REVIVING AMERICAN LABOR:
LABOR LAW FOR A TWENTY-FIRST CENTURY ECONOMY

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OVERVIEW

American incomes and wealth today are far less equal than they were fifty years ago, and the inequality is growing. Though productivity and gross domestic product have risen, wages have not kept pace, meaning that workers are not sharing in the economic gains to which they themselves contribute. Social mobility has fallen commensurately, with significant political consequences.

Over those same fifty years, unions have been in a deep decline. This decline has been met with ambivalence from much of America's heartland and joy from the business community, but its effects are deeply troubling. Nonunion jobs pay less than union jobs and thus contribute to rising inequality. Much less acknowledged, and only now becoming better understood, is that high-paying union jobs help increase the wages even of nonunion workers. When union jobs vanish, the wage premium for other workers goes with them.

The decline in union density long has been noted by American legal and industrial relations scholars, who have responded by advocating for changes to the National Labor Relations Act. This book advances a reform agenda far beyond these traditional fixes. The general premise is that American labor law should be reconsidered and reformed, in ways both incremental and radical, but in all cases with the overall goal of protecting workers even as the economy and the nature of work are changing rapidly.

Structurally, the book starts with two introductory chapters, providing background empirical information on the dramatic decline of union density and the profound social consequences that decline has precipitated. The remainder of the book is comprised of five different Parts. Each Part starts with a chapter framing a specific problem or closely related suite of problems that has contributed to unions' declines; subsequent chapters in that Part, each written by a different author, propose different types of reforms to address the problem. Many of these reforms emphasize private sector workplaces governed by the National Labor

Relations Act, though some chapters also address public sector unions as well as the nascent attempt to permit bargaining by independent contractors under state and local law. These proposals may not always be entirely consistent with each other, and no one person (including the editors) are likely to agree with each proposal. In our view, this is a major strength of the book – it collects many paths forward, allowing the proponents of each to make their best case.

This book brings together the best labor and interdisciplinary scholars working today. They are, without exception, leaders in their fields, as the author biographies below will demonstrate. We have assembled a balance of empiricists and theorists, legal scholars and economics/policy scholars, senior luminaries and rising stars. Uniquely for books on labor topics, the scholars espouse diverse political perspectives. This makes internal dissention inevitable, but also produces a robust debate on how worker protection is best effectuated.

All of the authors listed below have confirmed their participation and provided working titles and abstracts of their chapters. We have intentionally not placed tight subject-matter constraints on our authors. Our strategy has been to pick the very best scholars, provide them general guidance on their topic and how it would fit into the overall structure of the book, and given them the freedom to explore that topic so long as their resulting chapter fits within the book's overarching premise. We believe that putting the best minds together and encouraging them to start conversations about labor reform in their own ways will be enormously generative, and are delighted with the topic proposals our authors have submitted.

CHAPTER SUMMARIES

Part I: Introduction

Chapter 1: Rick Bales: *Union Trends*. This Chapter provides an empirical description of the decline in private-sector union density, the state of public-sector unions, the disappearance of the strike as an economic weapon, labor's diminishing political power, the increasingly precarious nature of union financing, the expansion of right-to-work laws (particularly in what formerly was America's industrial heartland), the decline in manufacturing, and the rise of (almost entirely non-union) contingent and on-demand work.

Chapter 2: Jake Rosenfeld: *The Consequences of Union Decline*. Unionization rates in the U.S. are lower than at any point in a century. In the private sector, approximately one in twenty workers belong to a union, compared to one in three during the labor movement's peak in the 1950s. In the public sector, recent high-profile political attacks have damaged unions in various states, providing a playbook for union opponents to follow in states where public sector unions remain powerful. This chapter explores the wide-ranging consequences of this debilitated state of U.S. labor. Contrary to most prior accounts, this Chapter pays particular attention to emerging evidence for the impact of union decline on the economic and political standing of non-union workers.

The Chapter argues that understanding recent trends in inequality, wage stagnation for much of the labor force, and declining civic participation for particular populations means reckoning with a dramatically weakened labor movement.

Part II: Labor Law is Out of Date

A. **Chapter 3**: Cynthia Estlund: *Defining the Problem: Ossified Labor Law in a Rapidly Changing, On-Demand Workplace*. Labor law was constructed for one world; it is highly dysfunctional in the very different world we now inhabit. Our basic labor law framework calls for "exclusive" union representation, based on majority rule, within enterprise-based bargaining units, and it sharply constrains labor from leveraging power beyond those discrete bargaining units. The basic framework was formed in an economy dominated by large, integrated, capital-intensive manufacturing firms. Product market competition was bounded and muffled by a combination of regulation, trade barriers, and the sheer cost of transporting goods and services. Today, hypermobile capital, fissured organizations and production networks, and globalized competition give firms greater means, motive, and opportunity to avoid or escape the constraints and costs associated with unionization; and our labor law framework facilitates their doing so. Employers can and do fight unionization, and avoid its costs, at the workplace level where their power over employees is greatest. In the meantime, workers have lost confidence that union organizing and collective bargaining will do them any good. Despite these dramatic changes, since the 1950s labor law has become "ossified," or insulated from many potential forces of legal change. This Chapter will briefly chronicle the causes and consequences of labor law's ossification.

B. Solution Chapters:

1. **Chapter 4**: William B. Gould IV: *Reforming the NLRB*. This chapter discusses prospects for labor law reform in light of key prior reform attempts dating from the 1970s to the present. It also evaluates National Labor Relations Board (NLRB) rulemaking initiatives such as the single-facility unit proposed rule of the 1990s and the Obama Board's focus on election machinery reforms and front pay. Finally, this Chapter will discuss attempts by both the NLRB and the California Agricultural Labor Relations Board to publicize each statute in the workplace.

2. **Chapter 5**: Charlotte Garden: *Creating Laboratories for Labor Law Experimentation*. Labor law preemption is notoriously broad, preventing states and localities from experimenting with their own visions of private sector labor rights. Perhaps that rigidity is appropriate – after all, one could hardly expect the NLRB to administer multiple, conflicting regimes, and unions, employers, and workers have no private recourse in the courts if they

believe their rights have been violated. This Chapter proposes a new way forward, by advocating a simple change to the National Labor Relations Act (NLRA) that would allow groups of workers to opt out of coverage under that statute, and into coverage under state or local labor law, which would in turn be administered by a state or local regulatory body. This change would allow for meaningful experimentation with a range of goals and methods for achieving them, and could exist alongside other labor law reforms.

3. **Chapter 6**: Katherine V.W. Stone: *New Types of Policies to Address New Forms of Work*: Our existing labor and employment laws and institutions of work were formed in an era in which employers offered workers long-term jobs, and most workers expected to spend their entire working lives with a single employing entity. Our collective bargaining laws, unemployment assistance, health insurance, and pension arrangements were based on this model of continuous and reliable employment. That form of employment is disappearing. Today workers change jobs frequently and employers no longer value long-term attachment. The result is that there is a serious mis-match between our employment laws and the reality of most workers' lived experience. We need to broaden the focus of our employment laws to address the issue of transitions. Today workers will move frequently between jobs, and between periods of work and periods of unemployment, stints in employment and stints of entrepreneurial activity, time in a job and spent in care work, time in the labor force and time in training. This chapter will propose social policies to assist workers during the inevitable transitions that they will experience in this new and changing labor market.

