CLEAN SLATE FOR WORKER POWER:
BUILDING A JUST ECONOMY AND DEMOCRACY

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Since the founding of the country, concentration of power in the hands of a small minority has been recognized as a threat—perhaps the primary threat—to the viability of American democracy. This threat of concentrated power motivated the drafters of the U.S. Constitution to advocate for a system of checks and balances and a division of authority between state and federal governments. Concern over concentrated power explains the founders’ desire to ensure that a “multiplicity of interests” would be represented in the decisions of the national government. This aspiration finds expression in core principles of our democratic system: in the idea that every person should have one vote, no more and no fewer; in the idea that we are to have a republican form of government, not an oligarchy or an aristocracy; in the idea that we are all equal before the law.

But, since the founding of the country, the struggle to uphold these constitutional principles against the threat of concentrated wealth has been a continual one. This struggle was central to the story of the New Deal. Thus, President Franklin Delano Roosevelt critiqued wealthy business and financial elites by naming them “economic royalists,” thereby invoking the American revolutionary struggle against political royalism. As FDR put it in 1936: “For too many of us the political equality we once had won was meaningless in the face of economic inequality.” This democratic struggle against concentrated economic power has also been core to the highest aspirations of the labor movement. Dolores Huerta, leader of the United Farm Workers’ historic organizing effort, put it this way: “Organized labor is a necessary part of democracy, because organized labor is the only way to have fair distribution of wealth.”

The struggle to preserve democracy in the face of extreme wealth concentration is a defining feature of our current historical moment because we live in a time of radical economic inequality. The point can be illustrated with any number of statistics, and it is worth reviewing a few of them:
The average Amazon worker makes $29,000 per year, while Jeff Bezos, the CEO of Amazon, has a net worth of $110 billion. This means it would take an Amazon worker 3.8 million years, working full time, to earn what Bezos now possesses. It would take an Uber driver, driving full time, nearly 150,000 years to earn what Uber co-founder Travis Kalanick made on the Uber IPO.

The country’s wealthiest 20 people own more wealth than half of the nation combined—20 people with more wealth than 152 million others.

The wealthiest 100 U.S. households own approximately as much wealth as the country’s entire Black population.

The wealthiest 186 people own as much wealth as the entire Latinx population of the country.

Income inequality in America, as measured by the Gini coefficient, is now the highest it’s been since the Census Bureau began keeping track of the distribution of incomes.

You can work full time in America and still live in poverty; one in nine U.S. workers are paid wages that can leave them in poverty.

As the founders, Roosevelt, and Huerta warned, this vast disparity in economic power has translated into an equally shocking disparity in political power. Recent political science reveals, for example, that “the views of constituents in the bottom third of the income distribution receive[ ] no weight at all in the voting decisions of their Senators”; that presidents respond to the “narrow political and economic interests” of the wealthy; and that “when preferences between the well-off and the poor diverge, government policy bears absolutely no relationship to the degree of support or opposition among the poor.” Summarizing these findings, Martin Gilens and Benjamin Page conclude bluntly that in 21st century America, “the majority does not rule—at least not in the causal sense of actually determining policy outcomes.”

Accordingly, we face dual crises of inequality that reinforce and exacerbate each other in a vicious cycle: as economic wealth gets more and more concentrated, the wealthy build greater and greater political power that they, in turn, translate into favorable policies that lead to even more profound concentrations of wealth. And on and on.

The question is how to stop this downward spiral that threatens not only the economic survival of millions of American families but also the future of American democracy. There is, for better or worse,
We know from history that when workers come together and collectively build organizations that are capable of countervailing the power of the wealthy and the power of corporations, the outcomes are profound. Indeed, a large part of the explanation for our current crisis of economic inequality is the decline of the labor movement. Unions redistribute wealth—from capital to labor, from rich to poor—and without unions, we have lacked for a check on economic concentration. The decline of the labor movement also explains much of the current crisis of political inequality. When unions were strong, they helped ensure that the government was responsive to the needs and desires of the poor and middle class; without unions, these millions of lower-income Americans have lost their most effective voice in our democracy. Huerta was right: Powerful organizations of working people are necessary for economic justice and political democracy.

The question, however, is not how to restore the economy and the politics of 70 years ago. Nor is it how to restore the labor movement of that era. These cannot be the questions because although American democracy and the American economy were more responsive and more inclusive then, they were still profoundly exclusionary. Across our entire history, access to economic and political power has been unforgivably shaped by racial and gender discrimination, by discrimination based on immigration status, by sexual orientation and gender identity discrimination, and by ableism. And, truth be told, the American labor movement has itself often failed to insist upon a genuinely inclusive and equitable America.

What we need, then, is a new labor law that is capable of empowering all workers to demand a truly equitable American democracy and a genuinely equitable American economy. There are many recommendations in this report for how to construct such a labor law, but all of them are geared toward achieving this overarching goal. As such, while the policy recommendations are detailed and at times complex, the theory of Clean Slate is simple: When labor law enables working people to build organizations of countervailing power, the people can demand for themselves a more equitable nation.

In order for labor law to succeed in this mission, it must do far more than it does today. In sum, and as we develop in detail below, this new labor law must enable workers to build collective organizations that can countervail corporate power wherever that power impacts workers’ lives.
This means that labor law must allow workers to build power in the workplace, across industries and markets, at the level of the corporate board, and in our political system. Our recommendations attempt to ensure that workers can build collective power at each of these levels.

