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Matthew T. Bodie
University of Minnesota Law School

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The Lawless Workplace

Matthew T. Bodie[†]

Introduction

In their remarkable book *Fair Shake: Women and the Fight to Build a Just Economy*,¹ Naomi Cahn, June Carbone, and Nancy Levit tell the stories of individual women who have seen their careers smashed and shattered at some of the most important U.S. companies of the last fifty years. These stories—from employees at places like Walmart, General Electric, Wells Fargo, and Uber—illustrate the confluence of culture, social networks, and managerial policies that have disadvantaged and displaced female workers and elevated their male counterparts. The “Triple Bind,” as the authors describe it, describes the three ways in which women lose at these workplaces: when they don’t compete on the same terms as men; when they do compete but face an uneven playing field; and when they take themselves out or are pushed out of the game.² When men are in charge, the authors argue, they design the game to suit their talents and interests, and women find themselves on the outside.

This essay elaborates on one facet of the work ecosystems that Cahn, Carbone, and Levit describe: namely, their lawlessness. The modern American workplace has seen an erosion in the rule of law, not only from an external regulatory perspective but also from an internal governance perspective. American managers enjoy a relatively unbridled prerogative in designing shop-floor policies that is unique within modern democracies. As *Fair Shake* describes, these businesses have reshaped their internal cultures around “bottom-line” thinking rather than organizational structure, leading to “the lawlessness of the WTA economy.”³ These cultures do have their advantages: they make change easier, profitability

[†]. Matthew Bodie is the Robins Kaplan Professor of Law at the University of Minnesota Law School. His work focuses on labor and employment law, corporate law, and employee data privacy. Thanks to Claire Hill, June Carbone, Naomi Cahn, Nancy Levit, Zinaida Carroll, Fariza Hassan, and the staff of the *Minnesota Journal of Law & Inequality* for the opportunity to participate in this symposium and Special Issue.

1. NAOMI CAHN, JUNE CARBONE & NANCY LEVIT, *FAIR SHAKE: WOMEN AND THE FIGHT TO BUILD A JUST ECONOMY* (2024).

2. *Id.* at 14–15.

3. *Id.* at 223.

more salient, and shareholders richer. But they have substantial costs as well. The lawless workplace privileges those who thrive on chaos, who have pre-existing economic or relational advantages, and who are willing to break the rules. They contribute to a disordered society and a sense of powerlessness for those who are not the ultimate winners.

Part I below provides a brief description of the lawless workplace and provides examples from the pages of *Fair Shake*. Part II describes ways in which law can be reintroduced into the workplace to defeat the “Winner Take All” economy and bring balance back to the governance of employment.

I. Lawlessness and Employment

What does it mean to say that a workplace is “lawless”? Perhaps that seems a bit dramatic. Human resources professionals may feel that the employment relationship is more regulated than ever, with the Pregnancy Workers Fairness Act of 2024 (PWFA)⁴ being the most recent in a line of mandatory terms imposed on employers. Measured in regulatory pronouncements, the modern working environment may seem robustly covered. But for many workers, workplace protections fail to provide the promised sanctuary. There are essentially three types of problems: failed enforcement, rogue business models, and authoritarian governance. Each of these contributes to a sense of lawlessness in modern employment.

Failed enforcement is a common regulatory problem and not unique to our working lives. But the examples of laws ignored and flouted is endemic to many employee experiences.⁵ Wage theft is so prevalent in many industries that many scholars have referred to it as an “epidemic.”⁶ The #MeToo movement revealed what many had long experienced: rampant sexual harassment in all areas of societal engagement, especially the workplace. As *Fair Shake*

4. Pub. L. No. 117-328, div. II, 136 Stat. 4459, 6084–89 (2022) (codified at 42 U.S.C. §§ 2000gg–2000gg-6 (2023)); see *Finally Protected: Analyzing the Potential of the Pregnant Workers Fairness Act*, 137 HARV. L. REV. 662 (2023) (discussing the PWFA).

5. See, e.g., ANNETTE BERNHARDT, RUTH MILKMAN, NIK THEODORE, DOUGLAS HECKATHORN, MIRABAI AUER, JAMES DEFILIPPIS, ANA LUZ GONZÁLEZ, VICTOR NARRO, JASON PERELSHTEYN, DIANA POLSON & MICHAEL SPILLER, BROKEN LAWS, UNPROTECTED WORKERS: VIOLATIONS OF EMPLOYMENT AND LABOR LAWS IN AMERICA’S CITIES (2009), <https://www.nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf> [<https://perma.cc/8SHP-YXTV>].

