

Chapter 1

The Transformation of Employment Regimes: A Worldwide Challenge

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AROUND THE world, workers are embattled, labor markets are in disarray, and labor laws are in flux. The premise of this volume is that the decline of the standard employment contract is both a cause and an effect of these developments. Employment relationships, we argue, have become increasingly unstable in most industrialized countries and this instability is undermining the regulatory regimes that organized and governed labor markets and employment relationships for much of the twentieth century. As a result of the breakdown in regulation, we further contend, working people are increasingly experiencing the debilitating social, political, and psychological effects of growing economic insecurity and inequality. And, finally, we believe it unlikely that the standard employment contract can be revived or that the regulatory regimes once intertwined with it can be resuscitated.

In the wake of the decline of the standard employment contract, new regulatory approaches are emerging in many places and in disparate forms. These approaches are sometimes local small-scale initiatives, sometimes national in scope. The focus of this volume is on innovations in labor market regulation that might conceivably improve the lot of workers involved in new, nonstandard types of employment relationships. After assessing the extent and significance of the decline of the standard employment contract, we and our coauthors explore changing legal conceptions of the employment contract, new forms of worker organization, experiments with decentralized regimes of regulation and dispute resolution, and linkages between labor market regulation and social policies. We also examine challenges and opportunities for trans-

national learning and borrowing that grow out of the current regulatory disarray.

For four or five decades after 1945, in most industrialized countries, large numbers of workers enjoyed an array of job rights that included decent wages, protections against unfair treatment at work, social insurance provided by the state or the employer and, notably, some degree of job security. These rights comprised what many describe as the standard employment contract. Some elements were literally contractual—that is, part of a bargain between employers and employees, whether individually or collectively negotiated. Some were regulatory requirements layered on top of the individual contract of hire. For example, to reinforce the norm of job security, many industrialized countries gave workers effective protection against arbitrary dismissals, made redundancies prohibitively expensive, and placed strict limits on the ability of employers to use nonstandard workers, such as those hired on temporary or short-term contracts and independent contractors. The standard employment contract, though not universal, nonetheless constituted a norm such that an employer's failure to conform might well result in social, economic, or legal sanctions.

Moreover, in most industrialized countries, the standard employment contract was the platform from which many other social rights—old age assistance, vacation entitlements, health insurance, and so on—were delivered. State-sponsored labor market policies—skills training, job creation, unemployment insurance—likewise assumed, promoted, and normalized the standard employment contract. The standard employment contract was thought to be foundational for other economic labor market policies as well. It provided the logic underpinning the growth of internal labor markets in which workers developed narrow job-specific skills and knowledge in exchange for advancement opportunities and seniority-related benefits within the firm. It provided workers with the confidence to assert their rights under labor standards and health and safety legislation. And, by giving workers the actual or potential experience of working together over extended periods, the standard employment contract taught them how to organize for industrial and political action.

Finally, it is fair to say that the standard employment contract became one of the pillars of the postwar economic system. Decent wages gave workers the opportunity to consume, to acquire the accoutrements of middle-class life, and to better the prospects of their families. The availability of long-term employment gave them the confidence to save and invest either directly, in housing and other capital goods, or indirectly, through their pension and benefit funds. Moreover, the standard employment contract, by providing governments with a dependable revenue stream based on income and consumption taxes, made possible the postwar welfare state.

Of course it is easy to overstate the case. Job tenure—a key feature of the standard employment contract—was neither automatic nor universal. In most countries it emerged only gradually, as a by-product of the techno-social revolution associated with mass production or as an implied term of the postwar social contract. Depending on their historical circumstances or political configurations, some nations created the institutional framework and social environment necessary for the widespread adoption of the standard employment contract; others used legislation to provide specific elements directly or to mandate employers to do so; still others in principle allowed employers a margin of choice, but in practice forced them either to bargain with unions for job-related benefits or to risk alienating employees or losing recruits who could secure such benefits elsewhere.

Even in the heyday of the standard employment contract, some workers enjoyed more job security than others, and some enjoyed it not at all. In general, it was more often found in large manufacturing enterprises and the public sector than in small enterprises or the service sector. It was more likely to cover men than women, more available to well-established populations than recent immigrants or racial and ethnic minorities. In few countries, if any, was tenure so sacrosanct that employers could never strip it away by legal means or otherwise. Nor, for that matter, was the standard employment contract necessarily standard or even contractual. In some legal systems, security of job tenure derived from the explicit terms of individual or collective bargains negotiated between, or adhered to by, the parties; in others, it was decreed by statute. In others, it was simply assumed as part of the psychological contract between worker and employer, read into contracts retroactively by judges as a reasonable inference of what the parties must have intended, or merely detected as a social fact through close observation of recurring patterns of labor market behavior.

But acknowledging all these historical caveats and legal differences, the postwar political economy—the natural habitat of the standard employment contract—has eroded dramatically over the last two or three decades. The legal and regulatory structures that once facilitated, provided, and protected the standard employment contract have been dismantled. Furthermore, the emergence of new types of employment relationships has meant that fewer and fewer workers in the advanced economies are covered by standard employment contracts. The result is that more and more workers are experiencing greater job insecurity and its adverse consequences.

