the founders great control relative to their financial stake in the company. Groupon, for instance, awarded its founders 150 votes per share when it went public, while Zynga's founder Marcus Pincus controls 70 votes per share.[12] Under these circumstances, corporate control is effectively not contestable by outsiders or minority shareholders.

9. Timothy B. Lee, *The IPO Is Dying. Marc Andreessen Explains Why*, VOX (June 26, 2014), http://www.vox.com/2014/6/26/5837638/the-ipo-is-dying-marc-andreessen-explains-why.

10. *See, e.g.*, Michael Dambra, Laura Casares Field & Matthew Gustafson, *The JOBS Act and IPO Volume: Evidence that Disclosure Costs Affect the IPO Decision*, 116 J. FIN. ECON. 121 (2015), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2459591.

11. *See* RITTER, *supra* note 8.

12. Randall Smith, *One Share, One Vote?*, WALL ST. J. (Oct. 28, 2011), http://www.wsj.com/articles/SB10001424052970203911804576653591322367506.

Ironwood Pharmaceuticals Inc.	Groupon	Constellium NV
Crude Carriers Corp.	Manning & Napier	RCS Capital Corp.
MaxLinear Inc.	Zynga	Coty Inc.
First Interstate BancSystem Inc.	Renewable Energy Group	Truett-Hurst Inc.
DynaVox Inc.	Yelp	Luxoft Holding Inc.
PAA Natural Gas Storage LP	Vantiv	Silvercrest Asset Management
S&W Seed Co.	Digital Cinema Destinations	Noodles & Co.
Niska Gas Storage Partners LLC	Edgen Group Inc.	NRG Yield Inc.
Oxford Resource Partners LP	The Carlyle Group LP	UCP Inc.
Ameresco Inc.	Tilly's Inc.	Jones Energy Inc.
Green Dot Corp.	Facebook Inc.	Intrexon Corp.
Chesapeake Midstream Ptrs. LP	KAYAK Software Corp.	Pattern Energy Group
Rhino Resource Partners LP	Globus Medical Inc.	Premier Inc.
Booz Allen Hamilton Holding Co.	Manchester United PLC	RingCentral
FXCM Inc.	Workday Inc.	RE/MAX Holdings
Swift Transportation Co.	Seadrill Partners LLC	LDR Holding
Adecoagro SA	The WhiteWave Foods Co.	Veeva Systems
MagnaChip Semiconductor	Restoration Hardware Hldg Inc.	JGWPT Holdings LLC
Apollo Global Management	PBF Energy Inc.	Zulily
GNC Holdings	Zoetis Inc.	AMC Entertainment Holdings
TMS International	Health Ins Innovations Inc.	EP Energy Corp.
Arcos Dorados Holdings	Artisan Partners Asset Mgmt Inc.	Malibu Boats
Box Ships Inc.	Taylor Morrison Home Corp.	uniQure BV
Air Lease Corp.	Fairway Group Holdings Corp.	Ladder Capital
LinkedIn Corp.	Blackhawk Network Holdings Inc.	Lumenis Ltd.
Yandex NV	PennyMac Finl Svcs Inc.	Castlight Health Inc.
KiOR	William Lyon Homes Inc.	Phibro Animal Health Corp.
Zillow	Tableau Software Inc.	Moelis & Co LLC

Table 1: Firms going public with unequal voting rights since 2010[13]

Dual-class voting rights have a long history and some famous practitioners, including Ford Motor Company (which went public in 1956 with two classes of shares, one giving the Ford family forty percent of

13. This table was created from data contained in the linked Excel spreadsheet at *IPOs from 1980 – April 2014 with Multiple Share Classes Outstanding*, https://site.warrington.ufl.edu/ritter/files/2015/06/dual-class-ipo.pdf (last visited Dec. 18, 2015).

the votes with only five percent of the shares) and Nike (which gives founder Philip Knight additional votes and guaranteed seats on the board of directors).[14] But dual-class capitalization has traditionally been most common in the newspaper industry, where family-controlled businesses such as the New York Times and Dow Jones sought to avoid pressures from investors to trade journalistic integrity for profit. Since Google went public in 2003, giving the two founders and CEO Eric Schmidt an absolute majority of the voting rights, the practice has become common in Silicon Valley.