6. Eamon Coburn, *Supply-Chain Wage Theft as Unfair Method of Competition*, 134 YALE L. J. 615, 618, 618 n.1 (2024).

details in the story of Lauren Martinez and Aspen Dental,⁷ the grand latticework of mandatory protections such as family and medical leave can be porous—ignored by faraway HR offices. Arbitration agreements permit employers to establish their own processes and avoid court enforcement, often bending the contours of dispute resolution in their favor. In the gig economy, companies have routinely treated their workers as independent contractors despite rulings to the contrary, with ride-share companies spending millions to change the law and absolve themselves of employment responsibilities.⁸

Fair Shake's discussion of Walmart is instructive here. The biggest private employer in the United States, Walmart is omnipresent across the country as a low-cost, accessible retailer of almost anything the average person needs on a day-to-day basis. Despite its size and cultural importance, Walmart has not been a model employer. According to one report, Walmart is also the number one company in terms of fines and settlements paid out for wage theft through wage and hour violations.⁹ These violations come on top of Walmart's already aggressively-low wages.¹⁰ An incredibly lopsided gender imbalance persists at its managerial levels, which led Betty Dukes and other workers to challenge the company's promotion practices.¹¹ The authors in *Fair Shake* explain how this approach to their employees' entitlements comes from the top: "A lightbulb went on for us when we realized that the managerial system [that the *Wal-Mart v. Dukes* litigation] challenged as discriminatory worked, from start to finish, to facilitate circumvention of the labor laws and shortchange Walmart workers without anyone in Bentonville being held accountable."¹² Depriving workers of their due is baked into the Walmart model.

The second type of lawlessness is represented in the rogue business models unleashed within the American economy. These business models are often created to circumvent regulations

7. CAHN ET AL., *supra* note 1, at 142–46.

8. *Id.* at 159–74 (discussing platform workers and California's Proposition 22).

9. *See id.* at 28; *see also* Steven Greenhouse, *Suits Say Wal-Mart Forces Workers to Toil Off the Clock*, N.Y. TIMES, June 25, 2002, at A1, A18.

10. Wayne F. Cascio, *The High Costs of Low Wages*, 84 HARV. BUS. REV. 23 (2006) ("Wal-Mart's legendary obsession with cost containment shows up in countless ways, including aggressive control of employee benefits and wages.").

11. *Wal-Mart, Inc. v. Dukes*, 564 U.S. 338, 370 (2011) (Ginsburg, J., dissenting) (quotations omitted) ("Women fill 70 percent of hourly jobs in the retailer's stores but make up only 33 percent of management employees.").

12. CAHN ET AL., *supra* note 1, at 28.

intended to shield workers, customers, citizens, or the environment from harm. David Weil coined the term “the fissured workplace” to describe companies that carve off their workers into other contractors to sever the employment relationship, despite the fact that these workers continue to perform critical roles within these companies’ businesses.¹³ Other companies routinely ask their employees to break the law, such as Wells Fargo asking workers to stick their customers with fake accounts¹⁴ or General Electric’s focus on profits at all costs, countenancing securities fraud.¹⁵ In her study of bad corporate behaviors, our colleague Claire Hill has developed the following description of a problematic business model or practice: “one that deviates from the ideal, relying on the existence of a party who is not: (a) fully capable, (b) fully willing, (c) fully informed, or (d) transacting for her own account.”¹⁶ Many of the examples in *Fair Shake* detail policies and approaches that are structured to game the system.

The poster child for rogue business practices could well be Uber. Cahn, Carbone, and Levit chronicle the ways in which the entirety of the organization was geared towards disruption. The company’s business plan was to destroy and replace the traditional taxicab—a highly regulated industry.¹⁷ Uber would regularly break the law when entering a geographic market without permission, only later working to amend the laws once a customer base had risen up around their services.¹⁸ The company’s culture under founder Travis Kalanick featured a hard-partying atmosphere, open-beer kegs, and aggressive sales and development targets. Particularly rampant within the company were instances of sexual harassment, sex discrimination, bullying, and inappropriately

13. See DAVID WEIL, *THE FISSURED WORKPLACE: WHY WORK BECAME SO BAD FOR SO MANY AND WHAT CAN BE DONE TO IMPROVE IT* (2014).

