

A Call to Action

THOMAS A. KOCHAN

Editors' Note

Who works and how we work have changed dramatically in recent years, yet the policies and institutions governing work and employment remain mired in the work world of the 1930s. As a result, the social contract—what we expect from and are accountable for at work—has broken down. The central challenge of our generation of industrial relations professionals is to update these policies and institutions to create and support a new social contract capable of meeting the needs and expectations of the workforce, economy, and society of the 21st century.

A fundamental mismatch exists between today's workforce and workplace and the institutions and policies that support and govern them. As a consequence, both the workforce and economy are held back from reaching their full potentials and a gap is growing between the winners and losers in society. We therefore need to update these policies and institutions in ways that give workers and employers greater control over their destinies.

We have been talking and writing about these issues in many different forums during 1999. The main points emerging from these discussions are summarized below:

1. The old social contract grew out of the images of work and employment relations that were prevalent during the New Deal era: a long-term relationship between a large firm, competing mostly in an expanding domestic market, involving two types of employees—hourly wage earners and salaried managers, with a spouse at home attending to family and community matters.
2. The policies and institutions that evolved out of the New Deal were generally successful in producing a broadly shared prosperity and improved work quality for the majority of Americans. Wages and benefits improved in tandem with rising productivity and profits, and loyalty and good performance on the job were rewarded with increased security, dignity, opportunity, and savings for retirement. Collective bargaining, professional personnel/human resource management, and government regulations created a dynamic that resulted in incremental expansion and diffusion of comprehensive benefits, employment standards and protections, and systems for fair administration and enforcement of workplace policies.
3. Over time, the New Deal images of work became outmoded by globalization of markets, emerging technologies that created both new businesses and shifts in demand for labor and the organization of work, organizational restructuring that displaced senior and white collar workers, variation in employment types and uncertainty in employment duration, increased diversity in the workforce, and increased interdependence between family and work responsibilities.
4. As a result, the old social contract has given way to a long period of stagnant real wages, increased inequality of income and wealth, falling health and pension coverage, increased job insecurity, decline in union coverage, increased litigation and conflict over government regulations and their enforcement, increased polarization between business and labor on core values and issues, and a sustained impasse over labor policy.

5. There is also considerable good news to report. Innovations in how work is organized are spreading gradually to more workers; knowledge workers—those with high skills—are doing well in today’s labor markets; the sustained macroeconomic growth and tight labor markets are now producing modest improvements in real income and job opportunities for low-income workers; labor-management partnerships are helping some unions and companies adapt to their changing circumstances; and flexible employment arrangements and practices are helping some families and employers integrate family and work responsibilities.

In what follows, I propose an institutional and policy framework for reconstructing a social contract that allows working families and employers to regain control over their destinies at work. Many elements of a new policy and institutional framework can already be seen in the large number of innovative efforts under way in different settings around the country. If previous American traditions are true to form, the next generation of institutions and policies will emerge from these local experiments and innovations. But to date, these are still islands of innovation. To move them to a scale that benefits our overall society and economy requires leadership and support from national policy makers and professionals in all parts of our field.

I also challenge our profession and our national leaders to move from passive analysis to active advocacy for putting the future of work and the policies and institutions governing employment at the top of the nation’s agenda. To do so, we have to reframe our approach to these issues, bring new voices into the discussion, and offer new ideas capable of breaking the twenty-year stalemate America has endured over labor and employment policy issues.²

Table 1: Key Features of a Social Contract

Voluntary	Terms of employment are mutually agreed upon.
Consent of the governed	Processes ensure the parties can modify the contract’s terms as conditions change.
Mutual responsibility	Each party is responsible to each other and to the broader society.
Enforceability	Each party can be held accountable for keeping its part of the understanding.
Subsidiarity and democracy	Parties closest to the workplace are able to control their own destinies.

Adapted from published writings of Thomas Hobbes, John Locke, Jean Jacques Rousseau, and John Rawls.

The Social Contract As a Metaphor

Throughout our discussions, I have used the social contract as a metaphor to reframe this debate. By the social contract, I mean “*the expectations and obligations that workers, employers, and their communities and societies have for work and employment relationships.*”³ I believe this concept serves as a useful metaphor for our efforts because its philosophical underpinnings capture the central concern of workers and employers today and reflect the best values of our profession.