Consider the IPO prospectus of Facebook, dated February 1, 2012. Under "Use of Proceeds," it states: "[W]e do not currently have any specific uses of the net proceeds planned. . . . Pending other uses, we intend to invest the proceeds to us in investment-grade, interest-bearing securities . . . or hold as cash."[15] It later notes:

> Because we qualify as a "controlled company" under the corporate governance rules for publicly-listed companies, we are not required to have a majority of our board of directors be independent, nor are we required to have a compensation committee or an independent nominating function. In light of our status as a controlled company, our board of directors has determined not to have an independent nominating function and has chosen to have the full board of directors be directly responsible for nominating members of our board, and in the future we could elect not to have a majority of our board of directors be independent or not to have a compensation committee.[16]

In short, one twenty-eight-year-old college dropout, holding an absolute majority of the voting shares, would have ultimate control for the foreseeable future. He might, for instance, make $20 billion acquisitions without consulting the board of directors.

It is somewhat surprising that after three decades of shareholder activism and governance reform, startups in Silicon Valley—America's hotbed of investor-fueled innovation—have chosen to abandon good governance en masse and to adopt shareholder-hostile voting structures. One possibility is that young technology firms are going into the markets wearing armor to protect themselves from Wall Street's myopia so that they can make long-term investments and create jobs. But while the

14. DAVIS, *supra* note 1.

15. U.S. SEC. & EXCH. COMM'N, FORM S-1: REGISTRATION STATEMENT FOR FACEBOOK, INC. 34 (2012), *available at* http://www.sec.gov/Archives/edgar/data/1326801/000119312512034517/d287954ds1.htm.

16. *Id.* at 31.

"creative" part of creative destruction occasionally generates shareholder value (at this writing, Facebook is valued at roughly one-quarter trillion dollars, in spite of having revenues of only $12.5 billion in 2014),[17] it almost never creates actual full-time employment.

At this writing, the number of employees at ten of the most highly visible technology companies to go public since the Great Recession are modest, to say the least: Zynga (1,974 employees); LinkedIn (6,897); Groupon (3,525 in North America); Zillow (1,215); Yelp (2,711); Facebook (9,199); Tableau (1,947); Zulilly (2,907); and Box (1,158) collectively employed 31,533 persons.[18] For comparison purposes, Circuit City fired roughly 34,000 employees when it was liquidated in January 2009.[19] Almost no one actually works at the companies that go public, and these firms hire relatively few new people each year, even at the behemoths. Google adds roughly 5,000 net new jobs per year, Facebook about 1,200.[20] (Notably, in 2013 only seven of Facebook's 1,200 new hires were black, which points to another one of Silicon Valley's issues.)[21]

The simplest explanation for the declining prevalence of public corporations is not regulation but transaction costs. In his 1937 article *The Nature of the Firm*, Ronald Coase noted that using free markets was not free. Coase wrote, "The main reason why it is profitable to establish a firm would seem to be that there is a cost of using the price mechanism. The most obvious cost of 'organising' production through the price mechanism is that of discovering what the relevant prices are."[22] When the cost of using the price mechanism goes down—for instance, because it is possible to find multiple bidders for many essential tasks on the Web; many of the tools of organizing are available free or cheap online; and labor can be "rented" through temps and contractors—then the tradeoffs that once favored corporations begin to tilt in favor of alternative ways of organizing, such as privately financed LLCs.

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17. U.S. SEC. & EXCH. COMM'N, FORM 10-K: FACEBOOK, INC. 32 (2014), *available at* http://www.sec.gov/Archives/edgar/data/1326801/000132680115000006/fb-12312014x10k.htm.

18. Figures on employment from company 10-K filings available at *EDGAR: Company Filings*, U.S. SEC. & EXCH. COMM'N, http://www.sec.gov/edgar/searchedgar/companysearch.html (last visited Nov. 8, 2015).