14. CAHN ET AL., *supra* note 1, at 105–21.

15. *Id.* at 52–54.

16. Claire A. Hill, *Marshalling Reputation to Minimize Problematic Business Conduct*, 99 B.U. L. REV. 1193, 1202 (2019).

17. Brishen Rogers, *The Social Costs of Uber*, 82 U. CHI. L. REV. DIALOGUE 85, 91 (2015) (“[I]t seems unquestionable that Uber aims to undermine traditional taxi service, and it seems manifestly unfair that taxi drivers and Uber drivers can operate in the same market subject to different rules.”).

18. Elizabeth Pollman & Jordan M. Barry, *Regulatory Entrepreneurship*, 90 S. CAL. L. REV. 383, 384 (2017) (discussing high-profile companies such as Uber that “have devoted an enormous amount of resources to pursuing lines of business that carry tremendous legal risk” in which existing laws “are unclear, unfavorable, or even prohibit the activity outright”).

aggressive behavior.¹⁹ A law firm investigation yielded 215 complaints of workplace violations.²⁰

Allegations of Uber’s “bro” culture and sexualized environment point to an ongoing rogue business culture of men behaving badly. Sadly, frustratingly, and infuriatingly, such cultures pervade far too many workplaces. And elite, highly-educated industries are not immune; indeed, they can offer the worst examples. *Fair Shake* discusses at length the culture at Silicon Valley venture capital firm Kleiner Perkins and the manifold ways in which male domination warped job expectations and evaluations of talent.²¹ Another example is the ultra-rich global party circuit, where young women are hired to adorn the festivities and signal the power, social status, and desirability.²² As described by professor Ashley Mears, the “girls”—young women between sixteen and twenty-five who were tall, thin, and preferably models—were necessary to the milieu but had little long-term career opportunities as a result of it; only the men were there to network.²³ Even without overt sex discrimination, many systemic barriers to sex and gender equality remain embedded within the culture.²⁴

The third instantiation of the lawless workplace is authoritarian governance. When one person can control, rewrite, and override internal rules and policies, the rule of law is replaced with rule by fiat. The Wagner Act was passed to provide for “industrial democracy” within company walls.²⁵ That purpose, however, remains largely unrealized. Instead, Americans have acclimated themselves to dictatorial governance.²⁶ Kalanick’s reign

19. CAHN ET AL., *supra* note 1, at 130.

20. *Id.*

21. *Id.* at 85–104.

22. ASHLEY MEARS, VERY IMPORTANT PEOPLE: STATUS AND BEAUTY IN THE GLOBAL PARTY CIRCUIT xi–xiii (2020).

23. *Id.* at 16, 36–37 (“Their beauty generates enormous symbolic and economic resources for the men in their presence, but that capital is worth far more to men than to the girls who embody it.”).

24. See KERRI LYNN STONE, PANES OF THE GLASS CEILING: THE UNSPOKEN BELIEFS BEHIND THE LAW’S FAILURE TO HELP WOMEN ACHIEVE PROFESSIONAL PARITY (2022).

25. Craig Becker, *Democracy in the Workplace: Union Representation Elections and Federal Labor Law*, 77 MINN. L. REV. 495, 501 (1993) (“The ideal of industrial democracy figured prominently in the legislative debates that preceded the passage of the Wagner Act, and the Act cut deeply into employers’ legal authority in the workplace.”).

26. See ELIZABETH ANDERSON, PRIVATE GOVERNMENT: HOW EMPLOYERS RULE OUR LIVES (AND WHY WE DON’T TALK ABOUT IT), at x (Stephen Macedo ed., 2017); Mark Barenberg, *Democracy and Domination in the Law of Workplace Cooperation*:

at Uber was characteristic of this approach, with a tyrant's penchant for making up his own rules as he went along. But we can see this phenomenon and the "dark triad" personality traits—narcissism, psychopathy, and Machiavellianism²⁷—in many firms.²⁷ As much of the Western world has reoriented around the importance of impartiality, the democratic restraint of power, the rule of law, and adherence to abstract principles, the authoritarian firm resembles the tribal, clannish, chieftain-oriented social structures of most of human history.²⁸ It is devolution—a departure from what we should expect from our organizing institutions. And it deprives us of a sense of order.