The key elements in this metaphor, borrowed from political philosophy, are summarized in Table 1. Work and employment should be a *voluntary relationship, one mutually agreed upon* and that over time has processes and procedures that ensure continued *consent of the governed*. Each party to the employment relationship has *responsibilities to each other and to society*. Therefore, an employment relationship cannot be viewed, as it has come to be in today’s winner-take-all economy, as solely a two-party instrumental exchange, focused on only narrow self-interest of the individual worker and his or her individual employer. Work and employment must contribute to a good society for all, however we define that term. For a social contract to be meaningful, it must also be *enforceable* in some sense, so that each party can be held accountable for keeping its part of the understanding.

Our uniquely American approach to the social contract reflects our

highly decentralized traditions—we *attempt to provide the parties closest to the workplace the rights, power, and capabilities needed to control their own destinies at work*. This was the genius of the New Deal legislation providing for collective bargaining—what one of our distinguished predecessor presidents Milton Derber described as the American model of industrial democracy.⁴ Labor legislation would establish the basics that should apply to all workers, and then collective bargaining would act as a tool for workers and employers to add to these basics in ways that fit each particular employment setting.

But we have allowed our unique American institutional approach to workplace relations to erode and atrophy. Indeed, collective bargaining is only a shadow of its original vision and stature, now covering less than one in seven workers in America. And the workplace is awash in specific workplace regulations, most of which are sensible and important in their own right; but some are not well suited to the variety of employment settings found in the economy, some conflict with each other, and some are out of the reach of enforcement to the average worker. We also have ceded responsibility for improving working conditions and living standards to the macroeconomy. We can be thankful for the near-decade-long sustained prosperity that the American economy has enjoyed. The tight labor markets of the last several years have been successful in improving the lives of those near the bot-

tom of the income and occupational ladder and those moving from welfare to work. In some respects, the macroeconomic policy makers have bailed out our profession. But we cannot assume the macroeconomic boom will do the job for us forever. At some point, we need to give parties in the workplace the tools to regain control over their destinies.

Starting Points: A Holistic View of Work and Its Role in Society

A new social contract must be grounded in a clear vision of what members of society expect from work. What must we achieve at work to contribute to a good society, and where does work fit into the larger set of institutions that constitute a modern, information-based, global economy? Figure 1 lays out a multidimensional, holistic view of work that can serve as a framework to evaluate the quality of the policies and institutions supporting and governing work.

If work has these multiple dimensions, then the institutions and policies that govern and support that work must be accountable for addressing each of them and their interrelationships. Too often our old institutions drew lines between these different aspects of work. Unions focused on improving the eco-

conomic dimensions of work; employers took primary responsibility for shaping the workplace culture and designing and coordinating work to achieve maximum productivity and quality. And workers were expected to separate their families, communities, and citizenship responsibilities from their jobs through a division of labor within the family unit. But if these dimensions are to become more interdependent today, all institutions at work must attend to these interdependencies.

The New Employment Institutions

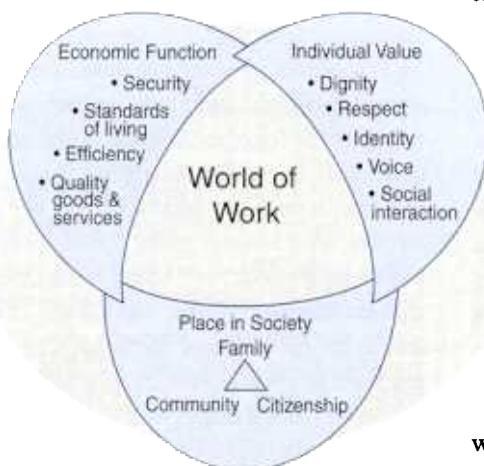
Historically, our field has organized its analysis of the institutions governing employment relations around three key “actors”—employers, government, and labor, which is broadly defined to encompass both the workers themselves and the unions that may represent them. Today, however, we need to make two additional modifications to shape the employment institutions of the future: (1) add a fourth set of actors—the growing number of labor market intermediaries and community groups and organizations that help structure labor markets and work and that address the interdependencies of work and family life today; (2) envision markets (labor, product, and financial) and technology not as externals to the actors but as socially constructed parts of the institutional structure itself. To be sure, markets and technologies are influenced by many factors outside of work and employment. But it is precisely because we have allowed these forces to remain outside of our intellectual thinking and institutional design that we have lost control over our destinies at work. We need to think how changes in markets and technologies can be harnessed to achieve the full range of objectives the different parties bring to work and employment relationships.

