

INTRODUCTION

This month marks the fifty-fifth anniversary of the assassination of Dr. Martin Luther King, Jr.¹ History remembers Dr. King as the non-violent leader of the civil rights movement in America.² Often overlooked, however, is his steadfast commitment to the organized labor movement.³ In 2011, Professor Michael K. Honey compiled and published sixteen speeches that Dr. King delivered to labor unions and workers' rights coalitions — most of which had never been seen by the general public.⁴ Inspired by his mentor A. Philip Randolph, a leader of the labor movement,⁵ Dr. King advocated for the coordination of the labor and civil rights movements in a “unity of purpose.”⁶ Dr. King viewed issues of economic justice as inextricably linked with issues of racial justice.

The civil rights movement was about human rights; for Dr. King, human rights were labor rights.⁷ Fifty-five years ago, he advocated for better working conditions and livable wages for low-wage workers.⁸ He called on the City of Memphis to “respect the dignity of labor,” and he envisioned a future in which the American public would see that “whenever [workers] are engaged in work that serves humanity and is for the building of humanity, it has dignity, and it has worth.”⁹ “All labor . . . has dignity.”¹⁰

In the time since Dr. King's speeches, the labor market and nature of work in America have been completely transformed. New technology,

¹ *Martin Luther King Is Slain in Memphis; A White Is Suspected; Johnson Urges Calm*, N.Y. TIMES, Apr. 5, 1968, at A1.

² *About Dr. Martin Luther King, Jr.*, KING CTR., <https://thekingcenter.org/about-tkc/martin-luther-king-jr> [<https://perma.cc/388S-7KPC>].

³ Joe Fassler, “All Labor Has Dignity”: Martin Luther King, Jr.'s Fight for Economic Justice, THE ATLANTIC (Feb. 22, 2011), <https://www.theatlantic.com/entertainment/archive/2011/02/all-labor-has-dignity-martin-luther-king-jrs-fight-for-economic-justice/71423> [<https://perma.cc/6KPD-GRRC>].

⁴ MARTIN LUTHER KING, JR., “ALL LABOR HAS DIGNITY” (Michael K. Honey ed., 2011).

⁵ The Ezra Klein Show, Opinion, *Transcript: Ezra Klein Interviews Brandon Terry*, N.Y. TIMES (Jan. 17, 2023), <https://www.nytimes.com/2023/01/17/opinion/transcript-ezra-klein-interviews-brandon-terry.html> [<https://perma.cc/87VH-U649>].

⁶ Martin Luther King, Jr., AFL-CIO Fourth Constitutional Convention Speech (Dec. 11, 1961), in “ALL LABOR HAS DIGNITY,” *supra* note 4, at 35, 38; *see also* Fassler, *supra* note 3. Notably, King and Randolph were critical of the labor movement due to its own history of racial discrimination. King, *supra*, at 40–41.

⁷ *See* Michael Honey, *Forty Years Since King: Labor Rights Are Human Rights*, ORG. AM. HISTORIANS MAG. HIST., Apr. 2008, at 18, 20.

⁸ Martin Luther King, Jr., American Federation of State, County and Municipal Employees (AFSCME) Speech (Mar. 18, 1968), in “ALL LABOR HAS DIGNITY,” *supra* note 4, at 170, 172 (“Now the problem is not only unemployment. Do you know that most of the poor people in our country are working every day? (Applause) And they are making wages so low that they cannot begin to function in the mainstream of the economic life of our nation.”).

⁹ *Id.* at 171.

¹⁰ *Id.* at 172.

a global pandemic, changing attitudes toward work, and greater participation of women have all driven a restructuring of American work. However, many of the federal statutes that form the basis of labor and employment law remain largely unchanged. Meanwhile, the importance of work to American life has only increased. Despite the predictions of early twentieth-century economists and writers that technological developments would lead to a decline in working hours and an increased value placed on other aspects of life,¹¹ Americans today work more hours each year than workers in any other similarly productive country.¹² And despite an ambitious program for working benefits started during the Great Depression,¹³ Americans now “have shorter vacations, get less in unemployment, disability, and retirement benefits, and retire later” than do people in comparable societies.¹⁴

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This edition of *Developments in the Law* grapples with the American conception of dignity in labor and explores the ways in which our current employment law regime is outdated and inadequate to serve the needs of a transformed workforce. This Introduction briefly lays out the legal framework affecting employee rights and surveys some major developments in the labor force to provide context for the following Chapters.

A. A Legal Framework from the New Deal Era

The foundations for the modern American labor and employment law framework took shape during the Great Depression. President Franklin Delano Roosevelt campaigned on protecting human dignity,¹⁵ and his New Deal employment legislation showed his commitment to ensuring that all American workers attained a baseline level of dignity in their work. The following Chapters discuss many of these statutes at length. In 1933, President Roosevelt signed the National Industrial Recovery Act¹⁶ (NIRA), which required companies to write industry-wide codes to set a minimum wage, secured the right of workers to

¹¹ See, e.g., JOHN MAYNARD KEYNES, *Economic Possibilities of Our Grandchildren*, in *ESSAYS IN PERSUASION* 321, 325–26 (3d ed. 2010); Erik Barnouw, *Time on Our Hands*, N.Y. TIMES BOOK REV., Sept. 22, 1957, at 28.

¹² Derek Thompson, *Workism Is Making Americans Miserable*, THE ATLANTIC (Feb. 24, 2019), <https://www.theatlantic.com/ideas/archive/2019/02/religion-workism-making-americans-miserable/583441> [<https://perma.cc/Y7RP-WCFJ>].

¹³ See *infra* section A, pp. 1588–91.

¹⁴ Thompson, *supra* note 12 (quoting SAMUEL P. HUNTINGTON, WHO ARE WE?: THE CHALLENGES TO AMERICA’S NATIONAL IDENTITY 30 (2004)).

¹⁵ *Franklin and Eleanor Roosevelt: Human Rights and the Creation of the United Nations*, GEO. WASH. UNIV., <https://erpapers.columbian.gwu.edu/franklin-and-eleanor-roosevelt-human-rights-and-creation-united-nations> [<https://perma.cc/89N8-268P>].