4. **Chapter 7**: Kate Andrias: *Developing Geographic or Sectoral Bargaining*. Declining union density has contributed to skyrocketing economic inequality and a diminished voice for workers in politics. The National Labor Relations Act bears much of the blame for this state of affairs, and not only because of its weak enforcement mechanisms, slight penalties, and lengthy delays. Rather, the voluntary, enterprise-based structure of bargaining established by the Act allows employers to resist unionism, while failing to grant workers significant influence over the political economy. Fundamental reform is necessary. Yet one need not invent reforms from whole cloth. The outlines of an aspirational new labor law regime are emerging from the efforts of low-wage worker movements. Those movements are organizing at the sectoral and regional levels, rather than at the level of the individual worksite or employer, and they are making demands on government as well as on employers. Building on that vision, a new system of mandatory sectoral bargaining would grant unions power to represent workers generally throughout an industry and would involve the government as an active participant in supporting collective bargaining. Mandatory sectoral bargaining is, of course, not immediately attainable, but it should be a long-

term goal of those who support labor rights, and those who oppose political and economic inequality.

5. **Chapter 8**: Ann C. Hodges & Martin H. Malin: *Public Sector Innovation*. Some states outlaw collective bargaining for some or all of their employees – and yet unions have survived, and in some cases thrived, by using approaches that might be adapted by unions in other settings. Such approaches include continual organizing of both employees and community supporters, cultivating legislative support through political activity and lobbying, providing a variety of valuable benefits to employees, developing cooperative working relationships with employers that provide benefits to those employers as well as employees, convincing local governments to recognize and bargain with unions notwithstanding legal prohibitions, working with local governments to provide a framework for representing employees who desire such representation, and negotiating for employees to provide representation on official time. Public employers and unions in union-friendly states have engaged in similarly innovative practices, including establishing collaborative partnerships on peer evaluation and incentive pay plans, cooperating to increase productivity and improve customer service, and allowing unions to bid on jobs that management intended to contract out. These practices offer lessons for unions and employers to both enhance their relationships and improve the efficiency and effectiveness of government.

6. **Chapter 9**: Seth Oranburg & Liya Palagashvili: *Balancing Flexibility and Rigidity: Do Unions Make Sense in the On-Demand Economy?* The on-demand economy has grown rapidly, and much of its success relies on the flexibility of labor supply. But the flexible nature of the on-demand economy is at tension with union rules, which often seek to impose greater rigidity on labor arrangements. Union rules may include guaranteed employment, barriers on entering the industry, onerous procedures for removing unproductive workers, and minimum or maximum requirements on hours worked. Many union rules are inconsistent with on-demand economy business models that require ease of entry and exit, diverse labor arrangements, flexibility of on-and-off work, and salaries based on output measures rather than hours worked. Rigid work is especially problematic for workers who have inflexible demands outside of work, which may disenfranchise women, immigrants, and other underrepresented groups from labor markets. In consideration of a new economy that works for everyone, this Chapter proposes a framework for what a flexible union arrangement might look like in the on-demand economy.

7. **Chapter 10**: Richard Allen Epstein, *How Unions Face Employers and the World: Of Cartelization and External Harms*. Unions are exempt from two

bodies of law that normally constrain private behavior. The first is that they are allowed to organize cartels, which reduce output and raise prices, without producing (as do patents) any offsetting benefit. The second is that strikes and other actions necessarily interfere with advantageous relationships to third parties (which happens with secondary boycotts). The tort of deliberate interference with advantageous relationships would cover many of these cases, except for the privileged status of unions. Damage caused by these exemptions have been benignly characterized as "incidental" -- on par with ordinary competitive injuries. This Chapter argues that workers would be better off if antitrust and tort laws were applied to unions in the same way these laws apply in other contexts.

8. **Chapter 11**: Sanjukta Paul, *Collective Action and Independent Contractors: Overcoming Antitrust Barriers*. This Chapter will first briefly survey salient elements of the two primary areas of law that together create the antitrust barriers to collective action by workers who fall outside the bounds of the category "employment." These two areas of law are: (1) the law of price-fixing (based on Section 1 of the Sherman Act), and (2) the law of the labor exemption to antitrust (based on the Norris La-Guardia and Clayton Acts). Independent contractors were not a major focus for the development of either area of law, and their potential exposure to antitrust liability for engaging in economic cooperation is thus something of a historical accident. After summarizing some of the main normative and policy reasons to do so, this Chapter will describe three mechanisms by which the special case of independent contractor workers' collective action may be revisited within the current doctrinal landscape, highlighting three especially promising routes. First, potential state statutes that set out a scheme for economic cooperation by independent contractor workers, either through collective bargaining or other mechanisms such as state-run sellers' boards, are an especially promising mechanism given the state action exemption to antitrust law (or *Parker* immunity). Second, without relying on any special exemption to antitrust law, courts and regulators can apply the decision calculus of Section 1 of the Sherman Act to permit collective action on the part of independent contractors. This can be accomplished by directly considering the market power of the coordinating actors, as well as by considering the longer-term consequences (beyond short-term maximization of price competition) of barring coordination. There are several sources of precedent for these considerations, which the novel factual scenario of the 21st century "gig economy" furnishes a unique opportunity to revive. Third, certain types of seller-run cooperatives are a mechanism that workers, advocates, and local policy-makers may be able to use to overcome antitrust barriers, without relying upon judicial or state involvement.

9. **Chapter 12**: Richard Kahlenberg and Moshe Marvit, *A Private Right of Action Against Employers Who Violate Labor Law*. This Chapter argues that Congress should create a private right of action for labor rights analogous to the one existing for employment discrimination claims. It will describe the failings of the current system, and how the overly politicized nature of the NLRB adversely affects workers. To counter these effects, the Chapter will advocate treating labor rights as part of the broader group of employment rights, where workers bring their charges through an administrative agency (the NLRB), but then have the option of removing the charges to federal court. Such a route would provide workers with increased civil damages, attorney's fees, discovery, and rights to jury trials. This would disincentivize a great many of the routine ways employers violate workers' labor rights with impunity. The Chapter will conclude by discussing the possibility of instituting such penalties on the state and local levels.

Part III: The Fissured Workplace: Challenges in Identifying Employers & Employees

A. **Chapter 13**: Joe Slater: *Defining the Problems of the Fissured Workplace: Who Belongs in a Collective Bargaining Relationship?* The long-standing assumption that labor and employment laws should apply only to "employees" has, in the modern economy, often become an exploitable loophole employers use to avoid legal obligations to workers. Granted, these laws were not meant to cover every worker who exchanges services for pay, no matter how occasional, indirect, or unsupervised the work. However, employer attempts to avoid legal responsibilities by claiming the required employment relationship does not exist have accelerated such that the utility of these laws in general is undermined. This Chapter will examine two examples of such practices: (1) the expansion of "independent contractor" status and the expense of "employment", and (2) the too-narrow definition of "joint employment" (where both employers are responsible for the employees under labor and employment laws). Joint employment raises issues in the context of both so-called "leased employees" (when one employer supplies workers/employees to another) and in the context of franchises.

B. Solution Chapters:

1. **Chapter 14**: Jeff Hirsch, *Administratively Expanding the Definition of Employer: Joint Employers, Franchises, and Leased Employees*. Other Chapters in this Part address the significant issue of determining which workers should possess labor rights. However, even when that question is resolved, there may also be serious problems in determining which entity or entities should be considered an employer. This issue has become especially relevant as businesses have increasingly relied on franchise arrangements, contracted production, and leased or contingent workers—arrangements that often result in multiple companies having influence over the terms and

conditions of work. For example, the NLRB's recent revision of its joint-employer standard and its related case against McDonald's has attracted considerable attention in Congress. This chapter will explore these relationships and consider reform options for ensuring that more workers are better able to bargain with the companies that actually influence their work conditions.