19. *Circuit City to Liquidate Remaining U.S. Stores*, MSNBC (Jan. 16, 2009), http://www.msnbc.msn.com/id/28691963/ns/business-us_business/.

20. *Id.*

21. Rupert Neate, *Facebook Only Hired Seven Black People in Latest Diversity Count*, GUARDIAN (June 25, 2015), http://www.theguardian.com/technology/2015/jun/25/facebook-diversity-report-black-white-women-employees.

22. Ronald H. Coase, *The Nature of the Firm*, 4 ECONOMICA 386, 390 (1937).

The public corporation, in short, may be reaching its twilight in the United States, a speculative point I initially made in a 2011 *Seattle University Law Review* article that now seems to be coming true.[23]

II. NIKEFICATION AND THE CORPORATION AS A NEXUS-OF-CONTRACTS

It is worth detailing why the public corporation is in decline in the United States. I would start with a forty-year-old article that helped change the discourse about what the corporation was, from a social institution to a mere nexus-of-contracts. Jensen and Meckling's 1976 article, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, is one of the most widely cited publications in economics in the past half-century.[24] Google Scholar attributes over 50,000 citations to this piece, putting it at the top of the field. Yet it is largely unread by economists outside of finance. Why is that?

This new theory of the firm was counterintuitive, contentious, and massively influential among law and business scholars. But there is something odd about a finance-based approach becoming dominant as a "theory of the firm." Anyone who has taken introductory microeconomics might surmise that the most important question about firms is how they set prices and volumes. Industrial economists might argue that market share and market power were important for consumer welfare. Labor economists might imagine that firms' roles as employers merited some interest.

The idea that the most important thing about a firm is how stock ownership by its managers aligns incentives with share price is surprising, to put it mildly. Only a tiny proportion of companies list on stock markets, and only a small fraction of those (mostly in the United States) have dispersed ownership. This was a theory about something that almost never happened in nature. A theory of family life would not want to start with the Kardashians; why would a theory of the firm start with managerialist American corporations? Moreover, how is it that a pair of financial economists at the University of Rochester business school, writing in Volume 3 of an anonymous journal published by the University of Rochester business school—which was edited by one of the authors!—managed to create a dominant paradigm for the corporation for the next thirty years? It was as if a self-published novel won its author the Nobel Prize.

23. *See* Davis, *supra* note 3.

24. *See* Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Cost and Ownership Structure*, 3 J. FIN. ECON. 305 (1976).

One might argue that Jensen and Meckling's influence derived not from creating a well-specified, falsifiable, broadly applicable empirical theory, but because they provided a quasi-scientific rationale for de-institutionalizing the corporation. For decades, scholars had argued about the social responsibilities of corporations and likened them to nation-states with relatively inviolable boundaries. Corporate managers had to trade off the interests of various "stakeholders," and shareholders were only one constituency among many. Jensen and Meckling argued that this was wrong on both counts. The corporation was nothing but a nexus-of-contracts that existed to create shareholder value:

> It is important to recognize that most organizations are simply legal fictions which serve as a nexus for a set of contracting relationships among individuals.
>
> . . . Viewed this way, it makes little or no sense to try to distinguish those things that are "inside" the firm (or any other organization) from those things that are "outside" of it. There is in a very real sense only a multitude of complex relationships (i.e., contracts) between the legal fiction (the firm) and the owners of labor, material and capital inputs and the consumers of output.[25]

A firm is like a market and should not be confused with an actor having goals, motivations, or personality. Through a puff of logical smoke, the traditional view of the corporation dissipates, and questions that animated some theorists (such as where a firm should place its boundaries) disappear (firms don't have boundaries—next question). We could now get down to the business of reorganizing the corporate sector to create shareholder value, guided by efficient capital markets.

Jensen and Meckling's most enduring contribution is their metaphor of the corporation as a mere nexus-of-contracts. At the time that they wrote, this idea was preposterous. General Motors and AT&T had almost one million employees each, with seasoned workforces laboring in vast and highly tangible facilities. Corporations were quite obviously social institutions, and their employees were like citizens who received health care for themselves and their dependents, stable compensation, and pensions upon retirement. Denying that GM was a social institution was like denying that Canada was a country. But the "nexus" imagery served as a useful provocation, a lever to bust up the unwieldy and shareholder-hostile conglomerates built up over the prior decades. This was a theory perfectly designed to legitimate a bust-up takeover wave.