¹⁶ Ch. 90, 48 Stat. 195 (1933), *invalidated in part by* A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935).

bargain collectively, and outlawed child labor.¹⁷ As he signed it, President Roosevelt said that “[h]istory will probably record [this Act] as the most important and far-reaching legislation ever enacted by the American Congress.”¹⁸ It received such widespread support that a family in Pennsylvania named their child “Nira” as an homage to the legislation.¹⁹ In 1935, President Roosevelt’s Congress passed the National Labor Relations Act²⁰ (NLRA), or the Wagner Act, which reaffirmed the right of workers to organize, to bargain collectively with their employers, and to act in a concerted way to ensure mutual aid and protection.²¹ It also created the National Labor Relations Board (NLRB),²² the federal agency “vested with the power to safeguard employees’ rights to organize, engage with one another to seek better working conditions, choose whether or not to have a collective bargaining representative negotiate on their behalf with their employer, or refrain from doing so.”²³ The Board was given the power to investigate labor practices, hold adjudicatory hearings, issue orders, and award remedies, including injunctive remedies through petitions to the federal courts.²⁴

In 1937, the Supreme Court held in *West Coast Hotel Co. v. Parrish*²⁵ that states could set a minimum wage.²⁶ As Professor Katherine Stone writes, this decision, along with the passage of the Wagner Act, “signaled the establishment of a new era” of government intervention in labor.²⁷ In the ensuing decades, state and federal statutes were passed that regulated other aspects of work.²⁸ This legislation included the Fair Labor Standards Act of 1938²⁹ (FLSA), which established a national federal minimum wage, mandatory overtime and recordkeeping provisions, and child labor standards in the private sector, as well as in federal,

¹⁷ Rogene A. Buchholz, *National Industrial Recovery Act*, ENCYC. BRITANNICA (Dec. 3, 2019), <https://www.britannica.com/topic/National-Industrial-Recovery-Act> [https://perma.cc/T486-GVAM]; Brent McKee, *New Deal Programs*, LIVING NEW DEAL, <https://livingnewdeal.org/what-was-the-new-deal/programs> [https://perma.cc/GQ53-JH2X].

¹⁸ Jonathan Grossman, *Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage*, U.S. DEP’T LAB., <https://www.dol.gov/general/aboutdol/history/flsa1938> [https://perma.cc/NS4K-CZRA].

¹⁹ *Id.*

²⁰ Ch. 372, 49 Stat. 449 (1935) (codified as amended at 29 U.S.C. §§ 151–169). In 1947, Congress passed the Labor Management Relations Act, 1947 (Taft-Hartley Act), Ch. 120, 61 Stat. 136 (codified as amended at 29 U.S.C. §§ 141–167, 171–187, 557), which amended significant aspects of the NLRA.

²¹ Katherine Van Wezel Stone, *The Post-war Paradigm in American Labor Law*, 90 YALE L.J. 1509, 1513 (1981).

²² 29 U.S.C. § 153.

²³ *Who We Are*, NLRB, <https://www.nlr.gov/about-nlr/who-we-are> [https://perma.cc/VN34-MWYR].

²⁴ Stone, *supra* note 21, at 1513.

²⁵ 300 U.S. 379 (1937).

²⁶ *Id.* at 399.

²⁷ Stone, *supra* note 21, at 1512.

²⁸ *Id.* at 1512–13.

²⁹ Ch. 676, 52 Stat. 1060 (codified as amended at 29 U.S.C. §§ 201–219).

state, and local government.³⁰ The next decades saw the passage of other important pieces of labor and employment legislation, such as the Age Discrimination in Employment Act of 1967,³¹ which regulates age discrimination; the Occupational Safety and Health Act of 1970,³² which seeks to establish and ensure workplace health and safety conditions; the Equal Employment Opportunity Act of 1972,³³ which aims to protect against discrimination on the basis of race and sex; and the Employee Retirement Income Security Act of 1974,³⁴ which establishes standards for private pensions. Subsequent legislation continued the trend of government intervention in labor. Some statutes mentioned in the Chapters of this edition include the Pregnancy Discrimination Act of 1978,³⁵ which amended Title VII of the Civil Rights Act of 1964³⁶ to prohibit sex discrimination on the basis of pregnancy; the Family and Medical Leave Act of 1993³⁷ (FMLA), which requires employers to cover unpaid, job-protected leave for their employees for certain family and medical reasons;³⁸ and the Trafficking Victims Protection Act of 2000,³⁹ which aims to protect dignity in labor at home and abroad by enabling a robust U.S. response to labor trafficking.

This framework of employee rights, composed of rights attained both by collective bargaining and through government legislation, formed what Professor Stone deems “the standard employment contract” in America.⁴⁰ It was composed of “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.”⁴¹ Importantly, however, this standard employment contract served as “the platform from which many other social rights — old age assistance, vacation entitlements, health insurance, and so on — were delivered.”⁴² Workers in America, more than in any other

³⁰ Grossman, *supra* note 18; *Wages and the Fair Labor Standards Act*, U.S. DEP’T LAB., <https://www.dol.gov/agencies/whd/flsa> [<https://perma.cc/CQ25-XR56>].

³¹ Pub. L. No. 90-202, 81 Stat. 602 (codified as amended at 29 U.S.C. §§ 621–634).

³² Pub. L. No. 91-596, 84 Stat. 1590 (codified as amended in scattered sections of the U.S. Code).

³³ Pub. L. No. 92-261, 86 Stat. 103 (codified as amended in scattered sections of 5 and 42 U.S.C.).

³⁴ Pub. L. No. 93-406, 88 Stat. 829 (codified as amended in scattered sections of the U.S. Code).

³⁵ Pub. L. No. 95-555, 92 Stat. 2076 (codified at 42 U.S.C. § 2000e(k)).

³⁶ 42 U.S.C. §§ 2000e to 2000e-17.

³⁷ Pub. L. No. 103-3, 107 Stat. 6 (codified as amended in scattered sections of the U.S. Code).

³⁸ *Family and Medical Leave Act*, U.S. DEP’T LAB., <https://www.dol.gov/agencies/whd/fmla> [<https://perma.cc/PQ93-9QYY>].

³⁹ Pub. L. No. 106-386, 114 Stat. 1466 (codified as amended in scattered sections of 8, 18, and 22 U.S.C.).

⁴⁰ Katherine V.W. Stone & Harry Arthurs, *The Transformation of Employment Regimes: A Worldwide Challenge*, in *RETHINKING WORKPLACE REGULATION* 1, 2 (Katherine V.W. Stone & Harry Arthurs eds., 2013).