Elon Musk represents the apex of this particular type of leader—impulsive, grandiose, compelling, and imperious. He rules not one or two but three major companies, and he has remade them in his own image. He fired many Twitter employees when he took over the company, and he failed to follow through on contractually-required payments and bonuses, leading to lawsuits.²⁹ Musk has shown no patience for any efforts to constrain his authority. Unfair labor practice charges from the National Labor Relations Board against SpaceX led to counter-litigation alleging the agency is unconstitutional.³⁰ Musk has ignored orders from the Securities and Exchange Commission³¹ and has engaged in an ongoing battle with the Delaware judiciary.³² And ruling his many kingdoms is not sufficient; over the last election cycle, Musk directed hundreds of millions of dollars towards electing Donald Trump.³³ Now that he

From Bureaucratic to Flexible Production, 94 COLUM. L. REV. 753, 932 (1994) ("The law's default position in the employment contract is nonunion governance—from the employees' point of view, that is, authoritarian governance.").

27. CAHN ET AL., *supra* note 1, at 139.

28. See JOSEPH HENRICH, *THE WEIRDEST PEOPLE IN THE WORLD: HOW THE WEST BECAME PSYCHOLOGICALLY PECULIAR AND PARTICULARLY PROSPEROUS* 21–24 (2020) (introducing the ideals and psychology of WEIRD individuals—Western, Educated, Industrialized, Rich, and Democratic).

29. KATE CONGER & RYAN MAC, *CHARACTER LIMIT: HOW ELON MUSK DESTROYED TWITTER* 284–86 (2024).

30. Robert Iafolla, *SpaceX's Constitutional Challenge to NLRB Gets Judicial Support*, BLOOMBERG NEWS (July 23, 2024), <https://news.bloomberglaw.com/daily-labor-report/spacexs-constitutional-challenge-to-nlrbs-gets-judicial-support> [<https://perma.cc/X9Y4-93ZH>].

31. Aarian Marshall, *SEC: Elon Musk Fully Ignored a Key Term of Settlement*, WIRED (Mar. 18, 2019), <https://www.wired.com/story/elon-musk-tesla-sec-lawsuit-twitter-court-filing/> [<https://perma.cc/LYF8-FVUT>].

32. Christiaan Hetzner, *Tesla Fumes Over Delaware Judge's Final Ruling to Block Paying Elon Musk 'What He's Worth'*, YAHOO! FIN. (Dec. 5, 2024), <https://finance.yahoo.com/news/tesla-fumes-over-delaware-judge-144742627.html> [<https://perma.cc/T4XB-3S5T>].

33. Greg Sargent, *Elon Musk's Stunning \$250 Million Favor to Trump Should*

owns Twitter, Musk can take concrete steps to ensure that his voice is amplified over everyone else's.³⁴

These three attributes—failed enforcement, rogue business models, and authoritarian governance—constitute and reflect the lawlessness of the modern for-profit enterprise. But as the authors of *Fair Shake* make clear, there are ways to fight back.

II. Towards A Lawful Workplace

Many features of the lawless workplace are not new and have proven stubbornly intractable in the face of modernizing efforts. But the decline in unionization, the growth of employment arbitration, the widening income equality, and the pace of technological change have all contributed to the degradation of policies, cultures, and norms that made the workplace less arbitrary and oppressive. In a “winner take all” economy, the “winners” get more and more, and they can accelerate the pace of accumulation for themselves as they gain power and resources. *Fair Shake* does not leave us hopeless, however; the authors lay out prescriptions for changes that would fight back against the forces that make the economy less fair and women less empowered within it. Below I build on their suggestions with ideas for addressing the three manifestations of lawlessness illustrated above: failed enforcement, rogue business models, and authoritarian governance.

Failed enforcement is perhaps the most straightforward to reform: we must simply commit to greater funding for our federal, state, and local governments as they set about enforcing the laws.³⁵ The Trump Administration has been hell-bent on eviscerating the federal workforce, but many state and local laws echo or amplify federal protections, and worker-friendly states could amp up their enforcement in creative ways.³⁶ Greater protections for

Wake Up Dems, NEW REPUBLIC (Dec. 9, 2024), <https://newrepublic.com/article/189147/musk-250-million-campaign-finance> [https://perma.cc/37LM-MSES].