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25. *Id.* at 310–11 (emphasis omitted) (footnote omitted).

Most large corporations had grown diversified during the 1960s and 1970s, sometimes operating in dozens of unrelated industries (e.g., ITT, LTV, Gulf & Western). Such firms were systematically undervalued by the stock market compared to more focused firms, yet their status as social institutions protected them from being reorganized by outside buyers. Tearing apart a social institution hardly sounds like a "tender offer" at all. Shifting a few contractual ties, on the other hand, seems harmless.

After the Supreme Court's *Edgar v. MITE Corp.* decision in 1982 struck down state-level antitakeover laws,[26] and the Justice Department relaxed its stance on intra-industry mergers, the conglomerate's days were numbered. Twenty-eight percent of the Fortune 500 received takeover bids in the 1980s, and these battles for control were generally successful at splitting up diversified firms.[27] Those that were not taken over often voluntarily restructured, leaving American industry far more industrially focused by 1990.[28] Moreover, corporate boundaries were no longer sacrosanct, and a consensus was emerging that corporations existed primarily to create shareholder value.

The nexus metaphor became ever more apt during the 1990s, when the advent of the Web made it easier to outsource on a grand scale. At first, firms contracted out peripheral activities like managing the payroll. Later, even the most central aspects of the business were eligible for outsourcing. China's growth as a manufacturing powerhouse made it feasible to outsource many of the lower-value-added tasks of production. Outsourcing firms ultimately came to encompass full-scale assembly and supplier management. The Web made the make-or-buy decision subject to continuous revision because prices were readily available. In combination, access to competing vendors in China and elsewhere over the Web made outsourcing irresistible for many corporations.

The ability to create an enterprise out of already-existing parts, without having to build them from scratch, enabled a disintegrated form of organization. Nike had demonstrated that design and production could be organizationally separated. The company doing the designing and marketing could be in Oregon, while other companies in China or Indonesia or Vietnam could handle manufacturing, and still other companies could manage distribution. This was "Nikefication," a new model of post-industrial organization. And if it worked for sneakers, why not

26. *See* Edgar v. MITE Corp., 457 U.S. 624 (1982).

27. *See* Gerald F. Davis, Kristina A. Diekmann & Catherine H. Tinsley, *The Decline and Fall of the Conglomerate Firm in the 1980s: The Deinstitutionalization of an Organizational Form*, 59 AM. SOC. REV. 547, 548 (1994).

28. *Id.* at 562.

computers, or blood thinner, or "enhanced interrogations" of prisoners in Iraq?

In the intervening years, Nikefication has become pervasive. Almost the entire electronics industry was outsourced during the late 1990s and early 2000s, as U.S. employment in computers and electronics declined by forty percent.[29] As practices of outsourcing became widely adopted, corporations came to look more and more like the nexus-of-contracts described by the financial economists, with the parts snapped together on a temporary basis like interlocking plastic blocks. The ready availability of outside contractors made hiring actual employees largely unnecessary and enabled the contemporary Silicon Valley model.

III. FROM NEXUS-OF-CONTRACTS TO THE WEB PAGE ENTERPRISE

Widespread Nikefication has led to a vast reshuffling of organizational and industrial boundaries in the United States. Surprisingly few things that Americans buy today are actually produced by the company that manages the brand. Moreover, advances in computing power and telecommunications have radically reorganized work processes inside organizations. Tasks that are not currently outsourced can be controlled by algorithms and "workforce management systems," which have been widely implemented across the retail, wholesale, and food service sectors. Today's shopping malls and chain restaurants are high-tech successors to the assembly line, with GPS-enabled time-and-motion studies optimizing human capital deployment at every moment. Line management is unnecessary when the performance of every worker at every store at every moment is available to headquarters staff back at the Panopticon. Drones at HQ can push messages to your terminal or headset to let you know that you are not scanning SKUs fast enough; you failed to upsell that customer on the silk scarf; your last table gave you only three smiley faces on their embedded iPad; or you are only grabbing seventy items per hour at the warehouse temp job when your quota is 110.