Globalization, technology, and new management strategies have all contributed to these developments. As global trade rapidly accelerates, firms respond more quickly to a wider variety of market signals, replace human operatives with digitized machinery, and disperse operations

down a supply chain of local and off-shore feeder firms. Moreover, to benefit from economies of scale and to take advantage of global brand awareness, firms have sought out new markets, often operating through local subsidiaries, franchisees, or distributors. Their diminished reliance on home markets and their ability to operate through proxies has made firms less responsive to pressures from their domestic workforce, whether as producers or consumers.

Given rapid and extensive changes in technology, markets, and management strategies, firms feel the need to continually renew their skills base, often to the prejudice of long-serving incumbent workers who are deemed to be too set in their ways, too highly paid to perform the tasks needed at an acceptable price, or both. One result has been a new and constantly evolving international division of labor in which firms initially relocate low-skill, low-wage functions to the developing world, and later relocate their more sophisticated operations as well, retaining only key jobs or those requiring proximity to head offices in the advanced economies. In such a scenario, long-term, locally based, semi-skilled industrial workers—the primary beneficiaries of the standard employment contract—have come to be seen as a costly burden rather than an asset. Not surprisingly, then, firms have repudiated the implicit or explicit promise of long-term jobs associated with the standard employment contract and opted with increasing frequency for a variety of short-term, episodic employment relationships. In short, flexibility has replaced stability in the lexicon of corporate managers.

In place of the standard employment contract, increasing numbers of workers in advanced economies experience flexible, nonstandard, contingent, or precarious employment relations. These arrangements are often explicitly limited in duration, sometimes implicitly so. They may offer part-time or project-specific rather than full-time, ongoing work. They sometimes position workers as autonomous, independent, or self-employed, sometimes dispatch them from a temporary employment agency, and sometimes redeploy them from the core workforce of large dominant firms and companies to that of their smaller and less stable suppliers. Although the extent and nature of these alternative arrangements differ from sector to sector and from country to country, almost all offer less security than did the standard employment contract. Not only is job tenure foreshortened or stripped away altogether, so too are many of the benefits associated with job tenure. As a result, in many countries union density and collective bargaining coverage are in decline, workers' real earnings are falling, and economic inequality is rising.

Of course, these changes did not occur in a political or legal vacuum. They were systematized and legitimated by an ideology that espouses unconstrained markets as a natural and unqualified good and that characterizes restraints on markets, such as legal rules reinforcing and en-

forcing the standard employment contract, as artificial and illegitimate. This ideology, moreover, has been translated into legal structures—trade regimes, domestic legislation, contractual and corporate forms—that often undermine or foreclose effective regulation of labor markets. Additionally, many governments have adopted fiscal restraints and austerity measures that radically reduce their capacity to either subsidize good labor market practices or suppress bad ones.

It is unlikely that these trends can be reversed any time soon or that we can reinstate the standard employment contract and the worker-friendly regulatory regimes that were built upon it. The new labor market arrangements are widely regarded as inevitable and desirable not just by influential business elites and business-friendly governments, but also by many academics, policy communities, and the media. Indeed, there seems to be little appetite for reviving the employment security regimes of the past—even amongst many whom such regimes were designed to benefit. Hence the challenge for progressive social policy thinkers in the twenty-first century is not simply to identify the risks and vulnerabilities created by the emerging forms of employment relations, but also to design new approaches to labor market regulation that will be regarded as plausible in the political and intellectual climate in which we find ourselves today.

Evidence of Changes in the Employment Relationship

Our analysis is controversial. Some scholars question the extent to which the standard employment contract was actually predominant during the postwar period; some deny that changes in recent years have been extensive or consequential; some assert that such changes are limited to particular worker populations; and some contend that the end of the standard employment contract, with its associated benefits, is an essential precondition for enhanced productivity and prosperity. In response to these challenges we offer, in the appendix, empirical evidence that, in our view, confirms the decline of the standard employment contract over recent decades in a number of advanced economies having different systems of law, social protection, and industrial relations. Admittedly, statistical comparisons across time and space are notoriously difficult. Moreover, highly aggregated data are unlikely to reveal the differential impact of overall labor market trends on different worker cohorts. Nonetheless, we, along with our nineteen coauthors from ten countries and half a dozen disciplines, are confident that we are making broadly accurate claims concerning the changing nature of employment and the implications of these changes for regimes of labor market regulation.

Our conclusions about the changing nature of the employment relationship are hardly counterintuitive. As is well known, the new international division of labor has been characterized by the migration of a broad range of jobs from the advanced economies examined in this volume to newly industrializing countries. The employment prospects of those who held (or hoped to hold) the now-absent jobs in their former location are more likely to have worsened rather than improved, though the opposite is true for workers where the jobs are now located. Within the advanced economies, the decline of manufacturing and the rise of the service sector have notoriously been associated with a polarization of good jobs and bad jobs; those who now hold (or expect to hold) bad jobs are unlikely to enjoy the same benefits as those who now hold (or formerly held) good jobs. And secular trends toward the feminization of the workforce and persistent high levels of un- and underemployment among the young can hardly be expected to leave unchanged the protections and perquisites enjoyed by older male workers, the primary beneficiaries of the standard employment contract in its heyday.