2. **Chapter 15**: Mirian Cherry, *Creating New Categories of Workers: Dependent Contractors and Independent Workers*. This Chapter addresses the problem of the "fissured workplace," which is one of the causes of union decline. Many jobs once classified as "employee" now are contracted out. Generally, however, only those workers considered "employees" are able to access the rights and benefits that go along with employment status. With so many businesses designating workers as independent contractors, especially in the gig and on-demand economy, fewer workers are eligible to organize. This Chapter will explore whether there is a way to create a third category of worker, potentially with union rights, that could help strengthen the labor movement. Recent proposals for "dependent contractors" or "independent workers" have suggested that such an intermediate category, situated between employee and independent contractor, would empower workers to be able to engage in collective action. However, there may be pitfalls to this approach, which have presented themselves in other jurisdictions that have attempted to create such an intermediate category. For example, the concern is that workers who should easily fit within the category "employee" will now be defined down into the intermediate category, with less rights and benefits. Overall, the approach is one that should be given serious consideration, but only if structured correctly.

3. **Chapter 16**: Ken Dau-Schmidt: *Defining Employment to Promote the Effective and Efficient Regulation of the Employment Relationship: Defining Employees and Employees in the Information Age*. Existing doctrine defining an employee covered by various remedial statutes does not seem up to the challenges of the information age. Where the words of the statute are ambiguous, the question is governed by general tests such as, in the United States, the "right to control" test, the "economic realities" test, and hybrids of these tests to fill gaps in the express language of the statute. This doctrine has empowered employers, for example FedEx and Uber, to try to formulate new platforms for production in the information age that leave workers uncovered by protective legislation as "independent contractors." As a solution to this problem, this Chapter advocates a new approach to interpreting who is an "employee" covered by protective legislation based on two general principles of statutory efficiency. By enacting protective legislation, the legislatures have decided to allocate rights and responsibilities in the work relationship based on some larger public policy.

To allow people to easily evade these decisions based on how they formulate their system of production undermines these legislative decisions and disadvantages those who follow the protective statutes. Accordingly, the first principle in deciding the coverage of protective legislation is to avoid regulatory arbitrage; work should not be excluded from a statute's coverage merely because of the method of production unless it is clear the legislature intended that work to be excluded. Moreover, we should promote efficiency in the administration and enforcement of our statutes. Courts should not conclude that the legislature intended to apply the law against the smallest, most numerous, and least powerful members of the production process when it can much more easily and cheaply be enforced against the large corporate structures that organize production. The second principle is that legal responsibility should be assigned to the cheapest cost avoider in the system of production so the laws can be most efficiently and effectively administered. These two principles of avoiding regulatory arbitrage and selecting for regulatory efficiency might be ratified through legislative action. Alternatively, because the principles seek the efficient application of the laws already enacted by the legislature, they might be appended to or replace existing tests for coverage of our labor and employment laws.

Part IV: Barriers to Creating a Collective Bargaining Relationship

A. **Chapter 17**: Kate Bronfenbrenner: *Defining the Problem: Weak Deterrents & Sophisticated "No Union" Campaigns*. This Chapter looks specifically at whether and how the effectiveness of employer anti-union tactics evolved over the last three decades of rapid corporate and financial restructuring on a global scale. Relying on seven original quantitative research studies by the author on organizing and first-contract campaigns in the public and private sector between 1986 and the present, as well as a review of case study and historical research, this Chapter examines whether employer campaigns have created some new anti-union formula or are simply using the same organizing tactics that have worked so well for them in the past, but using them more aggressively and effectively in the context of rapidly changing global corporate and financial structures. It also examines the role played by labor law frameworks that have failed to adapt to the radically changed corporate, state, and employment structures in which workers, employers, and unions operate. As employers and other political forces with an interest in assisting employers become more powerful, the weakness and lack of punitive enforcement in our current labor laws become more stark.

B. Solution Chapters:

1. Enabling union access: modern excelsior lists, captive audience meetings, card check, automatic elections

i. **Chapter 18**: Paul M. Secunda: *The Right Not to Attend: Employer Captive Audience Meetings*. One of the more effective anti-union techniques used by employers during labor organizational campaigns is the holding of employee captive audience meetings. Employees, in the midst of deciding whether to join a union, are compelled to attend an assembly where management has a one-way conversation with them about the evils of unionism. These meetings occur during working hours, when the employer is best able to exert its economic authority over employees and to play on fears of job loss if employees vote for the union. Further, employers can exclude pro-union employees from such meetings and can fire employees for attempting to ask questions. Based on employee free choice, the conduct/speech distinction in labor picketing cases, and the threadbare nature of NLRB precedent in this area, this Chapter contends the Board should make employer captive audience meetings a per se violation of Section 8(a)(1) of the NLRA.

ii. **Chapter 19**: Michael Oswalt: *Alternative Election Processes: Beyond Card Check*. Voting for a union nearly always involves casting secret ballots at work on a specified election day. This standard format, however, can be a barrier to collective bargaining. One alternative, colloquially known as "card check," would require union certification by signing cards or a petition. This Chapter considers three types of other reforms. The first, "more voting", includes proposals to loosen the prerequisites to activating the NLRB's electoral machinery, such as making representation elections more like the political process with regularly scheduled voting, or significantly reducing the procedural requirements for triggering certification and decertification elections. The second, "continuous voting", would allow workers to cast ballots on their own time over a range of days, similar to "early voting" in many state conducted elections. Workers could cast ballots by mail, phone, internet, or in-person at work or at the NLRB. The third, "neutral site voting", maintains the traditional date-specified secret ballot process, but moves the location away from the workplace to an off-site location like a hotel, library, or classroom. While this is the simplest and most easily implemented reform, it cures one of the most significant inadequacies of the current process: the employer's plenary control over the election day environment. This power extends not simply to campaign-related functions like electioneering and turn-out, but, as emerging research shows, to psychological and memory biases that artificially tilt preferences toward the employer.

2. **Chapter 20**: Anne Lofaso: *Leveraging Secondary Activity Within and Outside Legal Boundaries*. Labor law was at its pinnacle when secondary activities (e.g., picketing, boycotting, leafletting) were lawful. In 1947 and again in 1957 and 1959, Congress amended the NLRA, severely curtailing secondary activities, removing this effective organizing tool from labor. This Chapter explores methods unions can use, both within and outside the existing legal framework, to strengthen the collective-bargaining relationship. This Chapter will examine, among other things, the following questions: (1) How can unions expand membership beyond workers they directly represent? (2) How can unions encourage nonmembers to engage in lawful boycotts for secondary purposes, to achieve political gains for the working class? (3) How can unions leverage social media to pressure third-party neutrals? (4) How and to what extent should unions encourage members and the working class, in general, to engage in civil disobedience through secondary activity? And (5) How can unions utilize secondary boycotts of foreign neutrals to break supply chains?

3. **Chapter 21**: Marion Crain, *Reviving the Right of Assembly in Union Organizing*. Organized labor's judicial, political, and public image is often associated with violence and anarchy. These descriptions have some historical validity, but have outlived their original context, and often are inaptly applied to modern protests like Fast Food Forward, OUR Walmart, and the Occupy Movement. This Chapter reviews the historical relationship between labor and the First Amendment's right of assembly and articulates three theoretical insights reinforced by the connections between assembly and labor. First, collective activity represents more than simply an aggregation of individual voices. Second, groups are not one-dimensional but have many functions, purposes, and messages, which are developed and negotiated through collective expression and existence. Third, expression depends on the context in which it unfolds, and current doctrine too easily obscures that context, with significant ramifications for both public perception and group efficacy. This Chapter suggests how re-assembling labor law around the theory and doctrine of assembly that formed its early core might facilitate a richer understanding of labor unionism and its connections to the rest of First Amendment jurisprudence.