Giving workers a voice at work has always been a core aspiration of labor law. This component of a labor law regime advances the goal of bringing democratic values into the workplace and counteracting what otherwise is a sphere defined by autocratic managerial rule. The more we pay attention, moreover, the more we learn about the costs of autocratic workplace governance. Without the protections that come from a robust labor law and a strong collective organization of their peers, working people are simply too vulnerable to abusive employer authority. This vulnerability manifests in unsafe and unhealthy working conditions, wage theft, discrimination, and harassment. When workers fear that protesting such abuses will result in job loss, they are understandably hesitant to protest them—a lesson that has become painfully evident in recent years. With the backing of strong legal protections, including a just-cause dismissal standard, and the collective power of a workers’ organization, workers are better positioned to resist these intolerable conditions.

But while voice at work has long been central to labor law, we have had too narrow a vision of the appropriate scope of this right. This is true in at least two major respects. First, labor law has limited workers to a stark, binary choice about collective representation: They can choose to be represented by an exclusive collective bargaining union, or they can have nothing. And because labor law has made it so difficult for workers to choose a union, most are left with nothing. We can address this set of problems by giving workers a menu of representational choices—workplace monitors, works councils, members-only unions, and exclusive representative collective bargaining unions—and by making it far easier for them to embrace all of these choices.

Second, the range of issues over which workers can claim a right to voice has also been far too narrow. In recent years, workers have made the narrowness of the traditional regime evident by demanding involvement in matters beyond what we have historically defined as “terms and conditions of employment.” Thus, teachers are asking their school districts to address class sizes, affordable housing, and the lack of school nurses. Health-care workers are making demands about patient safety. Google employees protested the firm’s creation of a censored search engine for the Chinese market, Accenture workers asked their employer to cancel a contract to help the Trump Administration recruit border patrol agents, and Wayfair employees wanted a say in their firm’s decision to supply furniture to ICE. More and more workers want a role in addressing how their employers are contributing to—and how
they might stop contributing to—the climate crisis. The democratic principles that give workers a claim to voice over wages and hours similarly demand that workers have voice in these other decisions that their firms make and that have profound impacts on the workers and their communities.

The history of the past five decades teaches us, however, that—as critical as it is for workers to build countervailing power at work—limiting legal protection to collective organization at the employer level has come at an enormous cost. For one thing, as our labor market has evolved, as employment relationships have fissured, and as more and more employers have attempted to replace employment with independent contracting, it has become increasingly difficult for workers to organize in workplace units effectively. Put more simply, as the “employer” becomes less of a central organizing principle for work in America, employer-based organizing and bargaining are more difficult and less effective. Of equal importance, if worker representation occurs only at the workplace level, then every time an employer is organized, that employer may have the perception of being placed at a competitive disadvantage vis-à-vis the other employers in its sector of the economy. American labor law has, since its inception, privileged this kind of enterprise-level bargaining and, by doing so, has essentially baked an anti-union animus into American labor relations.

We address these issues by recommending that—in addition to far more robust protection for workplace representation and bargaining—American labor law provide for a system of sectoral collective bargaining. Among its many virtues, sectoral bargaining addresses the problems of fissuring: It matters not whether
someone is employed directly, is employed by a subcontractor or by a franchisee, or is an independent contractor; if they work in the sector, they are covered by the sectoral collective bargaining agreement. Sectoral bargaining is also important for disaggregated industries, such as domestic work. And sectoral bargaining helps solve the competitive problem inherent in a system that is limited to enterprise bargaining: Sectoral agreements can help take wages and working conditions out of competition for all the firms in the sector.

Powerful organizing and bargaining, at the workplace and across sectoral levels, are two core ways for workers to countervail the power of corporations, but these are not the only ways. Because key corporate decisions are made by corporate boards, workers should be positioned to exercise power at the level of the corporate board. To this end, we recommend giving workers significant representation on corporate boards and requiring that certain board decisions—those with the greatest impacts on the lives and communities of a firm’s workers—be made according to supermajority voting rules. We also recommend allowing workers to bargain over corporate-level decisions with major impacts on workers—extending the bargaining right, that is, to decisions that have historically been deemed at the “core of entrepreneurial control.”

Most broadly, labor law needs to empower workers to countervail corporate power in politics. In important ways, all of the reforms we recommend would facilitate the construction of political power for workers because, as we have already argued, economic power translates into political influence. So, as workers organize and rebalance the distribution of wealth, they would also be in a position to rebalance political inequality. However, we also recommend reforms targeted specifically at politics: changes to election rules that would make it easier for working people to participate in elections, including paid time off to vote and paid time off for other forms of civic activity.
Finally, one additional outcome of the project of rebuilding workplace democracy bears discussion, especially at this moment in our nation’s history. The drafters of the Wagner Act understood that participation in workplace democracy gives working people the experience of a democratic process that can otherwise be remote in their political life. Indeed, democracy at work is not only a value in its own right, but it also facilitates the development of an active citizenry more likely to— and more empowered to— participate in democratic political life. In giving workers a venue to raise their voices together against abuse of authority, democracy in the workplace can make an authoritarian society less likely. At a time when the foundations of our democracy are being questioned, the project of creating a widespread system of workplace democracy takes on additional urgency.

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Enabling working people to countervail the power of the wealthy and of corporations, wherever that power is exercised, is a critical endeavor. It is also a massively ambitious undertaking. As this brief introduction should suggest, we cannot realize these ambitions simply by amending the current federal labor statute. As important as such amendments could be, the project of addressing economic and political equality calls for much more than that. And so, animating our work has been the recognition that the scope of this project requires us to stop tinkering and to start fundamentally reimagining American labor law. The question we seek to answer is: What would labor law look like if, starting from a clean slate, it was designed to empower working people to build an equitable economy and politics?