In what follows, I present the outlines of a theory of complementary employment institutions, each with distinctive functions but engaged constructively with each other to meet the needs of the contemporary workforce and economy. But, as we will see, each of these institutions needs to recast its role and image and its relationships with the others.

A Multiple Stakeholder View of Firms

Since the New Deal, American firms have been assigned two competing responsibilities—to serve as agents for shareholders, by maximizing shareholder wealth, and to meet a series of (growing) responsibilities around which employment policies are built. These dual responsibilities have always been difficult to balance, and emphasis on each has risen and declined at different times. Paradoxically, just as pressures from shareholders have intensified, so too have human capital, knowledge, and learning come to be recognized as more critical strategic assets and organizational processes. And, to complicate matters further, these dual pressures come at a time when the boundary of the firm appears to be increasingly uncertain and blurred as organizations restructure to find their “core competencies” and contract with other organizations in their value chain or networks for other necessary services and resources. If the number of firms characterized by unstable organizational boundaries and uncertain tenure continues to grow, the locus of responsibility for employment policies may need to shift from the individual firm to the network of labor market institutions, across which employees are likely to move over the course of their careers. Individual firms then need to be more open to participating in a network of institutions that support and govern employment practices and opportunities, just as these same firms are now inter-

Figure 1
A Holistic View of Work



We cannot assume the macroeconomic boom will do the job for us forever. At some point, we need to give parties in the workplace the tools to regain control over their destinies.



acting with their networks of suppliers and vendors.

The range of interdependencies outlined suggests the need to shift political discourse and organizational analysis to conceive of firms as having multiple stakeholders, to which they owe a fiduciary and social responsibility. This means accepting the view that employees who share residual risks by investing their individual and collective human capital should have a right to participate in the governance of the firm.⁵ It also means accepting the reality that firms as employers will be held accountable for meeting the goals society sets for employment standards and human rights at work and for working cooperatively with external labor market institutions. The task then is to design institutional forums and processes to allow these multiple stakeholders (in this case managers, employees, government agencies, and external labor market institutions) to work effectively together to achieve these multiple objectives. Given the uncertainties facing firms and their legitimate needs for flexibility and adaptability, these arrangements need to be decentralized and well informed of the needs of the different stakeholders that share an interest in these outcomes.

How might this be done? The labor policies of the New Deal envisioned col-

lective bargaining as the central (essentially the sole) instrument for engaging and resolving worker and shareholder interests. While collective bargaining (and the threat of unions and collective bargaining on nonunion employers) performed well in structuring and adjusting a social contract that achieved a broadly shared prosperity from the 1940s through the 1960s, as a sole instrument, it has not been able to cope with the changes encountered in markets, technologies, workforce demographics, and employer structures and practices since then. As a result, these last two decades have been a period of both tumultuous decline in collective bargaining coverage and significant innovation in firms and unions that are struggling to adapt to these changes.

The innovations largely take the form of more flexibility in work organization and employee participation in problem solving at the workplace and greater information sharing, consultation, or, in some instances, formal representation in strategic management decisions and corporate governance. In their most developed forms, we have tended to call these “labor-management partnerships.” They certainly aren’t perfect, nor are they a panacea, but they are the best ideas we have going at the moment. As our former IRRR president Lynn Williams put it,

“the problem with labor-management partnerships is we just don’t have enough of them.” Therefore, we need to continue to study and practice how to make these partnerships work and to understand their limitations, while supporting and encouraging them in public policy, public discourse, and in our varying roles as professionals in this field.

These partnerships have proved most difficult to sustain in settings where the boundary of the firm is unstable, as it is in an increasing number of settings where technological changes and uncertain markets and emergence of new narrowly focused competitors make it difficult to assure employment security.⁶ Because there are so few partnerships, and the basis for them is limited, we need to look for other institutional structures as well. The biggest challenge lies in how to substitute for the partnership model in nonunion or weakly unionized firms. Management culture (which abhors power sharing unless necessary), labor law (which limits such arrangements), and lack of employee power to influence strategic levels of decision making all rule out this option at the present time. There are no easy answers to this problem, and it may be the biggest institutional design challenge we will face in the upcoming years. In keeping with American tradition, we need to experiment with new options that bring the full range of voices into the process.

