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Author

Mishel, Lawrence

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Lawrence Mishel, Economic Policy Institute[*]

Introduction—The Goliath in the Room: How the False Assumption of Equal Worker–Employer Power Undercuts Workplace Protections

Abstract: The belief that employers and workers have equal power and are therefore "free to contract" continues to hold sway among employers and jurists, but not among those who live in the real world of work. The papers in this issue rebut this assumption of equal power by examining the claims made in philosophy and law to support it, contrasting those claims with the realities of the labor market, and showing that limitations on management power do not generate adverse economic outcomes—and may even enhance it.

Keywords: freedom of contract, bargaining power, private government, employment

I. Introduction

It is common sense and common knowledge that inequalities in workplace power are persistent and consequential. Shifts in workplace power have become especially visible over the last few years, as the US transitioned from pandemic-induced high unemployment to a strong recovery characterized by labor shortages. Nevertheless, a pervasive and faulty assumption of equal power between employers and employees runs through employment law, philosophy, political science, and economics, and this assumption distorts policies and disadvantages the vast majority.

This issue of the *Journal of Law and Political Economy* elaborates the important role of this assumption of equal power in philosophical debates about freedom—recently energized by Elizabeth Anderson's *Private Government* (2017)—and in the shaping of employment law and policy. The papers here provide social-scientific evidence that challenges the equal-power assumption, and the freedom of contract framework it supports, in philosophy and law.

Casual observation of labor market trends of the last few years is enough to clarify the existence and consequences of labor market power. Ironically, labor market power has been most widely discussed during a recent rare period of greater *worker* power. The fact that workers gained leverage in the labor market in 2021 and 2022, and that employers have had to raise wages, has become common knowledge among economists, analysts, and workers themselves. The exodus of workers from their pre-pandemic jobs has sometimes been described as the Great Resignation, but the great bulk of workers, rather than leaving the labor force, quit to move to better-paying jobs. Workers felt empowered to quit

[*] Former president of the Economic Policy Institute. Please direct correspondence to lmishel@epi.org. I greatly appreciate the helpful comments from Ross Eisenbrey, Cindy Estlund, Ellen Kurlansky, Wilma Liebman, Henry Mishel, Shakked Noy, Brishen Rogers, and John Schmitt. Pat Watson's editing made this vastly better, as usual.

because of historic levels of job openings and job creation, and a corresponding rapid decline in unemployment, all driven by policies that stimulated the economy.

The rise of worker power in 2021 and 2022 stands in stark contrast to the pandemic-induced high unemployment situation of 2020, when many essential workers felt so powerless that they stayed in unsafe and potentially deadly jobs in order to feed their families. The 2021–2022 period also represents a sharp (if temporary) reversal of the well-documented erosion of worker power and the suppression of wages during the preceding four decades (Bivens, Mishel, and Schmitt 2018; Stansbury and Summers 2020; Stiglitz 2021; Mishel and Bivens 2021a). It is noteworthy that both major parties' convention platforms in 2016 highlighted the "rigging of the economy" and the wage suppression of the prior decades.[1]

Yet, the recent power tilt toward workers has hardly made a dent in the decades-long deterioration of workers' job quality, job security, and compensation. Though net productivity grew 59.7% from 1979 to 2019, the compensation of a typical worker grew just 13.7%. That 46-percentage-point gap represents a shortfall in compensation of about one percentage point each year for four decades (Mishel and Bivens 2021b).

In discussing the equal-power assumption in the workplace between employers and employees, it is worth keeping in mind Cynthia Estlund's observation that phrases such as "'inequality of bargaining power" are easily misunderstood or misused (Estlund forthcoming) It is not worth quibbling over whether or not employee and employer power are or could be precisely equal in some measurable way. As Estlund says, "[e]ven if labor market power is variable, contingent, and hard to measure, it's a real thing, and employees can have more or less of it" (Estlund forthcoming, n.p.). What matters is that the prevailing asymmetry of power matters "enormously to employees' life at work and beyond."

This issue proceeds as follows. The first two articles examine the economic claims made in law and philosophy to support the equal-power assumption. Chetan Cetty identifies the claims made by those seeking to rebut Elizabeth Anderson's work in philosophy debates. Julia Tomassetti details the economic claims made by judges and legal scholars in support of the equal power/freedom-of-contract thesis. The remainder of the issue offers empirical, social-scientific evidence that challenges these economic claims.

The next three articles delve into the realities of the labor market, showing that the power to quit does not prevent worker exploitation. Kathryn Anne Edwards, Suresh Naidu and Michael Carr, and Lawrence Mishel all document divergences between the equal-power/freedom-of-contract framework and how the labor market actually works. In particular, these papers show that quitting—which in theory is supposed to empower workers and curb employer power—is usually not so easy for workers. Rather, the circumstances that inhibit workers from quitting contribute to substantial, systematic employer power over wages and working conditions. The mere fact that the economy is rarely at full employment, and never is for large segments of the workforce, skews outcomes under any framework,

[1] The Republican Party platform read: "Our economy has become unnecessarily weak with stagnant wages. People living paycheck to paycheck are struggling, sacrificing, and suffering." The Democratic platform read: "But too many Americans have been left out and left behind. They are working longer hours with less security. Wages have barely budged and the racial wealth gap remains wide, while the cost of everything from childcare to a college education has continued to rise."

such as "freedom of contract," that presumptively honors contractual agreements between employers and employees.

In the third section, John Evans and William Spriggs, Ben Zipperer, and Benjamin Schoefer, Simon Jager, and Shakked Noy examine oft-repeated claims that restricting management's rights will lead to adverse economic outcomes—or even bring about the end of free enterprise. The authors examine empirical evidence on the consequences of certain policies that constrain managerial decisions: wage mandates such as the minimum wage; restrictions on labor flexibility stemming from collective bargaining or government regulations; and the strongest codetermination systems in Europe, which provide vehicles for worker voice at the board and workplace levels. This body of evidence shows that the kinds of restrictions of management's rights commonly sought by worker advocates benefit workers and do not lead to adverse economic outcomes for firms, workers, or the economy.

This introduction closes by noting that failing to acknowledge power asymmetries between workers and managers leads to income inequalities and wage suppression, especially for racial outgroups.