Moreover, our claims are not only supported by considerable data they are also reinforced by numerous sociological studies and journalistic accounts that highlight the rise of uncertainty and insecurity in working people's lives (see Vosko 2010; Fudge and Owens 2006; Standing 2011; Thornley, Jefferys, and Appay 2010; Sennett 1998; Tilly 1995; Ross 2010; Uchitelle 2006; Ehrenreich 2005). These studies suggest that most workers can no longer expect to be employed by a single firm for their entire career. Many older workers are being forced either to change jobs mid-career or accept an early and often poorly pensioned retirement, despite their expectations of career stability. Most younger workers expect to—and do—change jobs more frequently than their forebears, and recognize that they will have to retrain, update their skills, or learn new skills periodically in order to remain employable (Kurz et al. 2008, 352–53). Many workers, especially younger ones, have come to see themselves as free agents who sell their knowledge, skill, and talent in a volatile labor market (Hoffman and Casnocha 2012). Just as firms no longer demonstrate long-term attachment to their workers, many workers neither expect nor desire to spend their entire lives with one employer. While they may in fact remain employed by the same firm for a relatively long period, this will seldom be their expectation at the outset or during their tenure at the firm (Sennett 1998).

The result of these changes in the labor market is that, for an increasing number of workers, employment is no longer the open-ended long-term relationship that was characteristic of the standard employment contract, but rather has become a series of episodic arrangements that may or may not be renewed from time to time. Workers today move from job to job, in and out of different nonstandard employment relationships,

in and out of training, in and out of self-employment and indeed, in and out of the labor market. Employers no longer hire for life with the expectation that their workers will gain experience and receive training during the course of a lengthy tenure within the firm's internal labor market. Rather, in lieu of regular, long-term employees, employers hire individuals with specific skills on an as-needed basis from the external labor market, using a variety of arrangements including part-time, temporary, and short-term contracts, and contracts for the provision of services by independent contractors and temporary employment agencies. And, not surprisingly, the new labor market constituted by these changing patterns no longer reinforces—nor does it value—long-term, stable employment relationships. Instead, at its best, it rewards skill, flexibility, adaptability, and entrepreneurial self-marketing. At its worst, it creates enclaves of persons trapped in unpleasant and lowly paid work without a right to complain or an expectation of future improvement. It is, in other words, a highly polarized and unstable labor market, one very unlike the one that gave rise to, reinforced, assumed, and ultimately came to depend on the standard employment contract. This new labor market therefore requires a very different approach to regulation

The Decline of Postwar Regimes of Labor Market Regulation

Labor laws and other regimes of labor market regulation are usually based on a paradigm of employment—a set of relationships believed to be sufficiently typical to serve as the model to which other relationships should be made to conform or from which they should require a license to deviate. In many industrialized countries during the decades following World War II, the standard employment contract was that paradigm. However, changes in firm-level employment practices and labor market dynamics have undermined the descriptive validity, statistical incidence, and normative power of the paradigm. Not surprisingly, then, regimes of labor market regulation based on it have become increasingly unstable. This instability has taken several forms.

For example, many countries during the postwar period closely regulated the form and content of employment contracts, and greatly circumscribed the right of employers either to hire workers under nonstandard employment arrangements or to derogate from legislatively specified terms. A number of these countries have been modifying or abandoning these constraints in recent years. Japan, for example, had long prohibited temporary employment agencies and forbidden the use of fixed-term contracts for most work relationships. However, a series of legal reforms that began in the 1990s has gradually relaxed these prohibitions to the point where there is practically no limitation on fixed-term employment