Experimentation is especially needed and possible to envision how government agencies and progressive firms might work together to achieve the goals embodied in workplace regulations. On the one hand, the increased variety of employment settings make standard, uniform regulations inefficient and, from the standpoint of the individual firm, inflexible instruments for achieving the goals society has set for these policies. At the same time, many leading firms are implementing practices that go beyond minimum government standards. One option is to encourage firms, working

together with their employees (and unions), to develop workplace institutions capable of internalizing responsibility for adapting and enforcing employment policies to fit their particular circumstances. In return, firms gain greater flexibility from government agencies over how they meet these policy objectives. Indeed, a number of government agencies are already experimenting with this type of approach.

In settings where the boundary of the firm is unstable and firms can no longer make a reasonable promise (tacit or real) of long-term employment security, the locus for employment policy and institution building needs to move from the work site and the individual firm to the labor market and the network of institutions that facilitate mobility. This implies that the individual firm is only one participant in a network of organizations and institutions that is capable of facilitating mobility, efficiently matching people to jobs, and sharing responsibility for investing in human capital and monitoring and improving employment standards.

This too requires significant institution building, but again, the process is already under way. The variety of labor market intermediaries, i.e., groups and organizations that operate outside the boundaries of individual firms, is expanding rapidly. I will discuss their roles in more detail later. The challenge is to build stronger alliances and collaborative relationships among these institutions and among firms participating in these labor markets.

"Next Generation Unions" and Professional Associations

Before discussing the role of unions in this new institutional framework, let's deal with some basic issues. Unions are just as necessary and valuable today and in the future as they have been in the past. This is a deep value shared not only by members of this association but by the majori-

ty of the American public and by many leaders in the business community as well.⁸ Unions provide a critical service to a democratic society as well as to their individual members. America is now paying the price for allowing union representation to fall to such low levels. No task is more important to our profession, and indeed to American society, than building the next generation labor organizations. The good news is that there is an enormous amount of innovation and internal debate taking place within the labor movement today over how to achieve this objective. This bodes well, not just for the future of the labor movement, but for American society as a whole.

Unfortunately unions have an image problem and a strategic challenge. Workers, employers, and the public in general, and indeed, many union leaders, see unions as primarily defensive organizations to be called on for help only when a majority of workers in a specific bargaining unit distrust the employer sufficiently to engage in the high-risk, high-conflict battle needed to achieve union recognition and a collective bargaining contract. To be sure, unions need to continue to provide protection against arbitrary treatment at work. But the next generation unions must address the full range of dimensions included in Figure 1. They must focus on enhancing dignity, voice, social interaction, economic security, productivity, and family and community responsibilities. Serving this broader set of objectives requires that unions have a positive vision of their roles. And this positive vision must become the central reason why employees join, participate in, and retain their membership in the next generation unions, not whether or not they distrust their present employer.

Figure 2 illustrates the multiple purposes that I believe the next generation unions need to carry out for American workers and society. Space and time allow only a brief listing here.

1. Collective bargaining will remain a bedrock role for unions. But it may be only one of an increasing array of services provided, and it may be that not all union members will want, need, or have access to collective bargaining as we know it today. To remain focused on defining unionism synonymous with gaining collective bargaining status, as it is structured today, is neither consistent with the historical traditions of American unions⁹ nor responsive to the stated preferences of a majority of the unorganized workforce.¹⁰ To do so will only lead to further union decline.
2. Given that over 70 percent of American workers want a direct voice at work,¹¹ the next generation unions need to champion and support direct employee involvement and participation on the job to enhance worker learning; contribute to improved productivity, quality, and customer satisfaction; and to build a workplace culture that satisfies employees' expectations for voice, respect, and social interaction at work.
3. Unions need to engage corporate decision makers at the strategic level, where the real power resides and the critical choices are made that shape employment outcomes and long-term prospects. In some cases, this means forming partnerships with individual employers as previously discussed, such as Xerox, Levi Strauss, AT&T and its numerous offspring, Corning, Saturn, Kaiser Permanente, and others. But note, as this list suggests, these do not always last forever. In cases where the boundaries of the firm are uncertain (e.g., Levi's, AT&T's and its offspring's), unions need to rely on other devices such as sharing information on working conditions in the full supply chain or building networks that cut across firm boundaries to coordinate efforts at a community or industry level. In still

other cases, this requires amassing the knowledge and resources needed to engage the investor community or international financial agencies with capital investment and development strategies that work for the workforce as well as the investors. Given that the level at which capital allocations and other strategic choices are made is where the power lies, we cannot expect unions to do well in representing workers unless they too are active at this level. To do so requires new skills and knowledge as well as new strategies.