II. Anderson on Power Imbalance and Freedom in the Workplace

In her book, *Private Government: How Employers Rule Our Lives (and Why We Don't Talk about It)*, University of Michigan philosopher Elizabeth Anderson (2017) argues for a reconsideration of the prevailing wisdom on the nature of the arrangements between employers and employees. She equates the "private government" of the workplace to "communist dictatorships in our midst":

> Imagine a government that assigns almost everyone a superior whom they must obey. Although superiors give most inferiors a routine to follow, there is no rule of law. Orders may be arbitrary and can change at any time, without prior notice or opportunity to appeal. Superiors are unaccountable to those they order around. They are neither elected nor removable by their inferiors. Inferiors have no right to complain in court about how they are being treated, except in a few narrowly defined cases. They also have no right to be consulted about the orders they are given. (Anderson 2017, 37)

Anderson notes that when philosophers defend freedom, they focus almost exclusively on protecting citizens from government action, and usually ignore how employers suppress essential freedoms. Excessive employer power is presumed away on the theory that market forces—in particular, a worker's ability to quit—prevent exploitation. Similarly, Anderson observes that for some economists, "wherever individuals are free to exit a relationship, authority cannot exist within it" (Anderson 2017, 55). These economists regard employment relationships as no different than the purchase of any other commodity: "I have no contract to continue to purchase from the grocer and neither the employer nor the employee is bound by any contractual obligations to continue their relationship" (Alchian and Demsetz 1972, 777).

Anderson answers by pointing to the fundamental imbalance of power in the employment relationship. Economists "may be hoodwinked by the superficial symmetry of the employment contract: under employment-at-will, workers, too, may quit for any or no reason. This leads them to represent quitting as equivalent to firing one's boss. But workers have no power to remove the boss from his position within the firm" (Anderson 2017, 56).

Anderson contends that three types of freedom are constrained by employers: positive freedom, or the ability to choose from a range of options; negative freedom, meaning freedom from interference; and republican freedom, which consists in freedom from the arbitrary, unaccountable will of others. Freedom of speech (Garden, this issue) and freedom over one's own person—i.e., the ability to protect oneself from injury, illness, and death on the job (Rosenthal 2021)—illustrate her thesis.

Americans profess to value their right to free speech, but the Constitution protects speech only from government intervention; it does not protect workers from employer-imposed limitations on their ability to communicate at work, or even off duty. Garden (also see Gourevitch 2014) provides examples: An employer compelled its unionized workers to choose between attending a Trump rally, taking a day of paid leave, or staying home without pay. Workers have been fired for expressing their support for the "wrong" political candidate. Workers face pressure from their bosses to donate to or vote for certain candidates. Workers are required, under threat of dismissal, to take part in Bible study during working hours. During the COVID-19 pandemic, workers lost their jobs for raising questions about the safety of the workplace for themselves and customers, and workers were prohibited from revealing their own positive COVID diagnoses to coworkers. In short, employers can suppress free speech, on the job and off, across a wide swath of the private-sector workforce, especially worksites not covered by a collective bargaining agreement.

This loss of freedom of speech is a direct consequence of the employment-at-will doctrine, which, as discussed below, rests on the presumption that employees can quit as readily as they can be replaced by an employer. Though there are limitations on employer power over speech, Garden shows that the combination of legal rules such as the at-will doctrine and the difficulty of enforcing workplace rights means that "[f]reedoms that many Americans hold dear . . . stop at the workplace door" (this issue). In addition, Ann Rosenthal points out:

> Employers retain considerable powers over their workers' abilities to protect themselves from injury, illness, death, and loss of human dignity. From being able to decide when—or whether—to use the bathroom to protecting themselves from toxic substances, refusing to perform particularly hazardous tasks, learning about the hazards at their workplaces, or obtaining appropriate medical care for occupational injuries, workers are at the mercy of potentially dictatorial employers. (Rosenthal 2021, 1)

The death on the job of eight workers at a Kentucky candle factory and six in an Amazon warehouse when tornadoes struck the Midwest in December 2021 vividly illustrates the ineffectiveness of quitting, either as a constraint on employer exploitation or as a protection of basic worker freedoms. As Nolan wrote in *The Guardian* :

> Why did they die? They died because they were inside their workplaces in the path of the storm. They died because they did not leave work before disaster struck. And they did not leave work because they were allegedly ordered not to, by their bosses. The factory workers in Kentucky say that managers threatened to fire them if they left. Amazon workers say that they were told not to leave in advance of the storm. (Nolan 2021, n.p.)

Every one of those workers who died was free to quit, to walk off the job for good. Yet they stayed—unwilling to quit or to risk being fired—because of the high costs and uncertainties of joblessness and job searches. These incidents reveals the disparities of power in workplaces and in the labor market—disparities that, for these workers, were deadly.

Anderson concludes that public discourse:

> . . . pretends that the constitution of workplace government is somehow the object of voluntary negotiation between workers and employers. This is true only for a tiny proportion of privileged workers. The vast majority are subject to private, authoritarian government, not through their own choice, but through laws that have handed nearly all authority to their employers. It is high time that public discourse acknowledged this reality and the costs to workers' freedom and dignity that private government imposes on them. (Anderson 2017, 71)

III. Equal Power and the Freedom of Contract Framework in Employment Law

The assumption of equal (or equal-enough) power is deeply embedded in employment law, and provides the foundation for the freedom of contract framework. This framework posits that, because employers and employees have equal power to enter or reject an employment relationship, their negotiated arrangements are optimal—self-evidently better than either party's next-best alternative—and should not be lightly altered or regulated by external forces, such as government-set labor standards or unions. Yes, as Justice Ginsburg noted in her dissent in *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612, 1634–35 (2018), the legislature is empowered to intervene (unlike in the pre-New Deal period); and some statutes, such as the National Labor Relations Act (NLRA) and the Fair Labor Standards Act (FLSA), do acknowledge and address workplace inequalities. Yet even these components of employment law are weakened by the equal-power assumption, as explained below.

Samuel Bagenstos explains that the US Supreme Court based the doctrine of employment at will on the equal-power assumption:

> In [*Adair v. United States,* 208 U.S. 161 (1908)], Justice Harlan wrote that "the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee." He went on to say that "the employer and the employe [sic] have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land." And he declared, "it cannot be . . . that an employer is under any legal obligation, against his will, to retain an employe in his personal service any more than an employe can be compelled, against his will, to remain in the personal service of another." (Bagenstos 2020, 11)

Richard Epstein (1984), in his iconic defense of the common law at-will doctrine, also relies heavily on the presumed equality between employer and employee. As Epstein notes, the at-will contract has occupied a prominent place in the common law of employment since the nineteenth century. The basic position was well set out by the Tennessee Supreme Court in an oft-quoted passage from *Payne v. Western & Atlantic Railroad*, 81 Tenn. 507 (Tenn. 1884):

> [M]en must be left, without interference to buy and sell where they please, and to discharge or retain employees at will for good cause or for no cause, or even for bad cause without thereby being guilty of an unlawful act *per se*. It is a right which an employe [sic] may exercise in the

> same way, to the same extent, for the same cause or want of cause as the employer. *Payne*, 81 Tenn. at 518-19.

Thus, Epstein wrote, under an at-will arrangement "[t]he employer is free to demand whatever he wants of the employee, who in turn is free to withdraw for good reason, bad reason, or no reason at all" (966).