34. CONGER & MAC, *supra* note 29, at 394–97.

35. Charlotte Garden, *Enforcement-Proofing Work Law*, 44 BERKELEY J. EMP. & LAB. L. 191, 199 (2023).

36. Terri Gerstein, *How District Attorneys and State Attorneys General Are Fighting Workplace Abuses*, ECON. POL'Y INST. & HARV. LAB. AND WORKLIFE PROGRAM (May 17, 2021), <https://www.epi.org/publication/fighting-workplace-abuses-criminal-prosecutions-of-wage-theft-and-other-employer-crimes-against-workers/> [https://perma.cc/9TYY-U6TZ]; Terri Gerstein, *Workers' Rights Protection and Enforcement by State Attorneys General*, ECON. POL'Y INST. & HARV. LAB. AND WORKLIFE PROGRAM (Aug. 27, 2020), <https://www.epi.org/publication/state-ag-labor-rights-activities-2018-to-2020/> [https://perma.cc/4MPZ-F9TU].

whistleblowers are critical—this is one area where the Supreme Court has been willing to read legal protections in an expansive and employee-positive way.³⁷ Arbitration agreements must either be eliminated from the employment realm or more closely scrutinized to ensure that they do not deprive workers of their legal rights.³⁸ Unions can also assist in workplace enforcement, particularly working in concert with authorities.³⁹ Although somewhat rare in this country, works councils have demonstrated an ability to manage the shop floor in a much more democratic and lawful way, creating systems for participation and regulation that are not simply top-down edicts.⁴⁰

In combatting rogue business models, we need to attack the root causes of these models and cut off their sustenance. Enforcement will be critical here as well, as these variants generally thrive when existing laws are not minded.⁴¹ But we also need to eliminate the incentives for these rogue business models. Here, economic incentives and norm shaming can play important roles in reshaping the economic playing field away from these harmful business models.⁴² Investors now care more about the social and legal ramifications of their investments, and these expectations are influencing capital markets worldwide.⁴³ Professional associations and codes of ethics can provide meaningful roadblocks to rogue activities.⁴⁴ Even for workers who may lack significant market

37. Matthew T. Bodie, *The Roberts Court and the Law of Human Resources*, 34 BERKELEY J. EMP. & LAB. L. 159, 195 (2013) (arguing that “the Roberts Court recognized that a well-functioning internal complaint system needs protections against retaliation in order to function”).

38. Cynthia Estlund, *The Black Hole of Mandatory Arbitration*, 96 N.C. L. REV. 679 (2018).

39. See Janice Fine, *Enforcing Labor Standards in Partnership with Civil Society: Can Co-Enforcement Succeed Where the State Alone has Failed?*, 45 POL. & SOC’Y 359 (2017); Seema Patel & Catherine Fisk, *California Co-Enforcement Initiatives That Facilitate Worker Organizing*, HARV. L. & POL’Y REV. (Jan. 1, 2018), <https://journals.law.harvard.edu/lpr/wp-content/uploads/sites/89/2017/11/Patel-Fisk-CoEnforcement.pdf> [<https://perma.cc/NAT5-QZ67>].

40. Stephen F. Befort, *A New Voice for the Workplace: A Proposal for an American Works Councils Act*, 69 MO. L. REV. 607, 608 (2004).

41. CAHN ET AL., *supra* note 1, at 240–41 (discussing the need to strengthen the rule of law).

42. See Hill, *supra* note 16, at 1213–18.

43. Michal Barzuza, Quinn Curtis & David H. Webber, *Shareholder Value(s): Index Fund ESG Activism and the New Millennial Corporate Governance*, 93 S. CAL. L. REV. 1243 (2020).

44. See, e.g., Claire Hill, Brett McDonnell & Aaron Stenz, *Bad Agent, Good Citizen?*, 88 FORDHAM L. REV. 1631, 1632 (2020) (“[W]e should ask whether lawyers acting as bad agents are also harming society, or whether they may actually be promoting the public interest even though they are not promoting their clients’ interests.”).

power, an association with its own vocational norms and expectations can provide friction when companies want to depart from those norms.⁴⁵

Breaking the grip of toxic male cultures will prove a harder task, given the extent to which they are engrained. Enforcement of existing laws requires victims to speak up, and the #MeToo movement has hopefully changed the internal cost-benefit analysis of reporting that individuals must assess before coming forward. But interventions have many types and angles, and creative approaches can pay off. Daniel Hemel and Dorothy Lund have explored the use of corporate governance and securities fraud in punishing companies where sexual harassment and sex discrimination have flourished.⁴⁶ Even failed—or temporarily successful—initiatives can have an effect. In 2018—following the leads of countries like France, Norway, and Sweden⁴⁷—California enacted SB 826, which required publicly-held corporations to have female representation on their boards.⁴⁸ Prior to 2019, women only held 17% of California director positions.⁴⁹ Almost 30% of firms headquartered in California had no female directors.⁵⁰ The new law was enacted to change that, mandating women on boards and imposing six-figure fines for noncompliance.⁵¹ A federal circuit court held that the act required shareholders to engage in sex

45. See Jeffrey M. Hirsch & Joseph A. Seiner, *A Modern Union for the Modern Economy*, 86 FORDHAM L. REV. 1727, 1765–82 (2018) (discussing the possibility of a guild for Uber drivers).