⁴¹ *Id.*

⁴² *Id.*

developed country, depend on this legal framework for their rights.⁴³ Thus, individual dignity is, in many ways, contingent upon employment.⁴⁴ Americans “work[] to live and work[] to have something to live for.”⁴⁵

Today, the American economy and labor force look much different than they did in the 1930s, when the foundations of this legal framework were laid. Recent developments call into question the adequacy of the traditional legal framework for labor and employment law — built upon an array of bargained-for and government-imposed rights. Each Chapter will delve further into these developments, but some will be briefly surveyed in this Introduction.

B. Gender in the Workplace

The face of the American workplace has been transformed over the last two centuries, most notably through the increased participation of women. In 1920, women made up 20% of the U.S. labor force.⁴⁶ Today, women represent 47% of the labor force.⁴⁷ During World War II, women joined the workforce at unprecedented rates to fill the gap left by men who went overseas to join the war effort.⁴⁸ Many of these women lost their jobs in the postwar era but were left with “a new drive to work and join the workforce.”⁴⁹ So female workforce participation once again began to increase. By 1950, about 34% of women aged sixteen or older participated in the labor force, growing to nearly 60% of such women in 1998.⁵⁰ In the 1970s, a time Professor Claudia Goldin argues was the start of what she calls “the quiet revolution,” more women with children stayed in the workforce.⁵¹ During this time, women were expanding their horizons and planning “for careers rather than jobs.”⁵² They invested in formal education and aimed for jobs with

⁴³ Deepa Das Acevedo, *Essentializing Labor Before, During and After the Coronavirus*, 52 ARIZ. ST. L.J. 1091, 1096 (2020).

⁴⁴ *Id.* at 1095–96.

⁴⁵ *Id.* at 1096.

⁴⁶ *History*, U.S. DEP’T LAB., <https://www.dol.gov/agencies/wb/about/history> [<https://perma.cc/2PLS-GDWT>].

⁴⁷ *Id.*

⁴⁸ Haylee Broyles, *How Women Entered the Workforce in World War II*, THE COLLECTOR (Dec. 6, 2022), <https://www.thecollector.com/women-in-the-workforce-world-war-ii> [<https://perma.cc/G29T-FNKB>]; *Women in the Work Force During World War II*, NAT’L ARCHIVES, <https://www.archives.gov/education/lessons/wwii-women.html> [<https://perma.cc/ZJ9N-NHY5>].

⁴⁹ Broyles, *supra* note 48.

⁵⁰ *Changes in Women’s Labor Force Participation in the 20th Century*, U.S. BUREAU LAB. STAT. (Feb. 16, 2000), <https://www.bls.gov/opub/ted/2000/feb/wk3/arto3.htm> [<https://perma.cc/9SCD-8KRY>].

⁵¹ Elisabeth Jacobs & Kate Bahn, *Women’s History Month: U.S. Women’s Labor Force Participation*, WASH. CTR. FOR EQUITABLE GROWTH (Mar. 22, 2019), <https://equitablegrowth.org/womens-history-month-u-s-womens-labor-force-participation> [<https://perma.cc/BQ6U-GD8T>].

⁵² Claudia Goldin, *The Quiet Revolution that Transformed Women’s Employment, Education, and Family*, 96 AM. ECON. REV. (PAPERS & PROC.), 1, 8 (2006).

upward mobility.⁵³ In the 1970s and 1980s, women graduated college and sought advanced degrees at higher rates than ever before.⁵⁴

According to Goldin, the “quiet revolution” transformed the “outlook of women concerning their individual identities.”⁵⁵ Women began getting married later in life and viewed career success as playing a larger role in their own personal satisfaction.⁵⁶ But women’s labor force participation began to slow in the 1990s.⁵⁷ In the twenty-first century, participation continued to see a “gradual decline.”⁵⁸ And women’s labor force participation dipped during the pandemic.⁵⁹ While 59.2% of women worked before the pandemic, this number dropped to 58.4% by September of 2022 — a loss of 1.067 million women from the U.S. labor force.⁶⁰ Many attribute this to the greater need for childcare as schools were closed, a need that disproportionately burdened mothers.⁶¹ But women today are still demanding a seat at the table. And, as the #MeToo movement showed, women are also demanding respect and calling for fundamental changes in workplace culture to eradicate sexual harassment in the workplace.⁶² Chapters I and IV describe in more detail the inequalities facing women in the workplace, despite federal statutes prohibiting outright discrimination. And, as Chapter IV details, *Dobbs v. Jackson Women’s Health Organization*,⁶³ which overturned *Roe v. Wade*,⁶⁴ severely threatens any strides that have been made toward gender equality.

C. Technology and the Gig Economy

The technological revolution has also radically transformed jobs in America.⁶⁵ The automation of jobs has shifted labor demand “away

⁵³ *Id.*

⁵⁴ *Id.* at 9–11.

⁵⁵ *Id.* at 11.

⁵⁶ *Id.*

⁵⁷ *Women in the Labor Force: A Databook*, U.S. BUREAU LAB. STAT. (Apr. 2021), <https://www.bls.gov/opub/reports/womens-databook/2020/home.htm> [<https://perma.cc/R8Y8-ATKU>].

⁵⁸ *Id.*

⁵⁹ Katica Roy, *More than a Million Women Have Left the Workforce. The Fed Needs to Consider Them as It Defines “Full Employment,”* FORTUNE (Sept. 6, 2022, 5:02 AM), <https://fortune.com/2022/09/06/women-workforce-fed-rates-consider-full-employment-katica-roy> [<https://perma.cc/XNX5-MT8S>].

⁶⁰ *Id.*

⁶¹ See Scott Horsley, *Women Are Returning to (Paid) Work After the Pandemic Forced Many to Leave Their Jobs*, NPR (Sept. 28, 2022, 5:00 AM), <https://www.npr.org/2022/09/28/1125149612/women-are-returning-to-paid-work-after-the-pandemic-forced-many-to-leave-their-j> [<https://perma.cc/S7L9-FDRV>].

⁶² Sydney Cone et al., *Workplace Conduct Still Needs Improvement After #MeToo*, BLOOMBERG L. (Oct. 24, 2022, 4:00 AM), <https://news.bloomberglaw.com/daily-labor-report/workplace-conduct-still-needs-improvement-after-metoo> [<https://perma.cc/2UPR-S4TG>].