Freedom of contract logic remains ubiquitous today. Notably, the framework was central to the Supreme Court's 2018 opinion in *Epic Systems*, which held that under the Federal Arbitration Act (FAA), contractual provisions for individualized arbitration proceedings must be enforced, despite the FAA's saving clause and the NLRA's right to engage in concerted activity. Instead of being able to enforce their rights through litigation, or even collective arbitration, workers subject to such contractual provisions are limited to the remedy of private, individual arbitration proceedings.

Writing for the 5-4-majority, Justice Gorsuch presented the issue as a matter of an individual's freedom of contract: "Should employees and employers be allowed to agree that any disputes between them will be resolved through one-on-one arbitration? Or should employees always be permitted to bring their claims in class or collective actions, no matter what they agreed with their employers?" *Epic Systems,* 138 S. Ct. at 1612. The majority embraced the freedom of contract framework—even though employers imposed the forced individual arbitration agreements on employees long after they had accepted employment, simply notifying current employees by email of the new terms and declaring that showing up for work the next day would signify acceptance.

In her dissent, Justice Ginsburg highlighted the inherent power imbalance in employment contracts as the key fault line between liberal and conservative legal positions on employment regulation. The Norris-LaGuardia Act, as well as the NLRA, Justice Ginsburg noted, were based on the premise that "employees must have the capacity to act collectively in order to match their employers' clout in setting terms and conditions of employment." *Epic Systems,* 138 S. Ct. at 1634. From this perspective, the employer-designed arbitration clauses forcing employees to forgo the use of class actions in either a court or arbitration are simply updated versions of the yellow-dog contracts prohibited more than 80 years ago. Justice Ginsburg pointed out that the wave of New Deal legislation that still forms the foundation of modern labor and employment law—especially the NLRA and the FLSA—was founded on an understanding of the inherent inequality of bargaining power between employees and employers, and the need for workers to be able to act collectively. Indeed, these New Deal statutes were intended to set a legal floor for labor standards in order to maintain acceptable employment outcomes.

Nonetheless, the equal-power assumption pervades employment law. Bagenstos (2020, 2) argues that it undermines constitutional, statutory, and common law protections in the workplace, and he notes that the trend of judicial rulings ignoring imbalances of bargaining power has accelerated in recent years. This trend flies in the face of growing evidence—approaching a consensus among labor economists—that the balance of workplace power has shifted against workers for several decades. Indeed, the accumulating economics research, reviewed in this issue by Naidu and Carr, shows that employer power is pervasive and has contributed to wage suppression and erosion of labor's share of income.

Bagenstos argues that the equal-power assumption distorts employment law in five important ways: (1) it shores up the default principle of at-will employment; (2) it weakens statutory protections against discrimination; (3) it enables employers to misclassify employees as independent contractors; (4) it extends the domain of forced individual arbitration; and (5) it sustains unjust "right-to-work" laws.

- *At-will*: As we have seen, the equal-power assumption underlies the common law at-will doctrine, which in turn, according to Bagenstos, "reinforces status hierarchies in the workplace by requiring workers to accept all manner of indignities on pain of losing their jobs" and "allows a background principle of free contract and managerial prerogative to take precedence over democratically adopted regulations of the work relationship" (Bagenstos 2020, 11). Moreover, the power of the at-will presumption has inhibited common law developments that might have protected worker speech and privacy.[2]

- *Statutory protections against discrimination:* The at-will doctrine has, in many cases, made it impossible for workers "to challenge intentional race or sex discrimination, retaliation for their union activity, and other violations of the law" (Bagenstos 2020, 13). As Cynthia Estlund notes, "[I]f employers are free to discharge workers for good reasons, bad reasons, or no reason at all, they can easily hide the bad motive that violates antidiscrimination, anti-union, or anti-retaliation laws" (Estlund 1996, 1671).

- *Employee status and independent contractors:* Legal tests that distinguish between "employees" and "independent contractors" focus on the control that employers have over employees once the work relationship starts, but they ignore the disparities of power against which the employment contract is formed in the first place. As a result, courts tend to treat all employment terms as freely chosen by workers (Bagenstos 2020, 15-16).

- *Forced arbitration:* As detailed above, the workers' agreement to arbitrate in *Epic Systems* "occurred when the employer sent an email to incumbent employees telling them that showing up to the job the next day would constitute agreement to arbitration of workplace disputes" (ibid., 19). For Bagenstos, as for Justice Ginsburg, the idea that employers can force workers to give up their rights in order to retain their jobs violates the basic premise of the NLRA (Bagenstos 2020, 19).

- *Right to work:* Interestingly, the Court jettisons the equal-power assumption when the shoe is on the other foot. An example is the Court's treatment of "fair-share" union fees in *Janus v. AFSCME,* 585 U.S. --, 138 S. Ct. 2448 (2018). In that case, an Illinois statute required all public employees to pay a fee covering the union costs of negotiating contracts, regardless of whether the employee belonged to the union. Overruling a 1977 decision in a Michigan case, the Supreme Court held that the Illinois statute violated the non-union employees' First Amendment right of freedom of expression. Bagenstos notes:

  The court said that workers had no real option to refuse to pay the fee, because their employer's union contract imposed it as a condition of employment. Note that this is the opposite of the understanding of worker choice the court applied in *Epic Systems*, where it

[2] "Protecting workers' speech or privacy, after all, would impose limits on the reasons why an employer could terminate the employment relationship—limits that would stand in tension with the background principle that the relationship can be terminated for any reason or no reason at all. . . . [C]ourts too often focus on the concept of consent and too rarely attend to the imbalance of bargaining power between employers and employees" (Bagenstos 2020, 12).

> treated workers as freely choosing an arbitration agreement that their employer imposed on them as a condition of employment, validated by showing up for work each day. (Bagenstos 2020, 20)

IV. Identifying the Claims Underlying the Equal-Power Assumption

In this issue, the equal-power assumption, along with other assumptions about economic relations in the workplace that underlie the freedom of contract framework, are subjected to emprical scrutiny.

Julia Tomassetti and Chetan Cetty parse the arguments made by conservatives to support the freedom of contract/equal power framework and to challenge Elizabeth Anderson's argument in *Private Government.* Tomassetti identifies three assumptions about economic relations that entrench employer power in employment and labor law. First is the assumption of "balanced power," according to which there is no acute, systematic imbalance of power between the employee and employer and that the individual worker's right to quit or reject employment is comparable to, if not equal to, the employer's power to terminate or withhold employment. Second is the assumption of "managerial prerogative," under which the employer's control over nearly all aspects of the commercial enterprise must be almost absolute to prevent adverse economic consequences to the enterprise and the economy. Third is the "status quo assumption:" Maintaining the status quo of managerial prerogative is less costly than altering it.