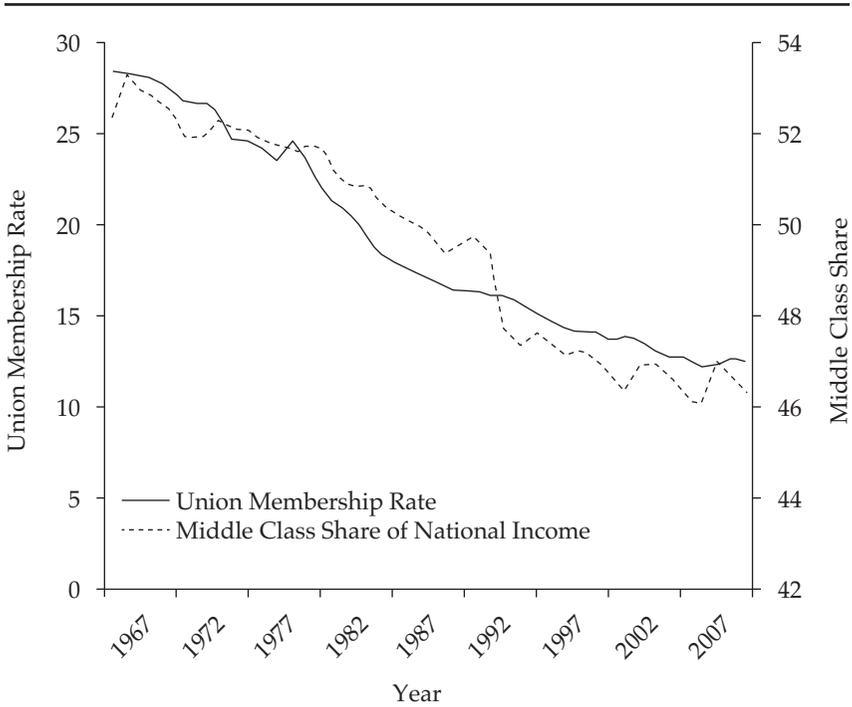
or worker dispatching. As a result, the number of temporary agency workers in Japan doubled between 1998 and 2006 (Japanese Institute 2008). Many European countries that also had previously placed severe limits on the use of short-term and other atypical employment contracts have similarly relaxed their restrictions. As these restrictions have been lifted, the use of temporary agencies, short-term contract workers, on-call workers, and independent contractors has surged in those countries. For example, between 2004 and 2007, temporary agency work increased 53 percent in Germany, 48 percent in the Netherlands, 70 percent in Sweden, 27 percent in Belgium, 40 percent in Ireland, and 133 percent in Greece (Arrowsmith 2009). Outsourcing, in-sourcing, and subcontracting have all increased, thereby contributing to the rapidly diminishing empirical and normative significance of the standard employment contract.

Where the standard employment contract prevailed, most states provided extensive social welfare benefits directly to workers or required employers to do so. However, changes in the global political economy and in local political cultures have led governments across the political spectrum to weaken programs designed to buffer workers from the consequences of unemployment and other job-related misfortunes. Sometimes the weakening of the social safety net has been undertaken in the name of austerity, sometimes with the aim of improving national competitiveness by reducing labor costs. Sometimes it has involved an overt reduction of benefits or the tightening of eligibility rules; sometimes it has been achieved by inaction rather than action, as governments fail to extend the reach of existing legislation to workers engaged in nonstandard employment relations. But in almost all advanced economies the trend has been to reduce the entitlements and protections that had come to be accepted as normal incidents of the standard employment contract.

In countries with less generous safety nets, such as the United States and the U.K., the effect of changes in the standard employment contract has been even more extreme. To the extent that workers in these countries looked primarily to their employers for wages, benefits, and job security, the developments have hastened an erosion of the middle class. On the political side, the decline of firm-specific careers undermined working-class solidarity and culture, thereby weakening unions and labor-affiliated political parties. On the industrial side, some of the same developments have led to the weakening of labor laws whether through amendment, judicial interpretation, degraded enforcement, or willful neglect.

The combined effect of all of these developments in the advanced economies over the past two decades is that workers have experienced flat or declining real wages, reduced social protection, diminished political influence, and a declining capacity to defend their own interests

Figure 1.1 Union Membership Rate and Middle-Class Income Decline in the United States, 1967 to 2007



Source: Madland, Walter, and Bunker (2011, 2), reprinted with permission. This figure was created by the Center for American Progress (www.americanprogress.org).

through industrial action. In the United States, to take an extreme example, private sector union density declined from 24 percent in 1973 to under 7 percent in 2010 (Hirsch 2003), and the number of major strikes fell from more than 460 per year in the early 1970s to just five in 2010. Furthermore, as figure 1.1 illustrates, the decline of union membership and power has been closely paralleled by a decline in the incomes of the middle three quintiles of the income distribution—what Americans think of as the middle class.

While extreme in its manifestations, the American experience is not unique. Union density, power, and influence have also declined and income inequality has risen in most other industrialized countries. According to the OECD, the wage share of national income in the OECD countries dropped from 67 percent to below 60 percent between 1975 and 2005 (Hijzen 2007). At the same time, union membership in the European OECD countries has declined and collective bargaining coverage has

shrunk, as shown in the appendix. The close parallels between the trajectory of unionization and the trajectory of economic inequality strongly suggests a causal relationship between the two.

There seems little doubt that many workers in the advanced economies are experiencing less job security, flat or declining real wages, diminished social protections, and the loss of collective power and individual agency. If this is indeed the case, there is an urgent need for new policies, regulatory strategies, and institutional arrangements that will somehow—in a very different environment—produce the positive social and economic outcomes once associated with the era of standard employment contracts and regulated labor markets.

New and Plausible Approaches to Labor Market Regulation

The challenge we have set ourselves and our coauthors is to identify new ways of regulating employment relations in an era when labor markets are increasingly characterized by polarization and instability.