⁶³ 142 S. Ct. 2228 (2022).

⁶⁴ 410 U.S. 113 (1973), overruled by *Dobbs*, 142 S. Ct. 2228.

⁶⁵ See Umberto Colombo, *The Technology Revolution and the Restructuring of the Global Economy*, in GLOBALIZATION OF TECHNOLOGY: INTERNATIONAL PERSPECTIVES 23, 23 (Janet H. Muroyama & H. Guyford Stever eds., 1988).

from routine low- to middle-level skills to higher-level and more sophisticated technical and managerial skills.”⁶⁶ Many have predicted that this move toward automation, which may accelerate even more with recent rapid developments in artificial intelligence,⁶⁷ will lead to job displacement.⁶⁸ Already, automation has led to greater income inequality.⁶⁹ However, not all predictions have been negative. Some experts, including the World Economic Forum, predict that automation will create more jobs than it displaces.⁷⁰

Technology hasn’t just changed the nature of existing jobs; it has also created a new way to work, and a new \$350 billion industry — gig work.⁷¹ Online platforms have transformed the service economy and the labor market by monetizing what had been dormant human capital.⁷² The gig economy includes “the delivery of services, the sharing of assets, and the recirculation of goods,”⁷³ facilitated by online platforms such as Uber, TaskRabbit, and Airbnb, which connect an on-demand worker to a consumer.⁷⁴

This kind of casual, short-term labor has completely disrupted the typical model of work in America, which was founded upon “the standard employment contract” that assumed long-term employment. Some have praised the gig economy for disrupting this typical corporate model and providing more transparency and flexibility for workers, including those typically excluded from the traditional labor market.⁷⁵ However, for many reasons, some of which are explained in Chapter II, online platforms in the gig economy have engaged in the “subversion of laws protecting those most vulnerable.”⁷⁶ Gig workers have few protections in employment law, largely due to their unfavorable classification as “independent contractors” instead of “employees” under the FLSA.⁷⁷

⁶⁶ Zia Qureshi, *Technology, Change, and a New Growth Agenda*, in GROWTH IN A TIME OF CHANGE: GLOBAL AND COUNTRY PERSPECTIVES ON A NEW AGENDA 3, 4 (Zia Qureshi & Hyeon-Wook Kim eds., 2020).

⁶⁷ *15 Jobs and Tasks Tech Experts Believe Will Be Automated Within a Decade*, FORBES (Feb. 18, 2022, 8:15 AM), <https://www.forbes.com/sites/forbestechcouncil/2022/02/18/15-jobs-and-tasks-tech-experts-believe-will-be-automated-within-a-decade> [<https://perma.cc/27EB-6NNZ>].

⁶⁸ See Daron Acemoglu & Pascual Restrepo, *Robots and Jobs: Evidence from US Labor Markets*, 128 J. POL. ECON. 2188, 2241 (2020).

⁶⁹ See Qureshi, *supra* note 66, at 5.

⁷⁰ Mohamed Kande & Murat Sonmez, *Don't Fear AI. It Will Lead to Long-Term Job Growth*, WORLD ECON. F. (Oct. 26, 2020), <https://www.weforum.org/agenda/2020/10/dont-fear-ai-it-will-lead-to-long-term-job-growth> [<https://perma.cc/R5GP-5BXV>].

⁷¹ Chris Kolmar, *23 Essential Gig Economy Statistics [2023]: Definitions, Facts, and Trends on Gig Work*, ZIPPPIA (Feb. 16, 2023), <https://www.zippia.com/advice/gig-economy-statistics> [<https://perma.cc/6PZV-ENPK>].

⁷² See *id.*

⁷³ Orly Lobel, *The Law of the Platform*, 101 MINN. L. REV. 87, 96 (2016).

⁷⁴ See *id.* at 96–99.

⁷⁵ See Orly Lobel, *The Gig Economy & the Future of Employment and Labor Law*, 51 U.S.F. L. REV. 51, 53 (2017).

⁷⁶ *Id.* at 55.

⁷⁷ See Lobel, *supra* note 73, at 132.

The legal consequences of being classified as an employee are great, as only employees receive many of the benefits of the federal legislation described above.⁷⁸ As a result, the FLSA, “designed to protect those most in need,”⁷⁹ fails to do just that. And, as Chapter II explains, minorities and Americans with lower incomes are overrepresented in the gig economy.⁸⁰ While the New Deal legislation was intended to bring dignity to the most vulnerable of laborers, this very population is excluded from protection in a meaningful way.

D. COVID-19 Pandemic

The COVID-19 pandemic transformed the way we work.⁸¹ COVID-19 is a respiratory disease first discovered in 2019 in Wuhan, China.⁸² It is caused by the coronavirus SARS-CoV-2.⁸³ The virus is very contagious and spreads person to person through respiratory droplets.⁸⁴ Once infected, one’s symptoms can range from mild to incredibly severe, and older adults and those with certain underlying conditions are at an increased risk.⁸⁵ Because of the nature of the disease, it spread rapidly across the globe in 2020. Since the first confirmed case in Washington State in January 2020,⁸⁶ there have been over one hundred million confirmed cases and one million deaths attributable to the disease in the United States.⁸⁷

Immediately, the pandemic forced American workers to stay in their homes to avoid infection. This affected different industries in different ways. Workers who could not work from home due to the in-person nature of their jobs shouldered the burden of the pandemic. With business closures and travel bans, hospitality and retail workers were hit especially hard, and many lost their jobs.⁸⁸ As those industries are “heavily occupied by minorities, who also tend to have less emergency

⁷⁸ See Lobel, *supra* note 75, at 63–64.

⁷⁹ *Id.* at 62.

⁸⁰ See Monica Anderson et al., *The State of Gig Work in 2021*, PEW RSCH. CTR. (Dec. 8, 2021), <https://www.pewresearch.org/internet/2021/12/08/the-state-of-gig-work-in-2021> [https://perma.cc/Z6B3-8XRW].

⁸¹ Rebecca Henderson, *How COVID-19 Has Transformed the Gig Economy*, FORBES (Dec. 10, 2020, 10:18 AM), <https://www.forbes.com/sites/rebeccahenderson/2020/12/10/how-covid-19-has-transformed-the-gig-economy> [https://perma.cc/L6QX-J7S2].