Cetty articulates questions about the workplace commonly raised by critics of Anderson's book: Can't oppressed workers just quit? Are workers really so unhappy? Won't the limitations on employer control proposed by progressives distort the smooth operation of the economy? Don't labor markets empower workers to exit undesirable employment relationships?[3] Cetty also notes that defenders of the equal power assumption "assume away unemployment and take full employment as a given."

The remaining papers in this issue examine the veracity of these economic claims. One set of papers exposes realities of the labor market that undercut the equal power assumption. The second challenges the notion that management rights need to be unconstrained to avoid adverse economic outcomes for firms, workers, and free enterprise itself.

A. Realities of the Labor Market: Why the Power to Quit Does Not Prevent Worker Exploitation

The realities facing employers and employees in the labor market differ greatly from the idealized notion of equally powerful workers and employers entering transactions that yield optimal outcomes for both. When the modern labor and employment law regime was created in the New Deal, it was widely recognized that employment relations were inherently unequal. That view held both among legal analysts (such as the Legal Realists, see Bagenstos 2020 and Rogers 2022, n45) and among institutionalist economists, who dominated economic analysis until the 1950s–1960s (Kaufman 2012). Today, recent social science research confirms that employers have much greater power in the labor

[3] Cetty also examines the questions, "Doesn't the gig economy offer a viable option for exiting oppressive work relationships?" and "Can't the terms of employment simply be made clearer up front?" These questions are not considered by the social scientists gathered here.

market and that worker exploitation is pervasive and systematic, especially for those without a college degree, women, and minorities.

The unconstrained right to quit gives a worker, theoretically, a tool for eliminating employer exploitation. Conversely, for power to be equal, employers must have the unconstrained right to fire workers. These assumptions are central to competitive labor market analyses that presume equal power. For instance, Milton Friedman (cited in Naidu and Carr, this issue) claimed that "the employee is protected from being coerced by his employer by the existence of other employers for whom he can work."

But Kathryn Edwards (this issue) points out that the freedom to quit does not guarantee the ability to find a new job; barriers can make moving jobs a luxury, rather than a right. Edwards identifies two primary types of barriers: labor market considerations (can a worker find another job?) and financial considerations (can a worker afford to transition to another job?). Finding a new job presumes that there is a job available and geographically accessible; that a worker can dedicate time to a job search; that a new job will be comparable or better; and that a job search will not entail a substantial loss of income. These conditions are frequently not met, limiting workers' mobility. In addition, as discussed further below, there are almost always more job seekers than job openings due to high unemployment, especially for workers with the least market power. Many jobs have scheduling, time-off, and other policies that make it almost impossible to search for a new job while employed. These problems are exacerbated by labor market discrimination: Edwards observes, for instance, that a Black worker must devote almost four times the effort to receive the same number of offers as a similar white worker.

The substantial financial costs of switching jobs also create barriers to mobility. Even a job that pays the same wage may involve the loss of nonwage benefits and compensation, including accrued time off or pension vesting. A key barrier is the inability to finance an unemployment spell dedicated to finding a new job, given workers' limited wealth and liquidity. It is difficult to move to another location to find a job, even if better jobs are available. Edwards also notes that workers with certain medical conditions can be locked into jobs that meet their health insurance needs, and that working parents can be locked into jobs because their current schedule or location allows them access to child care.

A McKinsey and Company survey in March 2021[4] confirms the precarious financial condition of many households:

> Only half of all respondents—and fewer than half of all parents—reported being able to cover their living expenses for more than two months if they or someone in their family were to lose their job. . . . This economic precarity is not evenly distributed. For example, only 36 percent of Americans earning $50,000 a year or less reported that they could cover expenses for more than two months, and 27 percent of those earning less than $25,000 a year said that they were worried about losing their housing. (McKinsey 2021, 15)

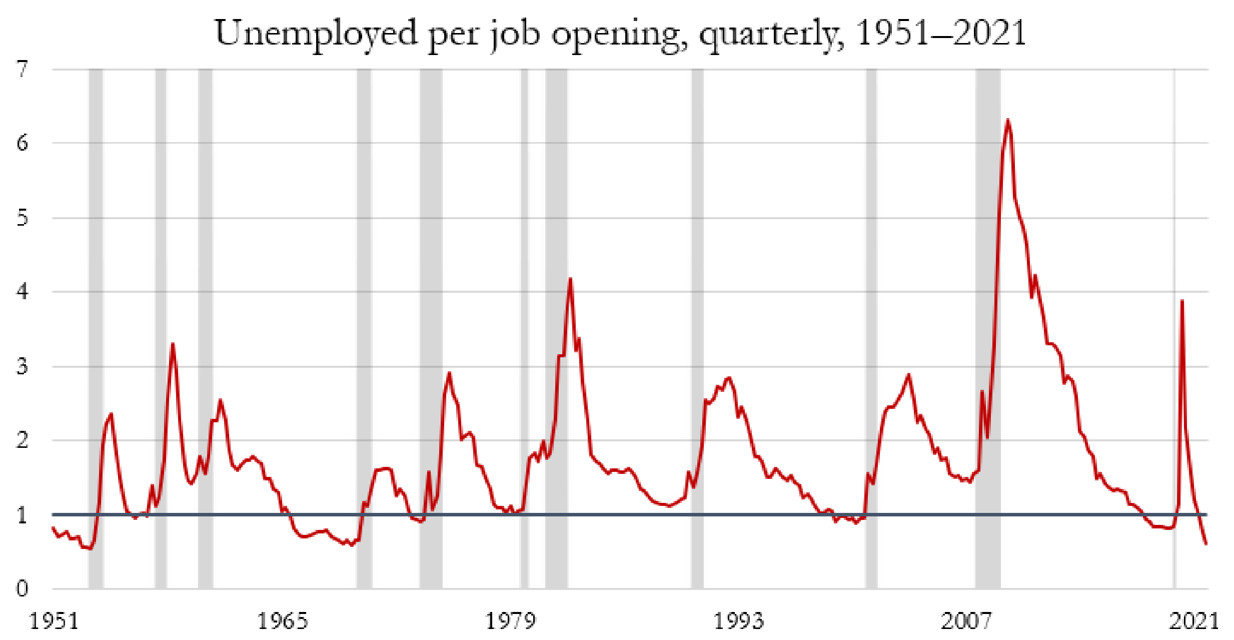
Mishel, in this issue, incorporates the impact of persistent unemployment into the discussion of equal power. Common sense and simple observation tell us employees can rarely walk away from their jobs as readily as employers can find replacements. In a capitalist economy with booms and busts,

[4] Unemployment was 6.0% in March 2021, slightly below the average over the 1979–2019 period. McKinsey reports that the survey likely undercounts "people with lower incomes, less education, people living in rural areas, or people aged 65 and older" (McKinsey 2021, n.p.).

unemployment rises and falls, and the economy is rarely at full employment (the point at which the number of job seekers matches job openings). Even on the rare occasion of full employment, there are still large segments of the workforce with substantial unemployment and difficulty finding quality jobs. Blacks, Hispanics, and those without college degrees endure a permanent recession. For example, Black unemployment never fell below 6% in any quarter over the entire 1979–2019 period, and high school graduates of all races enjoyed an unemployment rate below 5% for just 11% of the quarters over that same 1979–2019 period.