Of course, not everyone agrees that state intervention in labor markets and employment relationships is the best or only way to achieve positive outcomes. On the contrary, businesses, business-friendly governments, and market-minded scholars argue that workers would be best served by the further deregulation of labor markets and the further reduction of employee protections and entitlements. Deregulation would usher in a rising tide, they argue, that will lift all boats. Economic growth will generate more job opportunities and higher wages for workers, whose enhanced earning capacity will in turn enable them both to save more and to consume more—a virtuous circle that will operate to their ultimate benefit. Proponents of this approach insist that economic growth can only be achieved by enhancing the capacity of employers to respond flexibly to rapidly changing technologies and highly competitive markets. This will require states to allow employers to lower their direct labor costs, to reduce corporate taxes that presently support the social safety net, and to eliminate constraints on management's initiative, whether they originate in collective bargaining or in state regulation.

In one version of the rising-tide argument, employers will voluntarily adopt strategies to enhance the quality of work and the capacity of their workers because doing so will make those workers more productive and offset any advantage enjoyed by low-wage offshore competitors. In another, workers will come to realize that they benefit as consumers from the lower prices achieved by policies that suppress labor costs and enhance productivity. But alas, in no version of the rising-tide scenario do workers receive long-term benefits without first suffering short- to medium-term erosion of their prosperity and bargaining power.

The approach taken here is rather different. We believe that it is necessary to seek and possible to find new ways to achieve the array of positive social and economic outcomes previously associated with the standard employment contract. This is not to say that we offer grand proposals to restore the postwar regime of labor market regulation, strong unions, generous welfare provision, and the standard employment contract. Too much has changed too profoundly and too rapidly to imagine that such proposals—however meritorious in principle—will elicit much support or, if they do, that they will prevail over the contrary tendencies that have dominated public policy, corporate practice, and academic discourse for a generation or more. Instead, we and our coauthors subscribe to the plausibility principle, which maintains that new approaches to labor market policy and employment relations ought to be plausible. To be plausible, they ought to take account of how things actually are, not the way they used to be or ought to be. That is why this volume focuses on current experiments in labor market policies and institutions.

What do those experiments show? They show that at the local level, new strategies of collective representation are emerging in Germany and new forums for the adjudication of individual rights are emerging in Japan and the United States; that Denmark and the Netherlands have developed public policies that facilitate labor market flexibility while safeguarding workers' economic security; that labor market stakeholders in France, Italy, and Canada are collaborating on new approaches to job training and worker deployment; that Australia and Japan are extending labor standards protection to some nonstandard workers; that the United Kingdom, Australia, Spain, France, and other EU countries are wrestling with issues of gender and generational equity in turbulent labor markets; and that common law and civil law scholars alike are groping toward new conceptual approaches to the contract of employment. Some of these experiments may succeed, others will almost certainly fail. However, our aim is not so much to identify specific regulatory formulas that particular countries can emulate or eschew. It is rather to expose scholars, policymakers, and advocacy groups to a series of real-life, real-time experiments whose success or failure will, we hope, provoke them to seek out constructive solutions to the challenges of labor market regulation in their own time, place, and circumstances.

Even if readers share our commitment to the plausibility principle, they are likely to view the purposes, principles, and prospects of regulatory innovation through very different lenses. Some no doubt accept the fundamental virtues of neoliberal capitalism but pragmatically accept the need for limited regulation and a modest safety net so as to maintain workers' cooperation or diminish their discontent. Others are committed to one of the more salutary motifs of contemporary capitalism—the im-

portance of human capital—and therefore welcome experiments in labor market policies and practices that enhance workers’ capacities to remain or to become productive members of society. And still others are doubtless keen to spot the emergence of “green shoots” amidst the withered remains of old institutions as evidence of their ability to renew themselves and to survive in a radically changed environment.

This last narrative of regulatory renewal—the green-shoots narrative—receives special attention in this volume. Some countries, regions, and localities are attempting to devise new approaches that facilitate organizational and labor market flexibility and innovative economic performance without sacrificing worker security. These experiments are of several types: new forms of worker activism and representation that engage multiple employers across multiple sectors of the economy; supportive labor markets that facilitate people’s work-life transitions; new conceptions of the social safety net that provide assistance for transitions into, out of, and within the labor market; mechanisms to transnationalize the structures of labor market regulation; new types of worker training and unemployment programs; new types of dispute resolution that move the locus of labor protection outside the workplace to public tribunals; and other attempts to find more efficient and flexible regulatory strategies that nonetheless can plausibly claim to produce results for workers reminiscent of those they enjoyed under the old standard employment contract.

Admittedly little in this volume will appeal to those who advocate stonewall resistance to the loss of workers’ rights, last ditch defense of the institutions and policies that embody those rights, or mass mobilization to reclaim and expand them at the ballot box, in the streets, in workplaces, and in the domain of culture and public consciousness. Speaking only for ourselves, as editors of the volume, this omission is meant to neither signal disrespect for this fourth approach nor to deny that, over the long term, it may prove efficacious, but only our belief that it is implausible in the present difficult circumstances.

The Organization of This Volume

This volume includes nineteen chapters, most of them case studies of an innovative development in labor market regulation in a particular country. These chapters are arranged in six parts.