Part V: Barriers to Good Contracts

A. **Chapter 22**: Sharon Block, *Defining the Problem: Downward Pressure on Labor Standards from Inside and Outside the U.S., and a Tilted Bargaining Table Favoring Employers*. The American middle class is disappearing, as intergenerational economic mobility declines and income inequality increases. The result of these trends can be seen in the anger and frustration among many middle class workers

who supported Bernie Sanders and Donald Trump. The downward pressure on labor standards that marks the decline of the middle class is the function of several realities, including competition from lower paid workers overseas, changes in business models (the so-called fissuring of work relationships), and increased use of robots and automation that are moving our country in a low-wage, low-labor standard direction. Moreover, the mechanisms designed to drive higher labor standards are dysfunctional. Political paralysis in Congress has created an insurmountable obstacle to passing federal legislation to raise labor standards, leaving behind those workers living outside the progressive blue states where there has been some upward momentum. Even more significantly, workers are unable to engage in "self-help" through collective bargaining. They are saddled with an outdated labor law that is slow and cumbersome when it needs to be agile, and that minimizes scale and power when it needs to enable expansive and strategic action to meet the challenges of organizing in our modern economy.

B. Solution chapters:

1. **Chapter 23**: Marley S. Weiss: *Solidarity Forever or Just Whatever: Prospects and Pitfalls In Transnational Trade Union Bargaining and Collective Action As a Means to Revive the Power of American Labor*. Historically, when businesses have dramatically increased their geographic, industrial, or occupational scale or scope, labor unions have struggled to recoup their diminished power, and ultimately have restructured themselves along lines paralleling those of large employers. However, shifts in employment today are moving in several directions at once. On the one hand, the geographic scope of business operations has becomes truly multinational. Goods and services are produced through value chains crossing several borders in the course of production, even before transport to the sites of delivery. At the same time, the model of vertically- and horizontally-integrated production has dis-integrated into a model of interlinked but formally independent suppliers in the chain. For labor unions to respond to the challenge of this reorganization of the prevailing method of how business is conducted, new modes of organizing workers and collaboration among unions will have to be pioneered. Although trade unions have overwhelmingly been nationally based until now, supply and value chains operating across borders will necessitate innovative approaches to organizing, bargaining, and pressuring employers in trade unions collaborating transnationally, and sometimes integrating internationally. This chapter will review the history of efforts of worker representation and participation bodies to develop transnational forms of mutual support, collaboration, and coordinated bargaining. It will analyze major barriers to the success of such efforts, including divergent labor law rules, incompatible linguistic and cultural backgrounds, political rivalries, and orthogonal industrial relations traditions. Obstacles to reciprocity among labor organizations require especially close scrutiny. The

chapter will then review some of the novel strategies by which unions have drawn on the resources and support of foreign trade unions to successfully win organizing or bargaining campaigns. It will conclude by suggesting some ways forward that offer realistic prospects for success.

2. **Chapter 24**: Lance Compa: *Advancing Global Labor Standards.* This Chapter will review the potential and limits of using international instruments and complaint mechanisms to advance labor rights and labor standards globally. It will examine international norms, obligations, and "hard law"/"soft law" enforcement systems in five settings: (1) International Labor Organization (ILO) conventions and related oversight/enforcement committees, (2) Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises and the National Contact Point (NCP) enforcement system, (3) labor standards under international financial institutions (particularly the World Bank), (4) labor chapters in trade agreements, and (5) labor codes of conduct under corporate social responsibility (CSR) initiatives (both "in-house" corporate codes and "multi-stakeholder" codes). The Chapter will review experience and relevant cases, both gains and setbacks. It will connect them to the challenges facing U.S. unions and American workers, and conclude with recommendations for more effective use of these forums.

3. **Chapter 25**: Julius G. Getman: *The Central Role of the Right to Strike*. The NLRA was intended to replace individual contracts with collective bargaining agreements in establishing wages and working conditions for America's workers. To further this goal, the Act requires employers to bargain in good faith with labor organizations chosen by a majority of employees in an appropriate bargaining unit. However, it does not require agreement. Agreement was to be achieved through "free collective bargaining." This meant that in practice, once a union was certified as a bargaining representative, it would meet with the employer and present a list of bargaining positions calling for higher wages, better working conditions, and limits on the employer's right to hire and fire. Employers typically oppose most union bargaining demands because they increase employer costs and reduce its power. It was understood, from the moment the NLRA was passed, that the only way a union was able to induce meaningful concessions at the bargaining table was through the threat or use of the strike weapon. The strike weapon, where unions have the ability to use it, facilitates agreement because the consequences of its use can be costly and serious for both management and labor. The system contemplated by the Act's framer worked for many years when unions were powerful and the strike weapon feared. But over the nearly seventy years of the Act's existence, the power of the strike weapon has been consistently undercut by judicial opinions and congressional amendment. The most important limitation on union power is

contained in the *Mackay* doctrine, which permits employers to permanently replace striking workers. The doctrine is inconsistent with the language and basic policies of the Act. In many situations it has turned the strike from a union to an employer weapon. The possibility of losing jobs because of strikes is also a major employer argument to convince employees to reject unionization. Thus, this chapter argues for legislative reform that would – after nearly 80 years of the *Mackay* doctrine – create a more meaningful right to strike.

4. **Chapter 26**: Jesus Fernandez-Villaverde, *The Economics of Minimum Wage Regulations*, This Chapter will analyze the economics of minimum wage regulations. It will discuss why such regulations appear, why and under what circumstances unions support them, how these regulations evolve, whether there are alternatives, and the empirical evidence about their impact on employment, firm dynamics, technological change, and inequality. The Chapter will review recent theoretical and empirical results, and will critically assess the state of our knowledge about the changing labor markets in the U.S. and other advanced economies.

5. **Chapter 27**: Michael Z. Green: *Union Commitment to Racial Diversity*. This Chapter will discuss the increasing racial diversity in the make-up of unionized workplaces. It will suggest that union leadership must embrace the growing concerns of a racially diverse membership and approach those concerns at the bargaining table through creative terms valuing workplace diversity. The Chapter will also discuss diversifying union leadership and providing dispute resolution tools within the grievance process that will promote financial and racial solidarity.

Part VI: Making Unions More Relevant When Most Workers Don't Belong

A. **Chapter 28**: Brishen Rogers: *Defining the Problem: Unions as Mediating Civil Society & Political institutions in the Modern Era.* Industrial unions were a centerpiece of the post-war political economy in almost all capitalist countries. Facing the threat of communism from one side, and fascism from another, states, corporations, and unions agreed on a basic compact: workers consent to capitalist property relations and, in exchange, enjoy rights to organize and bargain collectively, and are guaranteed a fair share of national income. In most countries including the United States, unions also became central allies of labor and social democratic parties; in many countries they also developed and managed para-state institutions such as benefits funds and training and certification programs. The decline of industrial production and the accompanying decline of industrial unions has, therefore, left a gap in contemporary capitalist states: there simply are no mass-based, democratically controlled intermediate institutions capable of representing workers' interests in the political sphere. Nor, more alarmingly, do states or companies seem

to require unions as social partners any longer, and social democratic parties in many states seem to think they do not. New models of worker representation in both the economy and the political sphere are necessary to ensure distributive justice and decent working conditions. These models will need to work within rather than against the grain of contemporary society and legal norms — in which "compulsory association" is strongly discouraged; workers often see themselves first and foremost as members of an identity formation other than "working class," including religion, race, ethnicity, gender, region, sexuality, and political affiliation; and the working class is overwhelmingly in services rather than industrial production.

B. Solution chapters:

1. **Chapter 29**: Charles J. Morris: *Members-Only Representation and Ending Free Ridership*. With the American labor movement at the edge of irrelevance, it is time for unions to change how they organize and engage in collective bargaining. Such a change can be achieved without new legislation by using a long-forgotten means that the text of the NLRA already authorizes: members-only, minority-union collective bargaining. This type of bargaining flourished in the early years of the Act, but has been forgotten for many years. It can be achieved again. The main obstacle lies in the myopic reluctance of many influential union leaders to change embedded procedures that can no longer produce union growth. The proposed process of pre-majority organizing and bargaining, which will be accompanied by mandatory recognition without elections, can be made available administratively and/or judicially—but not easily. Public opinion and public support will also be required. This Chapter outlines recommended procedures. If successful, unions will again play a more important role in improving the economic inequality that confronts the nation.