The perennial imbalance facing workers is illustrated in Figure 1, showing the ratio of unemployed per job opening from 1951 through 2019. There were 1.75 unemployed per job opening on average, indicating that conditions were far more favorable to employers than workers. Workers were scarce—fewer unemployed than job openings—in just 20% of the months, with most of those months being in the early 1950s and late 1960s. In contrast, jobs were scarce 80% of the time, and there were at least two unemployed for each job opening in 28% of the months.

Figure 1



Source: Briggs and Hatzius (2022) extrapolation of job openings based on the help-wanted index from San Francisco Fed economist Regis Barnichon's update of Barnichon (2010).

Voluminous research shows that excessive unemployment disadvantages workers and assists employers. Consider the relationship between quit rates and unemployment rates. As unemployment rose from 4.6% in 2007 to 9.3% in 2009, the annual quit rate fell from 28.5% (39.2 million quits) to 17.9% (23.6 million quits). As unemployment fell over the 2009–2019 period to 3.7%, the annual quit rate rose from 17.9% to 29.8%, enabling a near doubling of quitting (rising 21.4 million from 23.6 million to 45.0 million). Workers' ability to quit is largely dependent on the number of job openings and the associated unemployment rate. Higher unemployment also dampens workers' ability to switch jobs and lengthens spells of unemployment between jobs.

The near constancy of excessive unemployment enables employers to fill job vacancies more successfully, more quickly, and with less effort than if employment were consistently robust. Employer recruitment activities—choice of methods, expenditures on help-wanted ads, screening of job applicants—become less intensive when unemployment is higher, and employer concerns about finding quality labor are sharply reduced. Employers are even able to raise hiring standards and require more credentials when unemployment is elevated. In the 2007–2010 downturn, for instance, employers increasingly required a bachelor's degree for physician assistant jobs but retreated from this requirement as unemployment fell. The bottom line of excessive unemployment's impact on power relations is that higher unemployment lowers wage growth, especially for low-and moderate-wage workers and for Black and Hispanic workers.

A wave of recent empirical studies and literature reviews (Webber 2015; Webber 2020; Dube, Giuliano, and Leonard 2019; Dube, Jacobs, Naidu, and Suri 2020; Bassier, Dube, and Naidu 2020; Azar, Marinescu, and Steinbaum 2019; Langella and Manning 2021; Card, Cardoso, Heining, and Kline 2018; and a meta-analysis by Sokolova and Sorensen 2021) has demonstrated that employer power is ubiquitous in the modern US labor market. In this issue, Naidu and Carr review recent studies measuring employer monopsony power and provide new empirical findings showing that quitting is not so easy. Their focus is on a measure of employer monopsony power, the quit elasticity, which measures how much more likely a worker is to quit a job in response to a (small) wage change. If markets are perfectly competitive, the quit elasticity will be very high—i.e., there will be complete turnover in response to small changes in the wage. Studies find, though, that quit elasticities are low, in the 2-3 range, implying that a 10% reduction in firm wages increases the probability an average worker quits by 20-30%. This, in turn, implies that workers are paid only about 80-85% of the value they produce, showing that that employer power is pervasive.

Naidu and Carr also note that historically disadvantaged groups have systematically lower quit elasticities, indicating that they face even greater employer power. For instance, workers in general are less likely to quit in response to lowered wages in low-wage sectors such as retail and restaurants. White workers, however, are almost twice as likely to quit a job in response to the same-size wage decline as are Black workers, indicating that Blacks face much greater employer power. Using a century of manufacturing data, Naidu and Carr find that quits are substantially lower when unemployment is high, and higher as unemployment falls. They also highlight the importance of the fact that low-wage workers generally are less likely to quit when unemployment is high. A Treasury Department report, reviewing the research, concluded that lack of competition in the job market costs workers, on average, 15-25% of what they might otherwise make (US Treasury Department 2022, 30).

The consensus among economists has shifted toward an acknowledgment of employer power over wages and workers. A major indicator of this shift was Alan Krueger's keynote address at the Kansas City Federal Reserve Board's 2018 convening in Jackson Hole, Wyoming. Krueger noted his break with the approach that assumes a competitive labor market:

> Although economists' go-to model of the labor market is often one with perfect competition—where bargaining power is irrelevant because supply and demand determine the wage, and there is nothing firms can do about it—in many applications I think it is more appropriate to model the labor market as imperfectly competitive, subject to monopsony-like effects, collusive behavior by firms, search frictions, and surpluses that are bargained over. As

a result of these labor market features, firms should be viewed as wage-setters or wage-negotiators, rather than wage-takers.[5] (Krueger 2018, 267)

Krueger buried the lede by relegating this passage to a footnote: "Notice that I don't call these features 'imperfections.' They are the way the labor market works. The assumption of perfect competition is the deviation from the norm of 'imperfection' as far as the labor market is concerned" (ibid.). More recently, David Card (2022, 1), in his 2022 American Economic Association presidential address, stated, "A growing consensus is that firms have some wage-setting power."

As Naidu and Carr conclude, quitting matters, but the power to quit, by itself, is incapable of restraining the capricious or exploitative whims of employers.

B. *Must Management Rights Be Absolute, Lest Economic Performance Deteriorate?*

As both Tomassetti and Cetty point out, one persistent argument in favor of presuming equal employer-employee power is that any departure from this assumption will involve restrictions on management's prerogatives that, in turn, will lead to adverse economic consequences, perhaps even undermining the free enterprise system itself. Three papers in this issue examine this contention and find that the sorts of interventions commonly sought by US worker advocates—interventions already in place in various market economies—do not harm firm or economic performance.

It is important to clarify the various dimensions of management rights before assessing the impact of their diminution. To begin with, most management rights are never challenged by collective bargaining or legislated mandates on employer behavior. For instance, under collective bargaining, "management has the right to determine what work shall be done; to determine what kinds of services and business activity to engage in; and to determine the techniques, tools, and equipment by which work on its behalf shall be performed" (Elkouri and Elkouri 2003). Legislative mandates and collective bargaining do affect managerial decision-making but in a more limited range of decisions, primarily about the level and structure of wages and criteria for promotions, discipline, and layoffs.