We have turned the tasks of organization design and management over to programmers. Hiring, scheduling, performance measurement, and evaluation are now largely in the hands of algorithms written by people who may have no personal experience of the jobs they are designing.

Things are about to get worse, at least from the perspective of labor. The next stage in this evolution after Nikefication is Uberization: renting labor for specific tasks rather than hiring for jobs. Business authors in the 1990s published many tomes on the "death of the career," arguing that

29. Gerald F. Davis, *After the Corporation*, 41 POL. & SOC'Y 283, 288 fig.1 (2013).

companies no longer valued long-term employment and that smart workers were perpetual free agents, always on the prowl for the next opportunity. The *job* had replaced the *career*. Jobs were always temporary, even if they were not labeled that way explicitly.

But now the *task* may be replacing the *job*. "Job" implies an employer (often a corporation) and an employee. But platforms like Uber, TaskRabbitt, and countless other "sharing economy" apps provide a means to contract for specific tasks rather than hiring for jobs. Thanks to ubiquitous smartphones, it is now possible to create markets (and therefore to discover prices) for all kinds of human tasks on all kinds of schedules. Not all markets require prices—think Tinder and Grindr—but at the moment, almost anything that can be provided by another human being has an app for it operating in the Bay Area. This is the "gig economy," or the "on-demand economy," or the "TaskRabbit economy."[30] A better term that remains agnostic about what is being provided via these impromptu markets is *platform capitalism*, where platforms enable transactions.

Uberization renders the corporate employment relation increasingly dispensable. Why do companies hire people in the first place? One rationale is that work requirements cannot always be specified in advance, and so it pays to have employees on hand who are willing to do a broad range of tasks more or less on demand. But this often requires firms to be fully staffed even if the expected demand is not realized. The company has to pay employees even if it doesn't have anything for them to do, which is an abomination for profit-driven firms. Recently, food service and retail firms have been under fire for their erratic scheduling practices that call in hourly employees for shifts and then send them home early if there is not sufficient demand, or require them to be available for shifts even though they might not get called in at all.[31] The risk of variable compensation week to week is borne by the employee, not the firm, and is one of the common grievances of low-wage workers. Uber, in contrast, does not have shifts. Its driver-partners are not required to work at any

30. Robert Kuttner, *The Task Rabbit Economy*, AM. PROSPECT, Sept.–Oct. 2013, at 46, *available at* http://prospect.org/article/task-rabbit-economy.

31. Jodi Kantor, *Working Anything but 9 to 5*, N.Y. TIMES (Aug. 13, 2014), http://www.nytimes.com/interactive/2014/08/13/us/starbucks-workers-scheduling-hours.html; Noam Scheiber, *The Perils of Ever-Changing Work Schedules Extend to Children's Well-Being*, N.Y. TIMES (Aug. 12, 2015), http://www.nytimes.com/2015/08/13/business/economy/the-perils-of-ever-changing-work-schedules-extend-to-childrens-well-being.html; Noam Scheiber, *Starbucks Falls Short After Pledging Better Labor Practices*, N.Y. TIMES (Sept. 23, 2015), http://www.nytimes.com/2015/09/24/business/starbucks-falls-short-after-pledging-better-labor-practices.html.

particular time. They log in to the app on their phone and hang out an electronic shingle. If an opportunity comes along, they can take it (and get paid); if not, no one is to blame. If demand is expected to be high, as on New Year's Eve or when it is raining, they can receive surge pricing. Pay is by the task, and there are no guarantees.

Now imagine an Ayn Rand world in which the employment relation is on a "buyer beware" basis. Walmart or other employers could offer training and certification for particular fungible tasks (cashier, shelf stocker, greeter, returns clerk) and, using the hypothetical Walmart YouServe app, recruit for the day or the hour as needed for each task. Self-employed "quasi-associates" could log on to the app and bid on shifts available at stores within a commutable distance for their certifications. If demand was high, the app might implement surge pricing; if not, the quasi-associates might compete against each other to offer the low price, everyday. Now, the hapless precariat has been transformed into a nation of microentrepreneurs, seizing control of their own schedule and charting their own destiny. Codependent no more!