2. **Chapter 30**: Robert Alt: *Free Speech or Free Riders: Can We Have One Without the Other?* Are there First Amendment rights of speech and association that require the government to permit workers to refuse to pay fees for collectively bargaining speech promulgated by unions where such speech may be on issues of public concern? If so, must unions continue to bargain on behalf of these workers under a theory of exclusive representation? Issues explored include whether collective bargaining involving compelled speech necessarily creates a free-rider benefit, the possible effects of objecting workers' exit on union membership, and possible modification of exclusive representation to address concerns raised by unions concerning lack of compensation for services provided.

3. **Chapter 31**: Catherine Fisk: *Restoring Union Security.* This Chapter will consider the future of union funding mechanisms in the wake of a half-

century's worth of attacks on union dues and fair share fees. After briefly summarizing the status of so-called right-to-work laws and the constitutional attacks on union security agreements, the Chapter will examine the reasons for the attacks and whether there are ways that unions can develop a sustainable funding mechanism if the Supreme Court, Congress, and/or state legislatures outlaw contracts providing for union security, fair share fees, dues checkoff through payroll deduction, and exclusive representation.

4. **Chapter 32**: Patrick J. Wright & F. Vincent Vernuccio, *A Labor Model for the 21st Century: A New Style of Union for Today's Workforce*. There are several ways labor organizations could improve and become more responsive to the needs of today's workers. This Chapter argues that unions should move away from their traditional operating formula in which they depend on coercion and monopolistic privileges granted by labor laws of the last century. Instead, unions should function more like voluntary professional associations, competing for their members' support, providing valuable services to members, and representing the diverse set of needs of individual workers. Unions should represent only workers who desire to be represented and serve the unique needs of the skilled worker of the 21st century.

5. **Chapter 33**: Maria Ontiveros, *Unions as Civil Society Institutions*. Labor unions have traditionally played an important role as a civil society institution - an organization or group that operates outside of the governmental and business sectors but that meets important social, civic and community needs. Union jackets and hats symbolized membership in a group that did more than collectively bargain with an employer. Union membership provided a connection, in solidarity with others, that could be relied upon for help and support in times of need. The Union Hall was a place for social fun and community gathering, not just a place for union meetings. Labor Day picnics and speeches served important functions in educating workers about the importance of citizenship and their role as political actors in society. Union meetings, election to leadership roles and debates about union bylaws and contracts were the training ground for skills need to organize and become political actors. This chapter explores the extent to which certain unions have stopped filling this role and examples of labor organizations that continue to do so. It argues that unions must recognize and revitalize this function in order to rebound and become relevant in today's world.

6. **Chapter 34**: Cesar Rosado: Unions and Worker Centers: Their Trust and Innovation Quandary. Labor cannot rebuild merely through the efforts of traditional labor unions. It needs coalitions and broader social movements. Among the most important community-labor groups collaborating today with labor unions are worker centers, or hybrid community-labor groups that represent low-wage, immigrant workers. Can traditional labor unions and

worker centers rebuild labor to expand labor rights? This paper uses evidence collected by the author through participant observation in a Chicago worker center and dozens of in-depth interviews to describe how traditional labor unions and worker centers may collaborate. But while some effective collaboration is possible, traditional unions and worker centers also fail to fully trust each other. Both actors' organizational uncertainties and perceived vulnerabilities, factors that sociologists have identified as key for trust, push them to conform with traditional scripts and conservatively understood, legally-prescribed organizational forms that limit working class organizational innovation. Hence, the way traditional labor unions and worker centers may be dealing with trust provides for some inter-organizational collaboration but may limit their capacity to create new working class organizational forms. The paper explores possible solutions for the trust and innovation quandary including giving new legal meanings to working class organizational forms.

7. **Chapter 35**: Ruben Garcia: *Politically Engaged Unionism.* This Chapter will examine the political coalitions between union members and community members in the 2016 elections in the Las Vegas area as a template for labor-community coalitions. The Culinary Union has focused on being a political union able to obtain results in the state legislature, but political and legislative success has been followed by gains at the bargaining table. In this Chapter, I will argue that the Culinary Union defies previous distinctions between economic and political unions, with lessons for the future of the rest of the labor movement.

8. **Chapter 36**: Matthew Dimick, *American Labor and the Ghent System*. The NLRA is obsolete, recent attempts at reform rely on the old model, and "New Governance" approaches instead should be sought to address problems in worker representation. This Chapter explores whether the Ghent system offers such a model. The Ghent system is a voluntary system of unemployment insurance in which labor unions administer publicly subsidized insurance funds and, along with employers and the state, participate in unemployment insurance policymaking. The Ghent system helps overcome three separate problems. First, it encourages employers to recognize and bargain with unions by providing workers with incentives to join labor unions before and independent of the employers' recognition of the union. Second, voluntary, union-administered unemployment insurance provides an alternative "selective incentive" that reduces free riding on collective union goods. Finally, union and employer collaboration in unemployment insurance policy generates efficiency gains underwriting cooperative labor relations and reduce employer resistance and workplace adversarialism. In exchange for generous unemployment benefits, unions yield on employment-protection rules, giving employers more flexibility in

the workplace – a bargain referred to as "flexicurity." The Chapter concludes by arguing that a "progressive-federalist" strategy of unemployment insurance reform at the state level may be more feasible than federal labor law reform because of the broad deference states enjoy under the federal Social Security Act. Non-legislative lessons also can be applied, as several contemporary examples illustrate.

9. **Chapter 37**: Matthew T. Bodie: *Organizational Power for Workers*. The NLRA endeavored to give workers a voice within their workplace, along with collective economic power to back up that voice. However, dramatically declining union density has caused the percentage of employees with access to this collective voice to shrink equally dramatically. The NLRA gives workers the limited power to compel bargaining in good faith. This is insufficient. Workers need direct power within their organizations—legal rights to participate in governance. These powers derive from the organizational form itself, which includes employees as a matter of economic fact, but generally excludes them from governance and control. This Chapter describes the broad principle of organizational participation and responsibility for workers, and then illustrates with several examples: fiduciary rights, nonbinding referenda on organizational decisions, and voting rights within the organizational structure.

10. **Chapter 38**: Victor Narro: *Labor Education as Vital for the Future of the Labor Movement*. The attack on labor education programs is part of the conservative and corporate agenda to destroy the United States labor movement. Labor education for students at the K-12 and university levels is needed more today than ever before to create consciousness in our young generation about the labor movement and why unions are the last remaining stronghold to good jobs, benefits and a decent quality of life. This Chapter will discuss how labor education can foster the next generation of union organizers and leaders to revitalize the labor movement. It will discuss the challenges and attacks facing labor education and how labor educators and their allies are fighting back.

CONTRIBUTION TO THE EXISTING LITERATURE

A confluence of events has turned scholarly and public concern to the steady decline of unions in the United States. First, social movements like Occupy Wall Street have drawn attention to the role of labor unions in fighting income inequality and promoting workers' voices. Second, unions have emerged as key architects of successful campaigns in states and cities to raise minimum wages, establish mandatory paid sick time, and limit employers' abusive scheduling practices. And third, the 2016 US presidential election saw both major political

parties advance visions of "good" work. On the Republican side, then-candidate Trump promised to bring back the sort of manufacturing jobs on which a head-of-household could buy a house and send kids to college – that is, union jobs, though Trump did not put it in those terms. And Democratic candidates Hillary Clinton and Bernie Sanders focused their messages to a much greater extent on unions themselves. Moreover, unions' role (or lack thereof) in getting out the vote on behalf of Democrats was a major story in swing states like Nevada, Wisconsin, and Michigan.