⁸² *Basics of COVID-19*, CTRS. FOR DISEASE CONTROL & PREVENTION (Nov. 4, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/your-health/about-covid-19/basics-covid-19.html> [https://perma.cc/DB9Q-ZXW9].

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Press Release, Ctrs. for Disease Control & Prevention, First Travel-Related Case of 2019 Novel Coronavirus Detected in United States (Jan. 21, 2020), <https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html> [https://perma.cc/FRL8-GLKK].

⁸⁷ *COVID Data Tracker*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> [https://perma.cc/4MA7-G6YE].

⁸⁸ Das Acevedo, *supra* note 43, at 1101.

savings,” workers of color lost their jobs at disproportionate rates and were more heavily affected by such job loss.⁸⁹ All in all, “the youngest, poorest, and most marginalized Americans . . . suffered first and worst.”⁹⁰

Fortunately, since 2020, the labor market has largely bounced back. Unemployment has fallen to 3.5%, its lowest in the past five decades.⁹¹ As of August 2022, the United States “replaced all of the jobs that were lost in the early months of the pandemic.”⁹² However, while jobs have returned, many prepandemic practices have not. To start, more workers are working from home. In 2022, 59% of workers who said their jobs can mostly be done from home were working from home, and most were doing so by choice.⁹³ In response, many, although not all, employers are now acknowledging and creating “new working norms.”⁹⁴ And in some industries, more flexible working conditions are now the new normal.⁹⁵ This flexibility benefits many groups, including workers with disabilities⁹⁶ and those with caretaking responsibilities.⁹⁷ But the option to work from home is largely confined to younger, more educated, and higher-income workers.⁹⁸ Chapter I describes in more detail trends around workers’ pursuit of better work-life balance as well as ramifications for workforce productivity.

As Professor Deepa Das Acevedo describes, employment law consists of many binary classifications (such as employee versus independent contractor and exempt versus nonexempt), and out of the pandemic grew a new classification: “essential versus non-essential labor.”⁹⁹ During the early days of the pandemic, health care workers, emergency

⁸⁹ *Id.*

⁹⁰ *Id.* at 1102.

⁹¹ All Things Considered, *The Unemployment Rate Fell to 3.5%, Matching Its Lowest Level in the Last 50 Years*, NPR (Aug. 5, 2022, 5:07 PM), <https://www.npr.org/2022/08/05/1116036160/the-unemployment-rate-fell-to-3-5-matching-its-lowest-level-in-the-last-50-years> [https://perma.cc/7DRE-K9HH].

⁹² *Id.* (statement of Ailsa Chang).

⁹³ Kim Parker et al., *COVID-19 Pandemic Continues to Reshape Work in America*, PEW RSCH. CTR. (Feb. 16, 2022), <https://www.pewresearch.org/social-trends/2022/02/16/covid-19-pandemic-continues-to-reshape-work-in-america> [https://perma.cc/65JL-KWGE].

⁹⁴ André Dua et al., *Americans Are Embracing Flexible Work — And They Want More of It*, MCKINSEY & CO. (June 23, 2022), <https://www.mckinsey.com/industries/real-estate/our-insights/americans-are-embracing-flexible-work-and-they-want-more-of-it> [https://perma.cc/QC66-FRA9].

⁹⁵ *Id.*

⁹⁶ Gus Alexiou, *Remote Work Boosts Employees with Disabilities, Research Shows*, FORBES (Oct. 27, 2022, 10:00 AM), <https://www.forbes.com/sites/gusalexiou/2022/10/27/new-research-confirms-boon-of-remote-working-for-disabled-employees-in-the-us> [https://perma.cc/3P5U-G943].

⁹⁷ See Janice Gassam Asare, *Flexibility Is the Key to Supporting Working Mothers in a Post-pandemic Workplace*, FORBES (May 5, 2022, 11:43 PM), <https://www.forbes.com/sites/janicegassam/2022/05/05/flexibility-is-the-key-to-supporting-working-mothers-in-a-post-pandemic-workplace> [https://perma.cc/FJ9M-C3WU].

⁹⁸ Dua et al., *supra* note 94.

⁹⁹ Das Acevedo, *supra* note 43, at 1093.

services workers, and sanitation workers, among others,¹⁰⁰ were recognized as essential to the continued operation of society, and were required to continue going in to work.¹⁰¹ However, despite their importance, essential workers are often denied the basic protections of employment law.¹⁰² Fifty-five years ago, Dr. King remarked that he hoped that one day, society would see that the sanitation worker is just as important to society as the physician, “for if he doesn’t do his job, diseases are rampant.”¹⁰³ But when the country was hit with COVID-19, Americans showed their gratitude for essential workers by banging on pots and pans instead of by providing them with tangible employee benefits.¹⁰⁴ Essential workers are often denied a living wage and paid leave.¹⁰⁵ “COVID-19 has laid bare the wide gap between the value that health care support, service, and direct care workers bring to society and the extremely low wages they earn in return.”¹⁰⁶

The gig economy, technological advancements, and COVID-19 have also affected the privacy of both consumers and employees. Online platforms collect personal information and data from consumer usage of their apps.¹⁰⁷ And these apps often employ rating systems that allow consumers to rate the service, creating “a system of stranger trust.”¹⁰⁸ But, as Professor Orly Lobel writes, this kind of system “brings us close to the ultimate Foucauldian panopticon” of constant surveillance.¹⁰⁹ Additionally, technological advancements have led to the electronic surveillance of workers.¹¹⁰ Employees are now being “tracked, recorded

¹⁰⁰ *The Essential Workers Project*, JOHNS HOPKINS BERMAN INST. OF BIOETHICS, <https://bioethics.jhu.edu/research-and-outreach/covid-19-bioethics-expert-insights/essential-workers-project> [<https://perma.cc/XYU6-9FHD>].

¹⁰¹ Das Acevedo, *supra* note 43, at 1093.

¹⁰² *Id.* at 1093–94.

¹⁰³ King, *supra* note 8, at 172.

¹⁰⁴ See Adam Jeffery, *New Yorkers Stop and Give Daily Thanks and Gratitude for Coronavirus Frontline Workers*, CNBC (Dec. 10, 2020, 8:22 AM), <https://www.cnbc.com/2020/04/05/new-yorkers-stop-and-give-daily-thanks-and-gratitude-for-coronavirus-frontline-workers.html> [<https://perma.cc/53D2-DB55>].