1. Minimum Wage and Other Mandates

The most studied government policy intervention constraining managerial decisions has been the minimum wage. Conventional competitive labor market theory suggests that raising the minimum wage will cause unemployment and, ultimately, hurt low-wage workers, because the higher costs for them will lead firms to substitute other workers and to introduce technologies and capital investment that displace them. In addition, higher costs mean higher prices, and so consumers will buy less of the firms' goods and services, depressing employment.

Contradicting this theory, voluminous research, based on outcomes in the United States, the United Kingdom, and other advanced economies, concludes that increasing the minimum wage has not had significant adverse economic outcomes for the intended beneficiaries—low-wage workers—nor for the economy overall (Zipperer this issue; Dube 2019). Raising minimum wages, sometimes significantly, has had very little if any negative impact on employment or work hours, yet is certainly

[5] That Krueger, a leading economist, would make such a statement before the economics establishment, and receive positive feedback, was an important development.

associated with raising the average and total annual earnings (total hours worked times average hourly wage) of low-wage workers. These results have led many researchers to question simple theories of competitive labor markets, and instead to highlight employer power. Researchers have also identified the mechanisms that enable firms to adjust to higher minimum wages: higher prices, reduced turnover, and higher productivity.

Innovative studies by David Card and Alan Krueger in the mid-1990s, showing that higher minimum wages did not necessarily cause lower employment (Card and Krueger 1995), led to an explosion of research on the impact of minimum wages. Most of this research has focused solely on the employment effects, but a more complete analysis would also evaluate whether higher minimum wages lead to higher annual earnings and a larger pool of wages earned by low-wage workers: Even if workers work fewer hours in a year, their annual earnings can potentially rise because of increases in their hourly wage. Such an outcome would be especially important in low-wage labor markets, where turnover is exceptionally high and nonemployment implies spending more time between jobs (Freeman 1996; Green 2015; Cooper, Mishel, and Zipperer 2018).[6]

Zipperer's review of the minimum wage literature focuses on the own-wage employment elasticity (OWE), the percent change in employment for a given wage change induced by the minimum wage.[7] Zipperer points out that it is important to focus on the minimum wage impact on the total pool of labor earnings (the total hours worked at the new wage in a year by all low-wage workers) rather than simply focus on the impact on employment.[8] According to Zipperer's review, "the central tendency of recent research is that minimum wage increases have small-to-no effect on the total employment of low-wage workers." Dube's review of the evidence on the minimum wage, commissioned by the United Kingdom government, across 36 studies on the US suggested a median OWE of -0.17, meaning "the proportionate change in employment is much smaller than the change in wage (around 1/6 as large)" (Dube 2019, 31) and therefore produced a large boost in labor income. Dube describes this employment impact as small.[9] Reviews of the US experience by Doucouliagos and Stanley (2009) and Belman and Wolfson (2014) also found the impact of minimum wages on employment to be small. Cengiz et al., in a highly authoritative study of 138 prominent state-level minimum wage changes between 1979 and 2016, found that "the overall number of low-wage jobs remained essentially unchanged over five years following the increase. . . . We also find no evidence of disemployment when we consider higher levels of minimum wages. However, we do find some evidence of reduced employment in tradable sectors" (Cengiz et al. 2019, TK).

Dube also provides detailed evidence of the minimum wage's impact from the U.K., reviews the available evidence from other advanced nations, and concludes:

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[6] Many opponents of the minimum wage describe a binary world where one either works or is unemployed, and they argue that the minimum wage may help some workers but "would price others out of the market" (Soto 2021). This flawed framework does not consider the possibility, as noted, that workers may work fewer annual hours but have higher annual earnings.

[7] For example, if the minimum wage caused employment of low-wage workers to fall by 1 percent, but caused their wages to rise by 10 percent, the OWE is -1 / 10 = -0.1.

[8] An OWE below -1.0, say between 0.0 and -1.0, the low-wage workers' total wage pool has increased because of a minimum wage increase; a -0.1 OWE implies that a 10% rise in the minimum wage increased the wage pool by 9%.

[9] Dube (2019, 31) says, "While all categorizations are inherently arbitrary, we can roughly think of an OWE less negative than -0.4 as small in magnitude, between -0.4 and -0.8 as medium, and more negative than -0.8 as large."

> The overall body of evidence suggests a rather muted effect of minimum wages to date on employment. The median OWE across the 48 estimates from various countries and affected groups is around -0.16, which suggests that the minimum wage raises wages much more than it has any effect on jobs. Moreover, for the set of studies that consider broad groups of workers the median OWE estimate is quantitatively close to zero (-0.04). There is, of course, variation across studies. However, the weight of the evidence suggests any job losses are quite small. This conclusion is reinforced when we consider the quality of evidence. (Dube 2019, 55)

A recent review of the evidence by the UK Low Pay Commission (2022) on the national living wage (NLW) confirmed Dube's findings.

A study of a significant increase in the 1960s in the rate and coverage of the US minimum wage (Derenoncourt and Montialoux 2021) provides telling evidence that even large increases have not led to adverse economic outcomes, and indeed can reduce racial inequality. The 1966 amendments to the Fair Labor Standards Act extended federal minimum wage coverage to agriculture, restaurants, nursing homes, and other services, thereby expanding coverage to an additional 21% of the workforce and to roughly a third of all Black workers. Regarding a 1967 increase in the rate, Derenoncourt and Montialoux estimate that about 16% of workers overall and 29% of Black workers had been earning at or below the new minimum. The authors find that, taken together, the expansion of coverage and the increase in the minimum wage raised total earnings with basically no change in employment. Moreover, these minimum wage policies were responsible for more than 20% of the reduction in the Black-white earnings gap during the civil rights era. Tellingly, Derenoncourt and Montialoux's case study of laundries in the U.S. South—where the new minimum wage policies affected a third of the workforce, in a sector where 40% of workers were Black—found a near-zero effect on employment. Similarly, a study by Bailey, DiNardo, and Stuart (2021) confirms that the late 1960s' minimum wage changes had large wage impacts and little impact on employment—except for some small employment losses among Black men.

Are these results inconsistent with the ostensible laws of supply and demand? If so, what does conventional competitive market theory miss? First and foremost, the conventional view ignores employer power, which is greatest in the low-wage labor market. Where employers have monopsony power, a higher minimum wage is not necessarily going to reduce employment: in fact, it should be expected to increase employment. The conventional analysis also does not consider the various ways that firms can adjust to a higher minimum wage (Schmitt 2015; Zipperer this issue). In particular, firms can often raise prices (if their competitors are similarly bound by the wage increase) and reduce employee turnover. Plus, as some firms do poorly but others successfully expand, employment is reallocated across firms, leading to higher productivity overall.

Research on other employer mandates, such as prevailing wage standards in construction (Duncan and Ormiston 2019) and various mandates in San Francisco (Reich, Jacobs, and Dietz 2014), have also found that worker outcomes improve without offsetting adverse employment impacts.