Our book starts from the premise that labor unions are important – in that respect, it stands on the shoulders of both older works, like Freeman and Medoff's *What Do Unions Do* (1984) and more recent ones, like Jake Rosenfeld's *What Unions No Longer Do* (2014). (However, our book does not assume that readers are already familiar with these works; instead, it begins with two chapters explaining the history and key consequences of union decline, with the latter authored by Rosenfeld.) From there, it identifies a suite of reasons for the decline of unions in the US, drawing on existing research and analysis such as that contained in David Weil's influential book, *The Fissured Workplace* (2014), and others including Sanjukta Paul's forthcoming Cambridge UP book, *Solidarity in the Shadow of Antitrust* (2018).

Our book's main innovation is its attention to solutions to the problem of union decline. While books on labor unions and labor law often propose ways forward – Jane F. McAlevey's *No Shortcuts: Organizing For Power in the New Guilded Age* (2016), Stanley Aronowitz's *The Life and Death of American Labor* (2014), and Thomas Geoghegan's *Only One Thing Can Save Us* (2014) are examples – our book will for the first time compile a set of diverse proposals, allowing readers to survey a broad landscape of potential paths. In addition, our book takes account of how technology is changing work. For example, multiple chapters focus on the platform economy, making our book a useful companion to new works on that topic, such as the forthcoming *Cambridge Handbook on the Regulation of the Sharing Economy*, and Jeremias Prassl's *Humans as a Service* (forthcoming 2017).

Unions are undoubtedly in for some shocks during the Trump administration. To name one, the Supreme Court is likely to fundamentally change union funding mechanisms by holding that public sector workers cannot be required to pay representation fees. And pending bills in Congress would work the same change in the private sector. But "when a man knows he is to be hanged, it concentrates the mind wonderfully." More prosaically, for those who believe union decline is a problem, now is the time to focus on concrete responses. The goal of our book is to facilitate an in-depth and nuanced conversation on that topic.

AUDIENCE

This volume will be of interest to academics and students in law, economics, public policy, industrial relations, and other disciplines, as well as policymakers, practitioners, and members of the general public interested in labor questions. Labor is a subject that touches many facets of scholarly inquiry, and we expect the volume to be an important resource for researchers. It will also be an ideal text for an undergraduate, graduate, or professional school

seminars in law, business, and industrial relations schools. In addition, the book might be used in broader courses focused on social policy, economics, or research methods in law and economics, as it illustrates well how one area can be approached from multiple distinct perspectives.

MANUSCRIPT DETAILS AND TIMING

We anticipate including thirty-eight chapters that will run roughly 5,000 words each, counting footnotes, for an approximate total of 175,000 words. We have this formal book proposal to CUP by early June 2017. We are uncertain how long the peer-review process will take, but we have told the chapter authors that if the proposal is accepted by CUP, they should expect a deadline on final copies of their chapters for winter 2017 or spring 2018. After some initial editorial work on our part and any necessary follow-up with authors, we anticipate being able to deliver the completed manuscript for review 2-3 months after the deadline for the chapter authors. We will be happy to assign specific deadline dates once we know whether and when CUP will approve this Proposal.

AUTHOR AND EDITOR BIOGRAPHIES

Robert Alt is the President and Chief Executive Officer of The Buckeye Institute, where he also serves on the Board of Trustees. Prior to heading The Buckeye Institute, Alt was a Director in the Center for Legal and Judicial Studies serving under former U.S. Attorney General Edwin Meese III at The Heritage Foundation, where he regularly advised Members of Congress and Supreme Court litigants on complex legal arguments and strategy. Alt serves on the Board of Trustees for The Philadelphia Society, the Board of Governors for the Council for National Policy, the Boards of Directors for the Free Speech in Science Project and Center, the Federalist Society's Columbus Lawyers Chapter Board, and the Board of Advisors for the Ashbrook Center at Ashland University where he has taught classes in constitutional law, political parties, and interest groups. Alt also previously taught national security law, criminal law, and legislation at Case Western Reserve University School of Law.

Kate Andrias is an Assistant Professor of Law at the University of Michigan. She teaches and writes in the fields of labor and employment law, constitutional law, and administrative law. Her current research focuses on the relationship between these areas of law and economic inequality. In addition to her scholarly work, Professor Andrias engages in a range of pro bono work relating to labor and constitutional law. In 2016, Professor Andrias was the recipient of Michigan Law School's L. Hart Wright Award for Excellence in Teaching. Professor Andrias previously served as special assistant and associate counsel to President Obama, and as chief of staff of the White House Counsel's Office. She clerked for Justice Ruth Bader Ginsburg of the U.S. Supreme Court and the Hon. Stephen Reinhardt of the U.S. Court of Appeals for the Ninth Circuit, practiced political law and appellate litigation in Washington, D.C., and worked for

the Service Employees International Union. Professor Andrias is a graduate of Yale Law School and is a member of the Academic Advisory Board of the American Constitution Society.

Richard Bales is a Professor of Law at Ohio Northern University. He has published more than eighty scholarly articles and authored or co-authored six books on labor/employment and arbitration topics. Professor Bales is a Fellow of the American Bar Foundation, an elected Member of the American Law Institute, and a member of the Labor Law Group. He has twice been selected as a Fulbright Specialist, once each to Kuala Lumpur and Jakarta.

Sharon Block is the Executive Director of the Labor and Worklife Program at Harvard Law School. Before coming to Harvard, Block held key labor policy positions across the legislative and executive branches of the federal government. From 2013-17, Block was the head of Policy Office at the U.S. Department of Labor and Senior Counselor to Secretary of Labor Tom Perez. In 2012, President Obama appointed her a member of the National Labor Relations Board, where she had served as an attorney early in her career. While serving in the Obama White House as Senior Public Engagement Advisor for Labor and Working Families, Block led the historic White House Summit on Worker Voice and, at the President's direction, also conducted a series of regional worker voice summits across the country. Before the Obama Administration, Block was Senior Labor and Employment Counsel to Senator Edward Kennedy on the Senate HELP committee.

Matthew Bodie is the Callis Family Professor at Saint Louis University School of Law. He teaches and writes on corporate, information privacy, and labor and employment law subjects. Professor Bodie served a Reporter for the American Law Institute's Restatement of Employment Law and was the primary author for the chapter on employee privacy and autonomy. He is a Research Fellow at New York University's Center for Labor and Employment Law. After law school, he served as a law clerk to Judge M. Blane Michael of the U.S. Court of Appeals for the Fourth Circuit. From 1997 to 2000, he served as a field attorney in the New York office of the National Labor Relations Board, investigating and litigating unfair labor practice charges and conducting representation hearings and elections. He then taught at New York University School of Law as an Acting Assistant Professor of Lawyering and earned an LL.M. in Labor and Employment Law. Professor Bodie served as an associate professor at Hofstra University School of Law from 2002 to 2006 before joining the faculty of Saint Louis University School of Law. He has been a visiting professor at Notre Dame and Harvard Law Schools.

Kate Bronfenbrenner is the Director of Labor Education Research and a Senior Lecturer at Cornell University's School of Industrial and Labor Relations, where she teaches and researches on union and employer strategies in organizing and bargaining in the global economy; labor, race, and gender; and capital mobility. Bronfenbrenner, who received her Ph.D. from Cornell in 1993, is the co-author and editor of several books, including Global Unions: Challenging Transnational Capital Through Cross Border Campaigns; Union Organizing in the Public Sector: An Analysis of State and Local Elections; Organizing to Win: New Research on Union Strategies; and Ravenswood: The Steelworkers' Victory and the Revival of American Labor. Her research on the timing of employer behavior in NLRB certification campaigns, The Empirical Case for

Streamlining the NLRB Certification Process: The Role of Date of Unfair Labor Practice Occurrence, played a central role in informing the decision by the NLRB to pass the election process rule change in 2014. Before joining the Cornell faculty in 1993, Bronfenbrenner was an Assistant Professor in Labor Studies at Penn State University and worked for many years as an organizer and union representative with the United Woodcutters Association in Mississippi and with SEIU in Boston, as well as a welfare rights organizer in Seattle, Washington.