46. Daniel Hemel & Dorothy S. Lund, *Sexual Harassment and Corporate Law*, 118 COLUM. L. REV. 1583, 1593 (2018) (“[T]he #MeToo movement has revealed (or reinforced our understanding) that widespread sexual harassment stands as an obstacle to the efficient allocation of human and financial capital.”).

47. Bryce Covert, *The Secret to Getting More Women on Corporate Boards: The \$100,000 Threat*, POLITICO (Feb. 25, 2022), <https://www.politico.com/news/magazine/2022/02/25/california-companies-women-boards-quotas-00010745> [<https://perma.cc/KER4-F59Z>].

48. CAL. CORP. CODE § 301.3(b) (requiring one or more female directors for boards with four or fewer directors, two or more female directors for boards with five directors, and three or more female directors for boards with six or more directors).

49. Brian Melley, *Judge Says California Law Requiring Women on Corporate Boards is Unconstitutional*, PBS NEWS (May 16, 2022), <https://www.pbs.org/newshour/politics/judge-says-california-law-requiring-women-on-corporate-boards-is-unconstitutional> [<https://perma.cc/YB6K-9NDD>].

50. Margeaux Bergman, *How the “Exception” Becomes the Standard*, 17 HASTINGS BUS. L. J. 405, 418 (2021) (“188 of the 650 firms headquartered in California did not have any female members on their boards . . .”).

51. Joan MacLeod Heminway, *Me, Too and #MeToo: Women in Congress and the Boardroom*, 87 GEO. WASH. L. REV. 1079, 1094 (2019); CAL. CORP. CODE § 301.3(e).

discrimination,⁵² and a state court struck down the law as violating equal protection under the California Constitution.⁵³ But the law had called attention to the dramatic misrepresentation and pushed private actors into action.⁵⁴ One study found that the legislation led to a “surge” in women’s representation, even with the ongoing questions about the act’s enforceability.⁵⁵

Authoritarian governance is likely the toughest nut to crack, given the ability of company tyrants to reinforce their own power internally and externally. We must take on considerable changes to workplace structure that shift the balance of power within firms. Pushing for greater shareholder power is one option; it is often in shareholders’ interest to prevent CEOs and directors from entrenching their personal power.⁵⁶ But as Grant Hayden and I have argued, shareholder primacy can no longer claim to be the only logical and societally efficient approach to corporate governance.⁵⁷ Involving stakeholders in governance will further splinter the accumulation of power and share the responsibilities of governance more widely. Tech titans like Elon Musk and Mark Zuckerberg may have taken the reins from shareholders to assume untrammelled control, but stakeholder power-sharing would reintroduce checks and balances into their companies. Codetermination legislation has made it to the U.S. Congress and should be considered a top-ten priority for corporate reformers.⁵⁸

Other potential outlets for worker voice range from traditional to unconventional. Our legal system installs unions as the primary vehicle for worker participation through collective bargaining. And

52. *Meland v. Weber*, 2 F.4th 838, 849 (9th Cir. 2021).

53. *Crest v. Padilla*, No. 19STCV27561 (Super. Ct. L.A. Cnty., 2022), <https://s.wsj.net/public/resources/documents/Crest-et-al-v-Padilla-05-13-2022.pdf> [<https://perma.cc/EMH7-AX6A>].

54. Sung Eun (Summer) Kim, *Mandating Board Diversity*, 97 IND. L. J. 31, 42 (Supp. 2022) (“The true value of the California Board Diversity Bills is to be measured by not only the changes they propel in the companies they regulate but also by the attention they have brought to the issue of lack of diversity on corporate boards and the alternative solutions they have inspired.”).

55. Daniel Greene, Vincent Intintoli & Kathleen M. Kahle, *Do Board Gender Quotas Affect Firm Value? Evidence from California Senate Bill No. 826*, 60 J. CORP. FIN. 1, 3 (2019) (finding a 23% increasing in female board representation between January and June 2019).