Part I features a multidisciplinary examination of the new political economy of employment. In chapter 2, Morley Gunderson provides an economist’s account of the decline of the standard contract of employment and advocates “active assistance adjustment programs that reinforce or ‘grease the wheels’ of market mechanisms by promoting job creation.” He warns, however, that unintended negative consequences may

flow from ill-considered attempts to reverse that decline or rectify its effects by extending the reach of out-dated regulatory schemes.

Acknowledging the risks identified by Gunderson, Robert Kuttner—also an economist—argues in chapter 3 that the deregulation of labor markets reflects shifts in relative political power. He disputes the proposition that “the current stage of capitalism requires a loosening of labor regulation.” Citing extensive evidence from Europe, Kuttner insists on the possibility of combining “socially guaranteed employment security with flexibility and continuing upgrading of workforce skills.”

Chapter 4, by socio-legal scholar Katherine Stone, offers a legal-institutional account of the rise of the standard employment contract in the United States, the industrialized country best known for the absence of job security. She demonstrates that the standard contract of employment in the United States developed “not as a set of legally imposed obligations, but as a widespread social practice.” She shows that assumptions about those social practices deeply permeated regulatory strategies so that “as employment arrangements changed, the regulatory regime became dysfunctional” with detrimental consequences for workers. This chapter is designed to clarify that the standard contract of employment is not merely or always a product of a particular labor law or a collective bargaining agreement, but can also be embodied in widespread workplace culture and practices. Stone ends with a description of some “green shoots” in which local groups are attempting to reconstruct both social practices and regulatory approaches to worker protection.

Together, the chapters in part I provide an account of how we got where we are today, a critical analysis of current constraints and possibilities for the future, and a preliminary look at actual experiments in regulatory innovation.

In part II, the focus shifts to efforts by legal theorists to reconceptualize the employment contract in the face of current developments. In chapter 5, in contrast to Stone’s account of the origins of the standard employment contract in social practice, Mark Freedland, an English common lawyer, emphasizes its legal rather than its factual dimensions. He argues that the standard contract of employment, as a legal concept, operated on two dimensions—a regulatory variable that reflected the extent to which its contents are subject to mandatory legal regulation—and an integration variable—“the extent to which such regulation also constitutes an integral element of the employment contract and is integrated into it.” Although he agrees that there is a decline in the standard employment contract throughout Europe, he contends that national legal systems display considerable divergence along these two dimensions of employment regulation, and cautions us to understand the decline in the standard employment contract in each country according to its own legal context.

In chapter 6, Bruno Caruso, an Italian civil lawyer, focuses on the crisis of the standard employment contract in Europe, with particular emphasis on Italy. He locates Freedland's argument within broader and more highly politicized debates over the fate of the employment contract under European law, and describes the erosion of the standard employment contract and the rise of alternative employment contracts in Italy. In a concluding section, with potential application well beyond the EU, he advocates a reinvigoration of the employment contract and the creation of what he calls a "new employment contract," one that does not depend on the bilateral vision of the parties to the employment relationship. Caruso also raises the question of why and whether employment contracts should be treated differently from other contracts. He reports on attempts in the EU to constitutionalize employment and other contracts—not only to preserve the protective principles traditionally associated with the contract of employment in many European countries but also to extend them "to all contracts in which economically strong parties could take advantage of economically weak and information-poor parties." Constitutionalization in this sense used by Caruso refers not only to the existence of enforceable legal norms embedded in the supreme law of the European Union or its member states. It also serves as a metaphor to describe the DNA of the social and political value systems of many European countries—the embedded belief that respect and fair treatment for workers is a fundamental premise of the social contract. Caruso's articulation of a constitutional-like norm that exists in many European countries helps to explain the experiments described in parts III and IV of the volume. It shows why, as national institutions and actors have found themselves increasingly unable to vindicate these constitutional or bedrock values, new, decentralized modes of governance of the employment relationship have emerged.

Part III, "Restructuring Labor Market Institutions," describes green-shoots developments in the institutions of labor relations—specifically the institutions of collective bargaining, employment contracting, and workplace dispute resolution—that have arisen in response to the erosion of the standard contract of employment. Chapter 7, by the sociologist Thomas Haipeter, describes the realignment of forces in the German industrial relations system. Rejecting the notion that decentralization represents either complete erosion or exhaustion of Germany's highly centralized postwar corporatist system of collective bargaining, Haipeter presents a number of case studies to argue that the German industrial relations system, and the union movement itself, is in a phase of renewal. For example, he notes that bargaining is taking new forms and unions are undergoing revitalization.

In chapter 8, the sociologist Jelle Visser describes flexicurity in the

Netherlands as a process of selective deregulation, whereby particular segments of the labor market—part-time, temporary, fixed-term, and agency workers—have been exempted from overarching prohibitions against nonstandard employment but have been extended specific protections appropriate to their situation. The overall result, Visser argues, is increased labor market flexibility with some compensatory moves in the direction of security. However, he notes, there is a risk “that employers may ‘lock in’ to substandard jobs and that unions may lack the power . . . to set the balance between flexibility and security . . . right.”