The architecture for this enterprise of the future is already in place. It is the enterprise as web page, in which the "firm" is a set of calls on resources that are then assembled into a performance. Next time you are on a web page, right-click and view the underlying source code. You will see that what appears as a coherent design on your browser is actually produced by a set of calls to various SQL databases and other sources. The page you see does not exist until you call it into being. This may sound abstract, but some familiar businesses already operate this way. When Circuit City was liquidated in 2009 and its 34,000 remaining employees shown the door, a Long Island company bought the brand name, logo, and web domain and connected it to an essentially automated order fulfillment system.[32] On the Web, it looked the same as it always did, but behind the scenes in the physical world Circuit City was no more. Like a hermit crab inhabiting a discarded shell, the new enterprise did what Circuit City did, without tangible real estate or human employees. The web page *was* the enterprise.

Essential components of an enterprise have been available online for years, but labor represents something different. It is possible to incorporate online,[33] raise funds,[34] hire programmers and other professionals,[35]

32. MSNBC, *supra* note 19; Miguel Bustillo, *Web Breathes New Life Into Failed Retailers*, WALL ST. J. (Mar. 22, 2010), http://www.wsj.com/articles/SB10001424052748704059004575127731650688968.

33. *See, e.g.*, LIBERIAN CORPORATE REGISTRY, http://liberiancorporations.com/about-the-registry/ (last visited Nov. 12, 2015).

locate manufacturers[36] and distributors,[37] and almost any other task. Direct in-person labor was the one component of the enterprise that was hard to make appear on demand. Thanks to Uberization, that is now possible. Like dockworkers on the waterfronts of old, or impromptu work crews assembled in Home Depot parking lots at dawn, we now face the prospect of a smartphone-enabled precariat scrambling for shifts on a daily basis.

Moreover, as Oliver Williamson might have predicted, it is not the level of skill but the firm-specificity of the skill that is likely to determine which jobs remain with employers and which become Uberized tasks. Physicians are already doing on demand consults online during their spare hours, including prescribing medicines.[38] How much of what a firm does could not be done by contractors in a pinch? How will organization design change so as to de-specify tasks and render them amenable to Uberization?

CONCLUSION

Platform capitalism has received a great deal of attention in the popular press and some in the academic literature. Here, I simply point out its implications for the corporation. Put most simply, platforms greatly reduce the cost of using the price system, which was Coase's rationale for the firm in the first place. If long-lived investments are unnecessary to do what a firm does because the inputs to production—including labor—can be rented on an ad hoc basis, then corporations will not be the most cost-effective way to organize. This may help explain the declining number of public corporations in the United States: the American economy is in the vanguard of implementing the "web page enterprise," which makes the corporation increasingly unnecessary.

We are used to talking about a world with "corporations" and "employees," but that time is coming to a close. Our categories for apprehending the world do not map onto the world we encounter today. The firm transformed from a social institution to a nexus-of-contracts, and is now increasingly moving toward a web page enterprise. We may be at a

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34. *See, e.g.*, INDIEGOGO, https://www.indiegogo.com/ (last visited Nov. 12, 2015).

35. *See, e.g.*, UPWORK, https://www.upwork.com/ (last visited Nov. 12, 2015).

36. *See, e.g.*, ALIBABA, http://www.alibaba.com/ (last visited Nov. 12, 2015).

37. *See, e.g.*, SHIPWIRE, http://www.shipwire.com/ (last visited Nov. 12, 2015).

38. Abby Goodnough, *Modern Doctors' House Calls: Skype Chat and Fast Diagnosis*, N.Y. TIMES (July 12, 2015), http://www.nytimes.com/2015/07/12/health/modern-doctors-house-calls-skype-chat-and-fast-diagnosis.html.

point where traditional theories of corporate governance are more hindrance than help.