Evidence

Old ways, new gigs—
the transformation of employment.
by Jane Whitehead and Gabriel Freimien ’20

As an international authority on labor and employment law, BC Law Professor Thomas C. Kohler asked fundamental questions about the nature and dignity of work and its impact on the people who perform it.

In 2008, he wrote of a looming crisis in labor and employment law globally and an urgent need for new thinking about “this kind of global economic and work relationship that will sustain democracy and allow humans to flourish.”

Nowadays, he sees an acceleration in the breakdown of long-established norms governing employment and a growing tendency of employers to see workers purely as profit centers, “mostly fungible and fully disposable.” The rise of the gig economy, he says, has challenged legal systems worldwide to reconsider who is and who is not an employee, and what that means in a era of unstable working relationships. That shift is perhaps most unbridled in the US than in other advanced societies, says Kohler. No other country he knows of has “employment ‘at will,’” a system supposed to be conducive to the freedom of both employers and employed, but in fact is highly favorable to employers. Benefits are favored for Europeans, but in the US, employers’ side lawyers once believed that “collective bargaining as a private ordering system was far more desirable than state ordering of the employment relationship.”

Another key change is erosion of the consensus that workers’ right to organize is a legitimate part of democracy. Kohler recalls that even tough employers’ side lawyers once believed that “collective bargaining as a private ordering system was far more desirable than state ordering of the employment relationship.” He notes recent SCOTUS decisions as evidence of the Court’s willingness to dismantle the very systems of self-organization he regards as the backbone of democracy. The stakes are high: “Work is a moral issue, and experience from 1980 to 2015

<table>
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<tr>
<th>Earnings</th>
<th>Minimum wage earners over the age of 24</th>
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<td>Women</td>
<td>13.4% Workers made $100,000+</td>
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<tr>
<td>Men</td>
<td>3.8% Workers made $74,000+</td>
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Recent Cases

- Epic Systems Corp. v. Lewis, 138 S. Ct. 1575 (2018). Ruled that arbitration clauses in employment agreements that require individual arbitration as opposed to class arbitration or class action are enforceable under Federal Arbitration Act, regardless of allowances within National Labor Relations Act.

20% of workers who belonged to unions in 1983
10% of workers who belonged to unions in 2017

Union

- National Education Association
- Service Employees International Union
- American Federation of State, County and Municipal Employees
- United Brotherhood of Teamsters
- United Food and Commercial Workers

2018: Health care unsupervised manufacturing and retail, the most significant job engine of 20th century, has become largest source of US jobs.

68% increase of workers in occupations requiring average to above-average education, training, and experience from 1980 to 2015

Some large employers, including Amazon, Costco, Target, and Walmart, have promised to set internal minimum wages above the federal minimum wage.