In chapter 9, Ida Regalia—also a sociologist—provides an account of decentralization and destandardization of employment regulation operating simultaneously in experimental local and regional pacts in Italy and France—institutions whose objective is to bolster protection for workers hired on nonstandard terms not by introducing new legal protections but by developing new arrangements to provide workers “with the security of permanence in the labor market.” The pacts accomplish their goal by promoting employment growth, facilitating transitions from more to less precarious work, enlisting local associations of employers rather than individual firms as providers of work, and organizing nonstandard workers into unions based on their employment status rather than the sector in which they are employed. She also describes new types of employer arrangements by which several employers share a group of temporary workers, thereby providing the workers job security with the group rather than with any individual firm.

Part III concludes with two chapters by legal scholars on new approaches to the resolution of employment disputes associated with changes in labor markets and employment relations. The first, chapter 10, by Takashi Araki, describes Japan’s new labor tribunal system for adjudicating labor disputes—a system that operates outside the workplace and outside the framework of traditional Japanese enterprise unions. Araki explains that the labor tribunals were created in response to the proliferation of individual employment disputes associated with the rise of nonstandard employment practices. The tribunals embody a series of institutional innovations including the appointment of lay judges, the introduction of tripartite tribunals, and the development of a new system of resolution-oriented, rather than precise, justice. No less important, Araki suggests, the rapid expansion of labor tribunals underlines the need to codify the substantive law of employment, much of which now consists of nonstatutory norms.

Chapter 11, by Alex Colvin, an American industrial relations expert, shows a stark contrast between Japan and the United States with regard to trends in dispute resolution. As in Japan, the rise of nonstandard employment in the United States has coincided with the proliferation of in-

dividual employment disputes. However, as Colvin reports, the American response—unlike the Japanese—has been to emphasize not public, but rather private organization-centric dispute resolution processes. Employers have increasingly, and with the approval of the U.S. Supreme Court, diverted employment disputes from courts and other public tribunals to private forums which they establish or control, such as peer decision-makers, ombudspersons, and management-designated arbitrators. As a result, dispute resolution has become an integral element of strategic human resource management and serves the organization's objectives rather than external values such as justice or fairness.

From one perspective, these two accounts of dispute resolution mechanisms depict a reversal of national stereotypes: the Japanese system is becoming more litigious and rights-driven, while the American is placing greater emphasis on loyalty to the enterprise and nonadversarial dispute resolution. Seen from another perspective, both the Japanese experience and the American—like the German, French, and Italian experiences described—can be seen as attempts to reconstruct labor market institutions to take account of the growing importance of nonstandard employment relations. Such an understanding underlines the importance of a point made earlier in this chapter: regimes of labor market regulation are constructed on paradigms of employment relations. As those paradigms change, or as their true nature becomes better understood, regulatory regimes are destabilized.

Part IV considers changing labor market institutions that attempt to address the new employment paradigm in ways that go beyond the immediate employment relationship. Thomas Bredgaard's chapter 12 describes the regulatory practice known as flexicurity, which seeks to locate individual worker security not in a specific job or with a specific firm, but in the labor market as a whole. His description of the operation and effects of flexicurity in Denmark differs considerably from Jelle Visser's account of flexicurity in the Netherlands in chapter 8. Bredgaard, a political scientist, begins with the suggestion that Denmark "seems to contradict the assumption that . . . atypical forms of employment . . . are becoming more common" because "Denmark may never have had a standard employment relationship." Or to place the Danish experiment in comparative context, it introduced the institutional apparatus of flexicurity *avant le mot*. The ingredients of Danish flexicurity are hefty public expenditures for vocational training and income security for the unemployed, active labor market policies designed to generate jobs and redeploy workers to fill them, and the absence of legal protection for workers facing dismissal or redundancy. The result has been high levels of labor force participation, high levels of worker mobility, and low levels of structural or cyclical unemployment. According to Bredgaard, Denmark's labor market success depends on "a long and gradual institu-

tional history” and thus may be impossible to export. Indeed, he warns, the success of flexicurity may be difficult to sustain in Denmark itself if it is unable to maintain its strong tradition of social dialogue and mutual trust, if the vested interests of unions and employed workers engender resistance to new flexicurity initiatives, and if the financial costs of maintaining current policies cannot be sustained in the context of deteriorating worldwide economic conditions.

Whereas Denmark has evolved a suite of labor market policies that do not depend on strengthening the employment nexus, Australia has acted deliberately to reinforce and extend the employment nexus by enacting laws to protect outworkers located far down the supply chain. In chapter 13, John Howe and Michael Rawling—both legal scholars—show how determined governments can use relatively simple legal technology to raise the labor standards of even the most precarious workers by imposing labor standards on the retailers who ultimately acquire their work product. Four of Australia’s six states have enacted legislation that deems outworkers to be entitled to the same terms and conditions as those conventionally employed elsewhere in the same industry, and makes retailers responsible for ensuring that their subcontractors’ employees have been treated in accordance with the law. In somewhat similar fashion, the Australian federal government uses its extensive procurement programs to ensure that workers employed in firms that supply goods and services to the public sector are treated in accordance with proper labor standards. Unlike the Danish experiment, this simple Australian innovation, Howe and Rawling contend, is easily exportable to countries that wish to escape labor law’s historic constraint, the employment nexus.