2. Labor Flexibility

Evans and Spriggs (this issue), recounting the debate at the Organization for Economic Cooperation and Development (OECD) over the importance of providing employers with "labor flexibility," provide additional evidence that restrictions on managerial authority do not necessarily lead to adverse economic outcomes for firms, workers, or the economy.[10] The OECD Jobs Strategy of 1994 (OECD 1994), promulgated at the high point of an era of market fundamentalism, claimed that labor market flexibility—the reduction of regulations and collective bargaining constraints on employers—was essential to maximizing employment, minimizing unemployment, and obtaining growth. This finding was the basis for recommending efforts to reduce minimum wages, decentralize and weaken collective bargaining, weaken employment protection legislation, restrict entry to and the generosity of early pensions, and reduce unemployment benefits (by cutting unemployment benefit levels and durations of payment, restricting eligibility, and enforcing work requirements) (Casey 2004, 338, cited in Evans and Spriggs, this issue). These recommendations relied on the view that unemployment is a structural problem caused by insufficiently flexible labor markets.

By 2018, however, the OECD had altered its position on labor flexibility (OECD 2018). A key turning point was a 2004 OECD seminar reviewing the empirical research on the effect of labor market regulations on employment (Baker et al. 2004). The results "showed no statistically significant relationship between labour market protection and unemployment."[11] Indeed, the authors concluded that there was a "yawning gap between the confidence with which the case for labour market deregulation has been asserted and the evidence that the regulating institutions are the culprits" (Baker et al. 2004, n.p.). Supporting the OECD results, Heimberger, in a meta-analysis, reviewed 75 studies across countries that examined the relationship between employment protection legislation (EPL) and unemployment, and concluded, "We cannot reject the hypothesis that, on average, the genuine empirical effect of EPL is zero" (Heimberger 2020, 22; see also Howell 2021, 25, noting a similar lack of "robust, widely accepted results").

The shift at the OECD also reflected a growing consensus that rising inequality was bad, was growing worse, and had become a major concern for economic as well as social and political reasons. In fact, in 2017 OECD Secretary General Angel Gurria stated in a speech to employers: "Inequalities harm growth. They erode trust in governments, in business, in modern capitalism and in democracy. They also contribute to a polarised and dangerous environment where populism, protectionism, and exclusive nationalism tend to grow and spread. We urgently need to reverse these trends" (Gurria 2017, n.p.).

As Evans and Spriggs show, the new focus on improving equality and inclusion provided a broader lens for evaluating the impact of inequality-reducing polices (such as collective bargaining, worker protections, and social policies) that the labor flexibility' agenda had tried to undercut. A key fact here is the need for countervailing power in the workplace because individuals are not able to effectively bargain with their employers. Other researchers (for example, Howell and Kalleberg 2022) confirm Evans and Spriggs' assessments. Nations can lessen inequality without adverse economic consequences.

Adams et al. (2019, 1) provide the most comprehensive analysis of the impact of employment protection legislation and economic outcomes using the UK Centre for Business Research Labour Regulation Index, covering 117 countries from 1970 to 2013. The authors find that these laws "have become significantly more protective over time and that strengthening worker protection is associated with an increase in labour's share of national income, rising labour force participation, rising employment, and falling unemployment, although the observed magnitudes are small."

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[10] The OECD coordinates economic policy and serves as a think tank for the advanced democratic industrial countries.

[11] Unpublished mimeo of the OECD Trade Union Advisory Committee.

Sarkar (2020) provides a similar analysis of the impact of labor regulation on total and youth employment for 108 countries over the 1996–2013 period. He finds in both developed and less-developed nations that "laws protecting the interests of labor do not hamper the long-term employment prospects of the general work force and the youth population."

3. Codetermination

Jager, Noy, and Schoefer (this issue) explore the impact of incursions into management's prerogatives by contrasting two sets of legal rules. The first stems from an important Supreme Court decision, *First National Maintenance Corp. v. N.L.R.B.,* 452 U.S. 666 (1981). In this case, the Court declined to impose on employers a duty to bargain with a union over partial closure decisions, because such a duty would impinge on "an employer's need for unencumbered decision-making," 452 U.S. at 679. Instead, the Court accepted the US Chamber of Commerce's assertion in its amicus brief that it would be "a sharp departure from the traditional principles of a free enterprise economy" to require bargaining over partial closures.[12] The Chamber's brief elaborated the argument:

> Decisions to withdraw or transfer resources from one facility or line of endeavor to another are uniquely the central burdens and prerogatives of management. They are determinations that call for speed, flexibility, often for secrecy. They are matters on which the collective bargaining process is unlikely to be useful, but likely to be obstructive or destructive.[13]

An alternative approach to such decisions is taken by the codetermination laws in Germany and most of Europe, which entail a deeper incursion into traditional management prerogatives. In "shop-floor" codetermination arrangements, worker representatives enjoy decision-making authority and are involved in day-to-day firm governance. In response to the claim made by the Chamber of Commerce that managerial decisions often require "speed, flexibility," and often "secrecy" as well, Jager, Noy and Schoefer find that codetermination does not obstruct or significantly slow down decision-making; indeed, surveys of managers, directors, and even investors report mostly positive views of codetermination. It is more difficult to draw strong conclusions about the impact of codetermination's incursions into managerial decisions. First, codetermination has two levels, one where worker representatives are part of a firm's board-level governance and one where representatives affect shop-floor issues. Board-level codetermination tends to be weak because worker representatives hold a minority of seats. Shop-floor representation is strong in certain countries—Nordic nations, Austria, and Germany—but weak elsewhere. Second, codetermination is embedded in a broader institutional setting where it is "intended to supplement core frameworks of union representation and centralized collective bargaining" (Jager, Noy, and Schoefer, this issue). Thus, the heavy lifting on setting wages and challenging the distribution of income rests with collective bargaining rather than codetermination.

Jäger, Noy, and Schoefer find board-level codetermination "creates two-way knowledge flows, giving employers a more intimate understanding of company operations and the desires of workers, and

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[12] Brief [of] Amicus Curiae of the Chamber of Commerce of the United States in Support of the Petitioner at 2, *First Nat'l Maintenance Corp. v. N.L.R.B.*, 452 U.S. 666 (1981) (quoting *Fibreboard Paper Productts Corp. v. N.L.R.B.*, 379 U.S. 203, 225-26 (1964) (Justice Stewart concurring).

[13] Brief [of] Amicus Curiae of the Chamber of Commerce of the United States in Support of the Petitioner at 2, *First Nat'l Maintenance Corp. v. N.L.R.B.*, 452 U.S. 666 (1981)

giving workers financial and strategic information that may inform collective bargaining strategies." Board representation, "probably reflecting the limited authority" provided worker representatives, has "mostly zero or slight positive impacts on worker and firm outcomes."