Miriam A. Cherry is Professor of Law and Director of the William C. Wefel Center for Employment Law at Saint Louis University. She is a graduate of Dartmouth College and Harvard Law School. Professor Cherry clerked for Justice Roderick Ireland of the Supreme Judicial Court of Massachusetts and then for Judge Gerald Heaney of the U. S. Court of Appeals for the Eighth Circuit, and worked for two prominent law firms in Boston, Massachusetts. Professor Cherry's scholarship is interdisciplinary and focuses on the intersection of technology and globalization with business, contract, and employment law topics. In 2016, the University of California Press published Professor Cherry's book *Invisible Labor*, co-edited with Marion Crain and Winifred Poster. Professor Cherry has been a faculty member or visitor at several law schools, including the University of Georgia, University of Missouri, and Cumberland School of Law. She is an elected member of the American Law Institute. In Spring 2018, Professor Cherry will be a visiting researcher at the United Nations' International Labour Office in Geneva.

Lance Compa is a Senior Lecturer at Cornell University's School of Industrial and Labor Relations in Ithaca, New York, where he teaches U.S. labor law and international labor rights. Before joining the ILR School faculty in 1997, Compa directed labor law research at the NAFTA Commission for Labor Cooperation. Before his 1995 appointment to the Commission, Professor Compa taught labor law, employment law, and international labor rights as a Visiting Lecturer at Yale Law School and the Yale School of Management. With colleagues in the Labor Law Group, he is a co-author of International Labor Law: Cases and Materials on Workers' Rights in the Global Economy (West Law Group, 2008). He also has conducted workers' rights investigations and reports on Cambodia, Chile, China, Haiti, Guatemala, Mexico, Sri Lanka and other developing countries. He serves on two federal advisory committees related to his research and teaching: the Department of Labor's National Advisory Committee for Labor Provisions of Free Trade Agreements, and the State Department's Stakeholder Advisory Board on the U.S. National Contact Point for the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises.

Marion Crain is Vice Provost for Washington University and the Wiley B. Rutledge Professor of Law. She also holds joint appointments (by courtesy) with the Brown School of Social Work and the Department of Women, Gender & Sexuality Studies in the College of Arts & Sciences. Her scholarship examines the relationships among gender, work, and class status with a particular emphasis on collective action, labor relations and social movements. She is the author, co-author or editor of a labor law casebook, an employment law casebook, two university press books and a commercial press book, as well as numerous law review articles and book chapters on labor and employment law, labor unionism, and the working poor. Professor Crain is a member and past Chair of the Labor Law Group, an international collective of labor and

employment law professors who work collaboratively to improve labor and employment law pedagogy through the production of course materials, and serves on the editorial board of the Employee Rights and Employment Policy Journal. Before joining Washington University's faculty, Professor Crain served as the Paul Eaton Professor of Law at the University of North Carolina in Chapel Hill, where she directed the Center on Poverty, Work & Opportunity and served as Associate Dean for Faculty Research and Development. She has previously taught or visited at the University of Michigan, George Washington University, Duke University, the University of Alabama, West Virginia University, and the University of Toledo. Prior to entering law teaching, she practiced labor and employment law with Latham & Watkins in Los Angeles and clerked for the Hon. Arthur L. Alarcon, U.S. Court of Appeals for the Ninth Circuit.

Kenneth G. Dau-Schmidt, J.D., Ph.D., is the Willard Carr Professor of Labor and Employment Law at Indiana University—Bloomington. Professor Dau-Schmidt is a nationally recognized teacher and scholar on the subjects of labor and employment law and the economic analysis of legal problems. He is author of seven books and many articles on labor and employment law and the economic analysis of law, and he frequently presents papers at academic conferences and law schools across the United States, Canada, Europe, and Asia. In 1990 he received the Scholarly Paper Award from the Association of American Law Schools for his work on the economic analysis of criminal law as a preference-shaping policy. Professor Dau-Schmidt has been involved in several national academic associations. He was elected to the National Council of the American Association of University Professors and appointed to serve on the executive and litigation committees of that organization. He is the past chair of the Labor Law Group and has chaired the Association of American Law School sections on the Economic Analysis of Law and Socio-Economics. In addition, he has served in various capacities on the executive committee of the AALS section on Labor and Employment Law and the Industrial Relations Research Association's section on Labor and Employment Law. He is also a founder of the Midwest Law and Economics Association. Professor Dau-Schmidt has been fortunate enough to be invited to teach at various European and Asian universities, including Christian-Albrechts-Universität in Kiel, Germany; Friedrich-Alexander-Universität in Erlangen, Germany; and Université Panthéon-Assas (Paris II) in Paris. He is also an affiliated faculty member with Peking University's School of Transnational Law in Shenzen, China.

Matthew Dimick is Associate Professor of Law at the University at Buffalo School of Law. He holds a J.D. from Cornell Law School and a Ph.D. from the University of Wisconsin-Madison, where he received a University Fellowship and wrote a dissertation on democracy within trade unions under Erik Olin Wright and Ivan Ermakoff. Between law school and graduate school, Dimick was a Law Fellow for the Service Employees International Union in Washington, D.C. Before coming to Buffalo, he was a Law Research Fellow at Georgetown University Law Center. Dimick's research and teaching interests center on the law, policies, and politics of economic inequality. He has taught courses in federal income taxation, tax policy, comparative corporate governance, labor law, employment law, and comparative/international labor and employment law. Methodologically, he pursues his research interests by building formal models of comparative law and politics to analyze the distribution and redistribution of income in advanced industrial societies. Current research projects include a theoretical and empirical

study of the relationship between altruism, income inequality, and preferences for redistribution in the United States; a formal model of the role of labor market institutions in redistributive politics that revises the predictions of standard political economy models of redistribution; and a theoretical and case-study analysis of the politics of regulating low-wage work in advanced industrial societies.

Richard A. Epstein is the inaugural Laurence A. Tisch Professor of Law at the New York University School of Law. He has served as the Peter and Kirstin Bedford Senior Fellow at the Hoover Institution since 2000. Professor Epstein is also the James Parker Hall Distinguished Service Professor of Law Emeritus and a senior lecturer at the University of Chicago. He has been a member of the American Academy of Arts and Sciences since 1985, and has been a senior fellow of the Center for Clinical Medical Ethics at the University of Chicago Division of Biological Sciences since 1983. He was a winner of the Bradley Prize in 2011. Professor Epstein has written many articles on a wide range of legal and interdisciplinary subjects, as well as over 15 books; his most recent is The Classical Liberal Constitution: The Uncertain Quest for Limited Government (Harvard U. Press, 2014). He has also edited (with Catherine Sharkey) Cases and Materials on the Law of Torts (11th edition, 2016). He writes a weekly column for Defining Ideas and is a contributor to Ricochet.com and Forbes.com.

Cynthia Estlund is the Catherine A. Rein Professor at the New York University School of Law, and a leading scholar of labor and employment law. Her writings explore workplace regulation and governance; freedom of expression and procedural fairness at work; diversity, integration, and affirmative action; and many aspects of collective labor law, both in the U.S. and in comparative perspective. Her most recent book, A New Deal for China's Workers? (Harvard, 2017), offers a comparative perspective on reform and its limits in the wake of rising labor unrest in China.