¹⁰⁵ Molly Kinder, *Essential but Undervalued: Millions of Health Care Workers Aren’t Getting the Pay or Respect They Deserve in the COVID-19 Pandemic*, BROOKINGS INST. (May 28, 2020), <https://www.brookings.edu/research/essential-but-undervalued-millions-of-health-care-workers-arent-getting-the-pay-or-respect-they-deserve-in-the-covid-19-pandemic> [<https://perma.cc/3HTD-Y4D7>]; Press Release, Rep. Ayanna Pressley, *The PAID Leave Act* (Apr. 3, 2020), <https://pressley.house.gov/sites/pressley.house.gov/files/Paid%20Leave%20One%20Pager.pdf> [<https://perma.cc/2PSC-CUBF>].

¹⁰⁶ Kinder, *supra* note 105.

¹⁰⁷ E.g., *Uber Privacy Notice*, UBER (Dec. 23, 2022), <https://www.uber.com/legal/en/document/?country=united-states&lang=en&name=privacy-notice> [<https://perma.cc/MM9S-64EG>].

¹⁰⁸ Lobel, *supra* note 75, at 55.

¹⁰⁹ *Id.*

¹¹⁰ The Daily, *The Rise of Workplace Surveillance*, N.Y. TIMES, at 00:42 (Feb. 15, 2023), <https://www.nytimes.com/2022/08/24/podcasts/the-daily/workplace-surveillance-productivity-tracking.html> [<https://perma.cc/DJ95-D2N3>].

and ranked.”¹¹¹ This became popular across industries as more people began working from home, and many employees are now tracked to determine when they are actively working based on keyboard and computer activity.¹¹²

E. Labor Movement

Today, Americans’ approval rating of labor unions is at 71%, the highest it has been since 1965, when Dr. King was delivering his speeches on labor.¹¹³ And there was a 57% increase in union-election petitions filed with the NLRB during the first half of 2021.¹¹⁴ The current President, President Joe Biden, promised to be “the most pro-union president you’ve ever seen.”¹¹⁵ And he is, perhaps, the most pro-union President since President Roosevelt.¹¹⁶ Both President Biden and President Roosevelt expressed similar views on the dignity of labor and the importance of unions. In 2021, President Biden said, “[T]hat’s what the labor union is all about: dignity.”¹¹⁷ Unions have seen recent high-profile victories at big corporations such as Starbucks¹¹⁸ and Amazon.¹¹⁹ This momentum may be largely attributable to the pandemic.¹²⁰ Former NLRB Chairman Professor Mark Gaston Pearce says the pandemic was “the wakeup call or the catalyst that has prompted two perspectives: ‘is there another way to work and live?’ and the relationship between employers with workers.”¹²¹ Chapter I explores in depth some reasons for this rise in labor-union activity and the broader

¹¹¹ Jodi Kantor & Arya Sundaram, *The Rise of the Worker Productivity Score*, N.Y. TIMES (Aug. 14, 2022), <https://www.nytimes.com/interactive/2022/08/14/business/worker-productivity-tracking.html> [https://perma.cc/L7WA-4ZPX].

¹¹² The Daily, *supra* note 110, at 02:12.

¹¹³ Justin McCarthy, *U.S. Approval of Labor Unions at Highest Point Since 1965*, GALLUP (Aug. 30, 2022), <https://news.gallup.com/poll/398303/approval-labor-unions-highest-point-1965.aspx> [https://perma.cc/QZ6J-CGQJ]; see *supra* p. 1587.

¹¹⁴ McCarthy, *supra* note 113.

¹¹⁵ Abigail Johnson Hess, *Biden Promises to Be “the Most Pro-union President” — And Union Members in Congress Are Optimistic*, CNBC (Dec. 2, 2020, 10:05 PM), <https://www.cnbc.com/2020/12/01/biden-promises-to-be-the-most-pro-union-president-and-rep.html> [https://perma.cc/48J3-VHTU].

¹¹⁶ See Caroline Mimbs Nyce, *Is Biden the Most Pro-union President in History?*, THE ATLANTIC (Sept. 15, 2022), <https://www.theatlantic.com/ideas/archive/2022/09/biden-railroad-labor-unions-deal-erik-loomis/671445> [https://perma.cc/R7HY-RE69].

¹¹⁷ Remarks at a White House Labor Day Celebration, 2021 DAILY COMP. PRES. DOC. 1 (Sept. 8, 2021); see also *supra* notes 7–10 and accompanying text.

¹¹⁸ Noam Scheiber, *Starbucks Workers at 3 More Buffalo-Area Stores Vote to Unionize*, N.Y. TIMES (Mar. 9, 2022), <https://www.nytimes.com/2022/03/09/business/economy/starbucks-union-vote-buffalo.html> [https://perma.cc/Z2AW-FVRF].

¹¹⁹ Karen Weise & Noam Scheiber, *Amazon Workers on Staten Island Vote to Unionize in Landmark Win for Labor*, N.Y. TIMES (Apr. 1, 2022), <https://www.nytimes.com/2022/04/01/technology/amazon-union-staten-island.html> [https://perma.cc/D7QN-QVCR].

¹²⁰ Jennifer Elias & Amelia Lucas, *Employees Everywhere Are Organizing. Here’s Why It’s Happening Now*, CNBC (May 7, 2022, 12:05 PM), <https://www.cnbc.com/2022/05/07/why-is-there-a-union-boom.html> [https://perma.cc/NAC9-UWC7].

¹²¹ *Id.*

trend of demanding better working conditions. Chapter III describes how this momentum in organizing can be used to protect workers against other unfair practices by their employers. We may be seeing the next major labor movement. While the last came in response to the inequalities and inhumanity of the Great Depression,¹²² the next may come out of the structural inequalities and inhumanity laid bare by the COVID-19 pandemic.

F. Chapter Summaries

The following Chapters analyze five developments in labor and employment law in the United States. Chapter I describes a trend in American workers' attitudes toward work that was brought into sharp relief by the COVID-19 pandemic — a desire to attain better work-life balance.¹²³ American workers today experience poor work-life balance compared to workers in other countries. The high rates of resignation and union activity since the pandemic signal that workers are now demanding a better balance. The Chapter argues that a renewed attention to this issue could, and should, spur a federal response.