Unfortunately, there is very little credible evidence in situations where shared governance arrangements have more substantively limited employer discretion—such as powerful German works councils or parity codetermination in German iron, coal, and steel firms. So, the available evidence from codetermination cannot answer the largest questions regarding incursions into management prerogatives.

Jäger, Noy, and Schoefer (this issue) describe their findings on shop-floor determination as follows:

> Shop-floor representatives in the Nordic countries and Germany wield moderate authority in day-to-day firm governance, which they use to shape nonpecuniary aspects of working conditions. They are largely unable to influence routine decisions about layoffs or wage-setting, but they may have a greater capacity to affect these decisions during economic crises. Relationships between shop-floor representatives and employers are generally amicable, with both parties viewing shop-floor shared governance as mutually beneficial.
>
> This qualitative evidence is once again consistent with quantitative evidence on the impacts of shop-floor representation, which suggests the institution has zero impacts on wages, may slightly reduce separations, and may improve subjective job quality (ibid.).

They conclude that "the existing evidence shows it is possible to involve workers in workplace decision-making in ways that, if anything, weakly improve firm performance while also plausibly benefiting workers." In other words, workers seem to benefit from codetermination—and somehow, free enterprise has survived.

V. The Impact of Unequal Workplace Power on Income and Race Inequalities

The prior sections argue that presuming equal employer and employee workplace power undercuts workplace protections in the law and ignores how the prevalence of employer power suppresses various freedoms. This section expands this critique of the equal power assumption by showing that it prevents us from understanding wage suppression and wage inequality, including racial inequality.

The growth of employers' power relative to workers—or eroded worker power—is central to understanding the tremendous growth of wage inequality since the late 1970s, the erosion of labor's share of income, and the disappointing growth in wages and benefits for the median or typical worker, which Mishel and Bivens (2021b) refer to as wage suppression. Explanations of these wage trends based on competitive markets with equal employee-employer power, most prominently explanations based on technological change or automation, do not square with the facts (Mishel and Bivens 2021b, Appendix A).

Mishel and Bivens (2021a) estimate that wage suppression has cost the median worker 1% a year in growth of hourly compensation from 1979 to 2017, accumulating to a nearly $10 per hour loss by 2017. They argue that it is the consequence of changes in policies and business practices that systematically undercut workers' individual and collective bargaining power. Six policy areas explain wage suppression, with the first three accounting for most of it:

1. Excessive unemployment, resulting from misguided monetary and budget policies.
2. Corporate-driven globalization, resulting from policy choices, at the behest of corporations, that undercut the wages and job security of non-college-educated workers.
3. Eroded collective bargaining, resulting from corporate practices, judicial decisions, and policy choices.
4. Weaker labor standards, resulting from a declining minimum wage, eroded overtime protections, "wage theft," and gender and race/ethnic discrimination.
5. New employer-imposed contract terms, such as agreements not to compete after leaving employment and to submit to forced individual, private arbitration of grievances.
6. Shifts in corporate structures, resulting from fissuring (or domestic outsourcing), industry deregulation, privatization, buyer dominance affecting entire supply chains, and increases in the concentration of employers.

A recent report from the Massachusetts Institute of Technology Task Force on the Work of the Future provides a complementary analysis, pointing to policy choices and not market forces as the drivers of the great divergence. "Rising labor productivity has not translated into broad increases in incomes because labor market institutions and policies have fallen into disrepair," the report notes (Autor, Mindell, and Reynolds 2020, 5). "The majority of workers have tasted only a tiny morsel of a vast harvest [of rising productivity]" (3). Specifically, "Median earnings stagnated relative to productivity growth over the last four decades; earnings of women rose faster than earnings of men; and earnings of whites rose faster than those of Blacks or Hispanics" (15).

This great divergence, according to the report, does not reflect the unfortunate outcomes necessary to fuel economic dynamism, economic mobility, and faster economic growth. Rather, "the U.S. employment rates of both men and women are decidedly middle of the pack and have fallen sharply relative to peer countries over the last two decades" (21). Moreover, the U.S. has the "lowest rates of intergenerational mobility among wealthy democratic countries" (23).

In line with Mishel and Bivens (2021a), the authors identify an array of policies that drove the great divergence: an erosion of collective bargaining, a lower minimum wage, inadequate labor and social policies that protect workers, and unbridled expansion of free trade. The bottom line: "U.S.-specific institutional changes and policy choices failed to blunt—and in some cases magnified—the consequences of these pressures [digitalization and globalization] on the U.S. labor market" (27).

Finally, one cannot understand nor address workplace race and sex discrimination without centering the role of employer power. As Wilson and Darity (2022, 14) write: "The imbalance of power between employers and employees is both a cause and consequence of the racial disparities in labor market outcomes." Moreover, efforts in the courts to hold employers accountable for discrimination are impeded by employer power (Yang and Liu 2021).

VI. Conclusion

The assumption of equal power between employers and employees is deeply embedded in employment and labor law to the disadvantage of the vast majority of workers, particularly Blacks and

Hispanics, women, and those lacking a college credential. Ignoring employer power over workers therefore further deepens workers' power disadvantage, diminishing compensation, equality, freedom, and democracy.

The role of power and law in the labor market is a key dynamic in the overall Law and Political Economy framework as articulated by Harris and Varellas (2020) and Britton-Purdy et al. (2020). For instance, Harris and Varellas, drawing on Desautels-Stein et al. (2014), identify two main claims at the heart of Law and Political Economy, both of which are affirmed and elaborated by the papers in this volume:

> [L]aw is central to the creation and maintenance of structural inequalities in the state and the market" and "class" power is inextricably connected to the development of racial and gender hierarchies, as well as to other systems of unequal power and privilege. (Harris and Varellas 2020, 10)

Similarly, this volume carries out what Britton-Purdy et al. (2020, 1820) point out as the mission of Law and Political Economy: to "inquire into how *law creates, reproduces, and protects political-economic power*, for whom, and with what results" (italics in original). The papers in this issue seek to do so by identifying how wrongly assuming employer-employee equal power in the law undercuts employee statutory, common law, and constitutional workplace protections and leads to inequality, a diminished democracy, and loss of freedom.

Finally, the papers in this issue illustrate the larger point made by Britton-Purdy et al.:

> [P]olitical economy requires a shift in our view of interpersonal relations—not as presumptively equal market transactions that are further legitimated by being voluntary and theoretically "making everyone better off" but rather as fundamentally power-laden bargains that require law and policy to be rendered more equal and fair. It also requires a shift in our view of inclusion from the individual to the structural level, looking not just at individualized experience but rather at how law and policy construct systematic forms of hierarchy and domination through a market that is always embedded in social relations. (Britton-Purdy et al. 2020, 1823)

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