Reworking the Workplace

American labor law is broken, argues a report released in late January by Clean Slate for Worker Power, a project of Harvard Law School’s Labor and Worklife Program. This is not just an academic problem, the report argues: in an era of flat wages and extreme inequality, fixing labor law is key to correcting the imbalance of power between the wealthy and everyone else.

By most estimates, American workers’ wages have fallen far behind productivity growth since the 1970s, while a small socioeconomic cohort has captured an ever-increasing share of the nation’s income growth. During the same period, union membership has fallen to a low of just over 10 percent of the workforce, as the composition of employment itself has changed (more service jobs, fewer unionized manufacturing ones), and policies have changed as well (for example, more states have passed “right-to-work” laws that ban unions from requiring workers whom they represent in collective bargaining to pay dues). Anti-union policies have made it difficult for employees in industries that now make up most of the working-class labor force—including retail, restaurant, and healthcare jobs—to organize. Starting a union requires “herculean battles against nearly impossible odds,” the report states, making the right to unionize guaranteed to U.S. workers by the 1935 National Labor Relations Act (NLRA) all but meaningless.

The ambitious, 100-plus page report lays out an agenda for a revitalized labor law for
the twenty-first century. It would make it easier for workers to organize (by, for example, banning right-to-work laws), to have a voice in corporate decisions that affect them, and to participate in electoral politics. At bottom, the project aims “to shift power from corporations to workers,” said Sharon Block, executive director of the Labor and Worklife Program, at the project’s launch.

Clean Slate engaged from ideas from more than 70 activists, workers, union leaders, lawyers, professors, and others. The report provides a policy blueprint for those working to rebuild the labor movement; along with it, the project has launched a grant program to support projects that pilot, implement, or advance its recommendations, for up to $50,000 each.

Clean Slate begins with the premise that the United States faces two linked crises: economic and political. “It would take an Amazon worker about 4 million years working full-time to earn what Jeff Bezos now has,” said Kestnbaum professor of labor and industry Benjamin Sachs, the co-leader with Block of Clean Slate. “This vast disparity in material wealth means that millions of American families struggle just to barely get by.”

And “This economic inequality translates seamlessly into political inequality,” he continued. “Put simply, when it comes to policy, our government pays no attention to what the poor and middle class want, listening only to the wealthiest...Today in America, the majority does not rule.

“This project is not based on nostalgia for the past,” Sachs added. Even though the labor movement was more powerful in the twentieth century than it is today, especially during the decades after the NLRA became law, he and Block stressed that the labor laws of yesterday were designed to exclude vast swathes of the workforce. The NLRA entirely excludes domestic and agricultural workers, for example—two sectors then dominated by women, people of color, and immigrants.

Before anything else, Sachs said, labor law needs to be expanded to include everyone currently written out of it, including farm and domestic workers, as well as workers who are undocumented, disabled, or incarcerated. The report also stresses employers’ widespread use of independent contractors to skirt labor laws.

“A true independent contractor is someone who runs her own separate business, sets her own rates, builds a customer base, and takes on the risk of business failure,” said Sarita Gupta of the Ford Foundation, one of Clean Slate’s funders. But corporations have applied independent-contractor status to millions of workers who don’t meet this definition: ride-share-app drivers, janitors, nannies, construction workers, and others. The report advocates making it much harder to classify workers as independent contractors, effectively assuming that all workers are employees unless the company can prove otherwise.

The report would make it significantly easier to organize traditional unions or other forms of representation, like works councils or workplace monitors. Its host of recommendations include significantly increasing penalties on employers that try to intervene in organizing; making strikers eligible for unemployment insurance; and creating “digital picket lines” to tell online shoppers if they’re buying from a company whose workers are on strike.

Clean Slate also recommends making it easier for workers to participate in U.S. civic life by mandating nationwide same-day voter registration, early voting, and voting by mail—as well as giving them paid time off to vote.

Workers should have a voice not just in the issues that unions traditionally bargain over, like wages and benefits, the report argues, but also in larger corporate decisions that affect them. It proposes giving workers 40 percent representation on corporate boards, and requiring a board supermajority to approve decisions that most affect employees’ lives. This “co-determination” structure, as Ruben Garcia, professor of law at the University of Nevada at Las Vegas put it, would “change the presumption of shareholder primacy...toward a presumption toward workers themselves.”

Another major reform advocated by Clean Slate is a system of sectoral bargaining, similar to that in many European countries: workers would bargain not just with their employers, but also at the industry level. Such systems provide collective bargaining to more workers and help remove the incentive for individual employers to fight unionization if they think it will put them at a disadvantage relative to their competitors. It also makes it easier for people like nannies and freelancers, who aren’t employed in a traditional workplace, to organize.

Such a system would address the proliferation of “fissured” workplaces in the economy, where employers farm out their work to independent contractors to avoid labor laws, said Larry Cohen, the labor chair for Senator Bernie Sanders’s organization Our Revolution.

Work on Clean Slate began after Block, formerly head of the policy office at the U.S. Department of Labor during the Obama administration, arrived at Harvard Law School in 2016. She felt that real progress had been made on labor issues during her service in Washington, but says that with the election of Donald Trump, “We ended up with a president and an administration that does not care about the rights and dignity of workers.

“Rather than fold, give up the fight, or lose focus,” she continued, “I and others...gained clarity. We realized that there was still a hunger among many to make sure that labor law works in the way intended, to the benefit of the people doing the work.” To that end, Clean Slate has advanced an alternative vision for debate now and in the years ahead. Read additional details at harvardmag.com/labor-law-20.

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