The Chapter opens by discussing the American conception of work-life balance, and why the prioritization of work over other life activities became part of the American cultural fabric. It continues by examining the two U.S. federal laws that regulate aspects of work-life balance: the FLSA and the FMLA, which the Chapter argues are inadequate to accommodate the needs of a modern workforce. Their histories show they were enacted to provide more protection and flexibility to the American worker, but they were based on what are now outdated conceptions of workforce participation, gender norms, and family structures. Their contents show that they set a “starkly limited baseline” of working hours and nonworking time.¹²⁴ And their structures show that their protections exclude large swaths of the working population. Their histories, contents, and structures all serve to disproportionately disadvantage women, single parents, those with disabilities, those in low-wage jobs, caretakers, and those who wish to engage with their communities.

Chapter I calls on the federal government to reenvision a modern American conception of work-life balance — to create a new expectation for the American worker that will allow workers time to also be parents, care for their families, and engage with their communities. The Chapter shows why the time to act is now. It examines five trends that have arisen because of the pandemic — caregiving, the Great Resignation, antiwork, the union boom, and quiet quitting — which

¹²² See *supra* notes 15–27 and accompanying text.

¹²³ The Chapter defines this balance as “the relationship between work and non-working time.” *Infra* ch. I, p. 1605 (quoting Clare Kelliher et al., *All of Work? All of Life? Reconceptualising Work-Life Balance for the 21st Century*, 29 HUM. RES. MGMT. J. 97, 97 (2019)).

¹²⁴ *Infra* ch. I, p. 1610.

show the consequences of an outdated employment law framework. The Chapter then examines state and local laws that have been passed because of this renewed attention. Specifically, lawmakers have moved to expand access to paid leave and to provide more predictable and fair schedules for workers. But, as the Chapter explains, these provisions only fill in the gaps left open by the FLSA and the FMLA. The federal government should respond to the concerns of millions of Americans and not only reform outdated federal laws to set a higher baseline for work-life balance but also reimagine what employers should expect of their workers, and what employees can expect out of their employment and out of their lives. Doing so will not only benefit the health and satisfaction of the American worker but also improve workplace productivity and strengthen our democracy.

Chapter II begins with a look at online gig platforms and their regulation by the Federal Trade Commission's (FTC) recent enforcement. As discussed, gig workers on online platforms have few protections in employment law. Against the landscape of a "regulatory vacuum,"¹²⁵ Chapter II envisions a path forward for gig workers: through the FTC. The FTC wields enforcement power in the areas of antitrust and consumer protection under the Federal Trade Commission,¹²⁶ Clayton,¹²⁷ and Sherman Acts.¹²⁸ While the FTC has not traditionally occupied a role that protects American workers, it has recently signaled its intent to regulate the online gig economy. Chapter II evaluates the promise and potential drawbacks of the FTC's entrance into this space. The Chapter concludes with a cautious but optimistic prescription — while this use of federal consumer protection laws will no doubt face scrutiny and practical challenges, the FTC's regulation of online gig platforms will improve the status quo for a population that enjoys few benefits and protections.

In order to assess the promise of the FTC's advance into regulating gig work, the Chapter places the FTC's policy announcement in its proper context. It begins with a brief history of gig work and a discussion of the industry's recent exponential growth. It explains the varying conceptions of gig platforms' utility — while some view the rise of online gig platforms as a move toward efficiency and flexibility for workers, others observe the darker side of the industry, in which these platforms take advantage of their workers through their unchecked control and ability to set poor working conditions. The Chapter continues by showing how and explaining why gig workers have few protections in labor and employment law. It then covers the FTC, detailing its origins; its development throughout the twentieth century; and its

¹²⁵ *Infra* ch. II, p. 1629.

¹²⁶ 15 U.S.C. §§ 41–58.

¹²⁷ *Id.* §§ 12–27; 29 U.S.C. §§ 52–53.

¹²⁸ 15 U.S.C. §§ 1–7.

modern conception, authority, and enforcement powers. The Chapter concludes by evaluating the promise of the FTC's proposed actions. It covers what the FTC will be able to do in this space, given its authority. It discusses the limitations of this approach — specifically the legal, conceptual, and practical limitations of having the FTC regulate this industry to protect workers — and then surveys the substantive possibilities and structural benefits that the FTC brings to the table.

Chapter III looks at a specific mechanism that American employers are using to undercut worker protections — mandatory arbitration clauses in employment contracts. These clauses require employees to agree to resolve future disputes through binding arbitration, instead of in a courtroom. The Chapter highlights the evils of these clauses, particularly how the “claim-suppressive effects of forced arbitration have eliminated up to ninety-eight percent of all employment claims and virtually insulated employers from liability altogether.”¹²⁹ Those subject to mandatory arbitration clauses are effectively denied the vindication of their substantive rights. The proliferation of these clauses has led to the growth of a strategy to combat them — mass arbitration.¹³⁰ And while mass arbitration has been largely successful in winning settlements for workers and pressuring some employers to abandon mandatory arbitration clauses, the Chapter argues that the strategy does not go far enough in part because employers and arbitration companies are adapting and making changes to lessen its effectiveness. The Chapter proposes a novel strategy that takes aim at mandatory arbitration clauses: “mass organizing.”¹³¹ The strategy involves leveraging litigation, workers-rights education and organization, and political organizing. By doing this, workers and plaintiff-side attorneys can continue to put pressure on employers and hold defendants accountable for violating their employees' rights.

Chapter III begins by discussing the claim-suppressive effects of mandatory arbitration clauses and class waivers. It explains the structural reasons why arbitration clauses have such devastating effects in the context of employment law and how they are acutely severe for low-wage workers, thereby disproportionately affecting female and Black workers. The Chapter describes the rise of mass arbitration as a response to mandatory arbitration clauses, and the limitations of this strategy. It then sketches out how mass arbitration could be taken a step further to facilitate long-term worker organizing. Chapter III concludes by discussing the benefits, ethical concerns, and legal challenges of the model.

A *Developments in the Law* issue on labor and employment in 2023 would be incomplete without a Chapter devoted to the effects of *Dobbs*

¹²⁹ *Infra* ch. III, p. 1652.

¹³⁰ See J. Maria Glover, *Mass Arbitration*, 74 STAN. L. REV. 1283, 1289 (2022).