The employment nexus haunts not just public laws and policies but organizations such as unions. In their study of unions in Japan, Keisuki Nakamura and Michio Nitta—both political scientists—show in chapter 14 how the emergence of multiple, growing, and overlapping categories of nonstandard employment have put pressure on Japanese unions to redefine their membership criteria, revise their approach to delivering services to their members, and ultimately abandon the employment nexus as the prime determinant of union affiliation. Of particular interest is the emergence of community-based unions to complement, and perhaps compete with, the long-established enterprise-based unions that have until recently exercised a virtual monopoly within Japan’s labor movement.

Part V moves beyond both the workplace and the domain of labor policy to describe ways in which more general social policy is being renegotiated in light of the changing nature of work. Changing patterns of employment tenure, of workplace demography, and of family life require a new approach to the provision of social services—a new integra-

tion of policy approaches that have heretofore been consigned to discrete domains. In chapter 15, the first in this section, Anthony O'Donnell, a legal scholar, argues that Australia has done better than most countries in achieving such integration. Its system of social assistance, he maintains, is "flexible, adaptable to changes in both labor market conditions and gender roles, redistributive, and cheap." The reason, he explains, is that it is tightly targeted to buffer the least well-off against risks associated with their normal life course. However, as the underlying paradigm of employment and of family life are both changing, increasing numbers of people are experiencing risk during their working lives rather than before or after. It is therefore necessary, O'Donnell claims, to "find a new welfare discourse" that no longer treats these individuals as fraudulent claimants or as individuals who are "poor through their own fault." He notes that this concern has led to serious consideration in Australia of a system of "drawing rights"—savings schemes on which workers could draw not only to meet the cost of specified contingencies, such as further education or retirement, but also to engage in income smoothing as they encounter periods of labor market dislocation. These schemes, however, have not yet been realized.

The concern for finding new approaches to social welfare systems is echoed in chapter 16, by Kendra Strauss, a geographer. Focusing on pensions, Strauss contends that "changes in the normative framing of labor relationships . . . and the institutions that structure and mediate those relationships are fundamentally related to, and co-construct, changes in the normative framing and institutions of social welfare." Her wide-ranging comparative analysis of occupational pension systems leads her, like O'Donnell, to point out that "the male breadwinner model of labor and social reproduction" of the postwar era has changed along with the standard employment relationship that gave rise to and sustained an extensive system of workplace pensions. Applying these observations to the U.K. system of pension provision, she concludes that the challenge is to create flexible pensions for flexible workers—a project she specifically analogizes to the development of flexicurity in Denmark and the Netherlands.

Finally, chapters 17 and 18, both written by legal scholars, explore attempts by the EU and its member states to protect social rights and implement social policies in the context of the changing gender demography and increasing volatility of the labor market. The first, by Julie Suk, begins by noting that "working mothers have always been on the margins of the standard employment contract," one result of which is the gender pension gap, which in turn is associated with the predominance of women in part-time or intermittent employment. France, in particular, introduced a number of policies designed to close the gender pension gap only to have them challenged as discriminating against men under both French and European law. It is as yet unclear whether these chal-

lenges can be deflected by making identical advantages available to all caregivers regardless of gender, but Suk poignantly asks, “does antidiscrimination law facilitate work-family balance and gender equality?” Her conclusion is a tentative no. The right approach, she says, is to “adapt social security to the changing nature of work” and to abandon the standard employment contract as “the starting point and aspiration of pension policy.”

In chapter 18, the legal scholar Julia López and her coauthors Consuela Chacartegui and César Cantón raise similar questions about the EU’s family-friendly policies on maternal and parental leave, the availability of child care, opportunities for part-time work, and care for dependent persons. They detect declining interest by EU member states in the promotion of work-life balance through the equal treatment of men and women but identify a different culprit: a shift in the emphasis of public policy toward “increasing overall economic growth and employment.” Acknowledging that some corporations have nonetheless adopted progressive and family-friendly policies, perhaps out of the conviction that such policies are good for business, the authors conclude by insisting that such policies must ultimately rest not on corporate advantage but on democratic principles.

Part VI, the final section of the volume, asks what might be learned from these case studies of innovation in regulatory design. Is it possible to transplant good ideas across boundaries, from one political economy to another, from one legal system to another, and from one type of enterprise to another? How can we learn from each other while maintaining a healthy awareness of the unique circumstances confronting each state and economy? Chapter 19, by Harry Arthurs, concludes this volume by asking whether the current crisis of global capitalism has perhaps opened up some policy space for experimentation at the national level, and whether countries forced to reconsider their long-standing regulatory frameworks may seek instruction and inspiration in the experience of others.

We hope the essays in this volume illustrate both the innovation and the diversity with which countries are confronting the policy challenges created by the changing nature of work. We also hope that by presenting, comparing, and evaluating some of the most interesting policy experiments now under way, we can help create a discursive space in which new policies can be imagined and constructive transnational learning can become possible.

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