56. Lucian Arye Bebchuk, *The Case for Increasing Shareholder Power*, 118 HARV. L. REV. 833, 836 (2005).

57. See GRANT M. HAYDEN & MATTHEW T. BODIE, RECONSTRUCTING THE CORPORATION: FROM SHAREHOLDER PRIMACY TO SHARED GOVERNANCE (2021); Grant M. Hayden & Matthew T. Bodie, *Codetermination in Theory and Practice*, 73 FLA. L. REV. 321, 322–23 (2021).

58. Accountable Capitalism Act, S. 3348, 115th Cong. § 6 (2018); Reward Work Act, S. 915, 116th Cong. § 3 (2019).

yet even in this day and age, a company can engage in an extraordinary anti-union campaign, involving hundreds of alleged and adjudged unfair labor practices, and suffer relatively little sanction.⁵⁹ This needs to change. Unions are not the only method of collective workplace action; the Google Walkout for Change provides one example of workers joining together to press for meaningful changes despite the lack of a labor organization.⁶⁰ Companies have also explored some alternative governance structures that depart from the standard hierarchical organizational chart to disperse power more equitably. A constellation of participatory management systems such as holacracy, works councils, and total quality management include employees within the firm's internal governance structures.⁶¹ Some organizational forms, such as the cooperative or the employee stock ownership plan (ESOP), invest employees with actual ownership rights.⁶² These alternative paths deserve continued exploration and trail-blazing.

Finally, given the dearth of collective worker power at this moment in time, we must also re-empower the individual employee. Employment at-will has long given managers and supervisors arbitrary power to fire workers "for any reason, or no reason at all."⁶³ Exercised by collective decision-making bodies, at-will employment would be less dangerous, but its pairing with unabridged power reinforces the authoritarian dynamic. At-will should either be further limited with more areas of protection within it, or it should be replaced with a just-cause system.

59. Matthew T. Bodie, *Labor Relations at the Woke Corporation*, 79 N.Y.U. ANN. SURV. AM. L. 171, 186–88 (2023) (discussing Starbucks' campaign against its internal unionization drive).

60. Noam Scheiber, *Google Workers Reject Silicon Valley Individualism in Walkout*, N.Y. TIMES (Nov. 6, 2018), <https://www.nytimes.com/2018/11/06/business/google-employee-walkout-labor.html> [<https://perma.cc/D6BU-EVKU>].

61. See, e.g., FREDERIC LALOUX, REINVENTING ORGANIZATIONS: A GUIDE TO CREATING ORGANIZATIONS INSPIRED BY THE NEXT STAGE OF HUMAN CONSCIOUSNESS 55–61 (2014) (introducing "Teal Organizations" as new structure of organization that emphasizes "self-management," "wholeness," and "evolutionary purpose"); BRIAN J. ROBERTSON, HOLACRACY: THE NEW MANAGEMENT SYSTEM FOR A RAPIDLY CHANGING WORLD 16–26 (2015) (describing "Holacracy," new paradigm of organization which distributes authority to all individuals in organization).

62. See, e.g., Robert Hockett, *What Kinds of Stock Ownership Plans Should There Be? Of ESOPs, Other SOPs, and "Ownership Societies"*, 92 CORNELL L. REV. 865 (2007).

63. See, e.g., *Fitzgerald v. Salsbury Chem., Inc.*, 613 N.W.2d 275, 280 (Iowa 2000).

Workplace surveillance is another way in which tyrannical managers can exercise control and domination over their labor force.⁶⁴ Barriers against the collection, use, and disclosure of sensitive data will insulate workers from being manipulated, embarrassed, and otherwise subjugated by the power this data provides.

Conclusion

In *Fair Shake*, Naomi Cahn, June Carbone, and Nancy Levit provide a powerful indictment against the ongoing structural inequality found in workplaces today. One of their insights is the role of lawlessness in promoting inequality across a variety of metrics, particularly gender. The United States has long tolerated one of the most disordered, rogue, and authoritarian employment climates of any of the industrialized and prosperous nations. It is time to take on the lawless workplace and disempower those who most benefit from its predations.

64. Ifeoma Ajunwa, Kate Crawford & Jason Schultz, *Limitless Worker Surveillance*, 105 CAL. L. REV. 735, 735–736 (2017).