¹³¹ *Infra* ch. III, p. 1653.

v. Jackson Women's Health Organization on the American workforce. Chapter IV deals with just that, through the lens of the corporate-employer response to the ruling. Following the leak of the *Dobbs* draft decision in 2022, many corporate employers responded by agreeing to cover the travel expenses of their employees who need to go to other states for access to reproductive care.¹³² While many viewed this unprecedented commitment by employers as a welcome emergency solution, the move raises salient questions about the nature and role of corporations in American society: Should corporations be obligated to step in where our government does not? Can and should corporations act as arbiters of morality and checks on an out-of-touch Court? Are the realities and context of *Dobbs* and abortion access unique, such that dependence on this unlikely intervenor is justified? Or will corporations step in only when it helps their bottom lines? While the activist corporation is not a new phenomenon,¹³³ its implications were brought to the fore of the American consciousness when the extremely politically charged issue of abortion access became involved. Chapter IV examines the phenomenon in this context and concludes that this corporate action does not go far enough and that employees should not be forced to rely only on their employers for this protection.

The Chapter begins with a discussion of how access to reproductive health care affects who can work to begin with. It explains that a lack of abortion access disproportionately excludes from the workforce people of color and gender minorities who can get pregnant. Abortion access is an economic justice issue and thus “runs together with racial justice questions.”¹³⁴ The Chapter explains how access to reproductive care is directly correlated to fair employment opportunities. It also explains how current federal protections for pregnant workers are inadequate in providing equality to pregnant workers in practice. And with these populations already facing discrimination at all levels of society, what was never a level playing field is made even worse.

The Chapter continues by discussing the commitments made by corporate actors. It examines the incentives corporations have to provide reproductive health care and retain their employees who can get pregnant. It then dives into the legal and political consequences of ensuring abortion access, showing that these corporate “care packages” are not a reliable solution for employees. The Chapter concludes by proposing alternative ways of protecting workers through the state and federal governments. The issue of access to abortion is a polarizing one, and this Chapter confronts the questions of how it affects the American

¹³² Emma Goldberg, *These Companies Will Cover Travel Expenses for Employee Abortions*, N.Y. TIMES (Aug. 19, 2022), <https://www.nytimes.com/article/abortion-companies-travel-expenses.html> [<https://perma.cc/GS4T-N6GM>].

¹³³ See Aaron K. Chatterji & Michael W. Toffel, *The New CEO Activists*, HARV. BUS. REV. Jan.–Feb. 2018, at 78, 89.

¹³⁴ *Infra* ch. IV, p. 1678.

worker, what the role of employers is in this debate, and how employment law can be used to remedy the resulting employment inequalities.

Finally, Chapter V looks beyond U.S. borders at incidents of forced labor internationally. The Chapter argues that the United States has a moral obligation to the victims of forced labor, as it is the world's largest economy and the largest importer of products that are at risk of being produced by forced labor. It surveys the current tools available to combat these human rights violations abroad, concluding that responses by the judicial, executive, and legislative branches all have downsides and are structurally inadequate to fully address the problem. Absent some larger intervention from the federal government, the retention of a private right of action in federal courts, and a more forceful commitment to enforcement across all three branches, the United States cannot fulfill its moral duty to victims of forced labor abroad.

Chapter V begins with an overview of the problem of forced labor around the world and sets out an argument for the moral obligation of the United States to address it. This practice forces twenty-seven million individuals worldwide to work in deplorable conditions.¹³⁵ And because the “demands and whims of American consumers” determine the fates of these workers, it is the moral, if not legal, duty of the United States to address the problem of forced labor.¹³⁶ The question is how. This Chapter helps answer that question by assessing the options available in the United States to accomplish the task. The Chapter details the avenues for relief that the United States offers individual victims of forced labor: the ability to bring civil cases in federal courts under the Alien Tort Statute¹³⁷ (ATS) or the Trafficking Victims Protection Reauthorization Act of 2003¹³⁸ (TVPRA). It explains that the door to relief through the courts is all but closed: the Supreme Court has narrowed the extraterritorial reach of the ATS, and the bar to prove a connection between the United States and an incident of forced labor under the TVPRA is very high. Additionally, a further limitation to the TVPRA's potency may be on the horizon, as some litigants have challenged the extraterritoriality of the statute.¹³⁹

Against the backdrop of limited private pathways to judicial relief for victims of forced labor, the Chapter continues by surveying the potential public policy levers available to the legislative and executive branches — and their shortcomings. Chiefly, the executive branch is “captured by the greater overarching political goals of the state,” and any action aimed at remedying forced-labor practices will be contingent

¹³⁵ U.S. DEP'T OF LAB., 2022 LIST OF GOODS PRODUCED BY CHILD LABOR OR FORCED LABOR: REPORT TO CONGRESS 3 (2022).

¹³⁶ *Infra* ch. V, p. 1704.

¹³⁷ 28 U.S.C. § 1350.

¹³⁸ Pub. L. No. 108-193, 117 Stat. 2875 (codified in scattered sections of 8, 18, and 22 U.S.C.).

¹³⁹ *Infra* ch. V, p. 1710 (citing *Doe I v. Apple Inc.*, No. 19-cv-03737, 2021 WL 5774224 (D.D.C. Nov. 2, 2021)).

upon American diplomatic and political priorities.¹⁴⁰ Thus, actions against forced labor become hollow and politically driven, which, the Chapter argues, limits what the United States can do. And while Congress can step in and do what the Executive will not, Congress has been reluctant to fill this role in recent years. The Chapter concludes with an assessment of what this landscape — the diminishing power of the judiciary and the hollow actions of the Executive — means for victims of forced labor around the world. The legislative and executive branches wield enormous power — but that power works only when they wish to use it.

* * *

This year's edition of *Developments in the Law* explores just some of the many recent changes in the American workforce and the way we work. Through the lens of the law, the following Chapters show how the traditional employment law framework is outdated and unable to confront these changes. And, importantly, the legal framework fails to protect those whom it was meant to — the most vulnerable of our society. The Chapters also examine the consequences of a legal framework that conditions basic protections of individual dignity on employment. When certain vulnerable workers are excluded from legal protection, they are also excluded from this promise of dignity — the promise of dignity envisioned by Dr. King and President Roosevelt. However, we are emerging from a global pandemic that has made us rethink how we want to live our lives and, thus, how we want to work. American society is perhaps ready for significant reform and a return to dignity in labor.

¹⁴⁰ *Infra* ch. V, p. 1721.