Jesús Fernández-Villaverde is a Professor of Economics at the University of Pennsylvania, where he serves as Director of Graduate Studies in the Economics Department, a Visiting Professor at University of Oxford, a Visiting Fellow at Nuffield College (Oxford), a Distinguished Visiting Professor at University of Melbourne (Australia), a Visiting Scholar at the Federal Reserve Banks of Chicago and Philadelphia and the Bank of Spain, an Advisor to the Hoover Institution at Stanford University's Regulation and Rule of Law Initiative, and a member of the National Bureau of Economic Research, the Center for Economic Policy Research, and A Dynamic and Monetary Union. He is editor of the *International Economic Review*. In the past, he has served on the editorial board of several other academic journals. He has published over two dozen peer-reviewed papers in journals such as American Economic Review, Econometrica, and Review of Economic Studies, and he has edited and co-authored several books.

Catherine L. Fisk is a Professor of Law at the University of California, Berkeley, where she teaches labor and employment law. She was the Chancellor's Professor of Law at the law school of the University of California, Irvine from 2008-2017. Before joining the founding faculty of the UC Irvine Law School, she was a law professor at Duke University, the University of Southern California, and Loyola Law School of Los Angeles. She is the author or co-author of five books

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Ruben J. Garcia is Professor of Law and Associate Dean for Faculty Development and Research at the William S. Boyd School of Law, University of Nevada, Las Vegas. Before joining the Boyd Law faculty, he taught for eight years at California Western School of Law in San Diego. Before then, he was a visiting professor at the University of California, Davis School of Law and a William H. Hastie Fellow at the University of Wisconsin Law School. He received an A.B. from Stanford University, a J.D. from UCLA School of Law, and an LL.M. from Wisconsin. Before law teaching, he practiced labor law on behalf of unions and employees in Southern California. Professor Garcia's primary research and teaching interests are in labor and employment law, with particular attention to the effect of race, gender, immigration, and globalization on the world of work. At UNLV, he teaches Labor Law, Employment Law and Constitutional Law among other courses. He has also taught undergraduates at the University of California, San Diego (UCSD). His research focuses on labor law, immigration policy, and the legal profession. He published his first book with New York University Press in 2012: Marginal Workers: How Legal Fault Lines Divide Workers and Leave Them Without Protection. He was Co-President of the Society of American Law Teachers (SALT) from 2014-2016 and serves on the editorial board of the Employee Rights and Employment Policy Journal.

Charlotte Garden is a Professor of Law at the Seattle University School of Law, and a scholar and teacher of labor law and constitutional law. Her articles about unions and workers have appeared in law reviews as well as popular outlets such as The Atlantic and SCOTUSBlog. She is co-author of a labor law casebook, with Seth Harris, Anne Marie Lofaso, and Joe Slater, and she regularly authors amicus briefs in cases affecting unions and workers. Before joining Seattle University, Professor Garden was a teaching fellow in the Appellate Litigation Clinic at Georgetown University Law Center, where she also received her LLM. Before beginning her law teaching career, she was an associate at the union-side labor law firm Bredhoff & Kaiser PLLC.

Julius G. Getman is the Earl E. Sheffield Regents Chair emeritus at the University of Texas School of Law. He has an LLM and LLB from Harvard and a BA from the City College of New York. Professor Getman is a major scholar in the field of labor law, where he pioneered empirical studies and continues to do extensive field work. Much of his work focuses on the right to strike, including his 2010 book, Restoring the Power of Unions: It Takes a Movement, published by Yale University Press, and The Betrayal of Local 14: Paperworkers, Politics and Permanent Replacements (Cornell, 1998). In 2007, Professor Getman's novel, Strike!, was published by Plainview Press.

William B. Gould, IV is the Charles A. Beardsley Professor of Law, Emeritus, at Stanford Law School. He is a prolific scholar of labor and employment discrimination law and, has been an influential voice on worker-management relations for over forty years. He was the Chairman of the National Labor Relations Board from 1994-98. Professor Gould has been a member of the National Academy of Arbitrators since 1970. He was Independent Monitor for FirstGroup

America from 2008-10. In 2011-2012, he was Special Advisor to the Department of Housing and Urban Development on project labor agreements. From 2014-17, he was Chairman of the California Agricultural Labor Relations Board. Professor Gould is a critically acclaimed author of ten books and more than sixty law review articles. His publications include the historical record of his great-grandfather (Diary of a Contraband: The Civil War Passage of a Black Sailor), and his own Washington story (Labored Relations: Law, Politics and the NLRB: A Memoir). A tenth book, Bargaining with Baseball: Labor Relations in an Age of Prosperous Turmoil appeared in 2011. The fifth edition of A Primer on American Labor Law was published by Cambridge University Press in 2013. Professor Gould has received five honorary doctorates for his significant contributions in the fields of labor law and labor relations.

Michael Z. Green is a tenured faculty member at Texas A&M University School of Law in Fort Worth, Texas. His scholarship focuses on workplace disputes and the intersection of race and alternatives to the court process. He began full-time law teaching after completing the prestigious Hastie Teaching Fellowship and obtaining his fifth degree, Master of Law (LL.M.), from the University of Wisconsin. A juris doctorate cum laude graduate with a Master's Degree in human resources and industrial labor relations, both from Loyola Chicago University, he has authored many law articles and book chapters.

Jeffrey Hirsch is the Associate Dean for Strategy and Geneva Yeargan Rand Distinguished Professor of Law at University of North Carolina School of Law. Prior to teaching, Professor Hirsch was a litigator in the Appellate Court Branch of the National Labor Relations Board in Washington, D.C. and served as a judicial clerk for the Judge Haldane Mayer on the U.S. Court of Appeals for the Federal Circuit and Judge Robert Beezer on the U.S. Court of Appeals for the Ninth Circuit. Professor Hirsch writes extensively on labor and employment law issues, and is a contributing editor of the Workplace Prof Blog, a member of the Labor Law Group, and a Research Fellow at the New York University Center for Labor and Employment Law.

Ann C. Hodges is Professor of Law at the University of Richmond where she has twice won the University's Distinguished Educator Award. Her teaching and research focuses on labor and employment law and nonprofit organizations. Professor Hodges is co-author of two books, Public Sector Employment and Principles of Employment Law. She has also published numerous articles and book chapters. Her scholarship focuses primarily on public sector employment, the intersection of labor and employment law, and alternative dispute resolution. She is a member of the Labor Law Group, which develops labor and employment law teaching materials for students. Professor Hodges has made professional presentations to academics, practitioners in labor and employment relations, nonprofit organizations, health care professionals, and cancer patients and their families. In 2014, she received the Elizabeth Hurlock Beckman award for inspiring former students to make a difference.

Richard D. Kahlenberg is a senior fellow at The Century Foundation, where he writes about education, civil rights, and labor. He is the author of six books, including Why Labor Organizing Should Be a Civil Right: Rebuilding a Middle-Class Democracy by Enhancing Worker Voice (with Moshe Marvit) (Century Foundation Press, 2012) and Tough Liberal: Albert Shanker and the

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Patrick J. Wright is Vice President for Legal Affairs at the Mackinac Center for Public Policy, where he directs the Mackinac Center Legal Foundation. He joined the Center in June 2005, after serving for three years as a Michigan Supreme Court commissioner, a post in which he made recommendations to the Court concerning which state appeals court cases it should hear. Before that, Wright spent four years as an assistant attorney general for the State of Michigan, where he gained significant litigation and appellate advocacy experience. He joined the State Attorney General's Office after one year as a policy advisor in the Senate Majority Policy Office of the Michigan Senate. Wright also spent two years as a law clerk to Hon. H. Russell Holland, a United States district court judge in Alaska. Wright received his law degree at George Washington University in Washington, D.C., where he graduated with honors in 1994. He received his undergraduate degree in political science from the University of Michigan in 1990.