4. If the firm is declining in centrality, the local community and political affairs will grow in importance. The Webbs were right.¹² As they predicted over one hundred years ago, government enactment and community participation are growing in importance for unions. If macroeconomic policies and, increasingly, international macrofinancial and trade policies are growing in importance, then unions need to strengthen their abilities to influence decisions and events at these levels. But equally important, if local community and labor market mobility are important, unions need to become more important actors at this level as well. This is what the living wage campaigns are all about. Unions need to continue working in coalition with community groups to make this role successful.
5. If job security is more uncertain, workers' abilities to move at low cost across employers become a more critical source of bargaining power and career security. For some workers, exit will be as important a source of bargaining power as voice inside the firm is for others. Unions of the future need to provide the full array of labor market mobility services—networks of contacts and job opportunities; portable pensions and benefits; education and skill accumulation and life-

long learning; and perhaps other personal legal and financial assistance as well. If the locus of social interaction and identity from work is shifting from the workplace to the occupation, unions need to once again become occupational community-building entities, much like the garment unions did in helping immigrants assimilate and make their way in a foreign environment during the early years of the 20th century.

Figure 2
Multiple Purposes of the Next Generation Unions



These different functions may not necessarily be performed by the same organizations. There might be specialization, core competencies, if you will. Some unions may choose to organize in traditional ways, relying on traditional employee motivations, while new organizations, professional associations, networks, etc., grow up that recruit, represent, and service members in new ways. I believe this would be a second-best solution. But if this is the case, then there must be active strategies for linking and cooperating across these different boundaries and mutual respect among and support among the different organizations in the network—unions, professional organizations, others yet to be named or invented. Or we might see the

labor movement as the hub of a wheel that coordinates the work of different groups.

For this vision of the next generation unions to become a reality, at least three things need to change. First, unions need to expand the ways they recruit and retain members. They need to recruit individuals and stay with them over the course of their careers rather than limit their organizing to the high-stakes, all-or-nothing, 50-percent majority it now takes to get one new member. The union-member relationship should be like that of a university student–alumni relationship—once a member, always a member. The fact is that there are nearly twice as many former union members in the labor force as there are current members.¹³ Second, substantial change in labor law is needed to make it possible for unions to play these different roles effectively, a point I will return to later. Third, American management culture needs to change significantly to accept the simple idea that workers should have the same freedom of association at work as they have in civil society.

If unions adopt this more positive vision and these varied approaches and are accepted as legitimate participants in labor market, workplace, and community affairs, America would be well on its way to ensuring that the next generation unions find their rightful place in the economy and society of the future.

Labor Market Intermediaries and Community Organizations

By the term “labor market intermediaries,” we mean the full range of groups and organizations that operate outside the boundaries of individual firms. Their functions are to support the mobility of workers across jobs and the matching of workers to job opportunities, coordinate employers and/or labor-management joint efforts, provide training and educational services, or advocate for worker and/or family and community concerns.

This is an illustrative, not exhaustive list, designed to make two simple points. The variety of intermediaries is expanding, and their importance as labor market institutions is growing, ranging from temporary help firms to recruiters in Silicon Valley and other tight labor markets, various family and work advisory services, cross-firm consortia, public and private training programs, and a host of Internet-based job placement services.

Equally impressive is the growth in the number and range of community groups and organizations engaged in promoting worker interests in community politics and worker advocacy activities. Here the boundary between “unions” and other groups gets increasingly blurred. The more than forty living-wages ordinances achieved through coalitions of labor organizations and community activists are a prime example.¹⁴ Another example is the new roles that central labor councils are taking. For example the one in Silicon Valley runs the gamut from being a temporary help service to a training and education center to a political mobilizing force. Indeed, a key challenge for unions and community organizations lies in developing sustained coalitions that both last beyond any single political campaign and that transition to ongoing sources of power and support inside employment relationships.

It may seem ironic to be arguing, as I am here, that in today’s global world the local community and labor market will become a more important arena and institutional environment for shaping work in the future. But this is exactly the locus in which family and work responsibilities are joined, where most dual-career couples search for opportunities in tandem with their partners, where opportunities for lifelong learning can be created and used most fully, and where the all-important social and professional networks are formed and sustained. Our history of policy and institutional innovation has strong local and state-level



roots. We would do well to learn from this history and invest heavily in building and supporting the local community-level infrastructures needed to give future workers and employers greater control over their destinies.

Government As a Catalyst for Innovation and Flexibility

Government is sometimes viewed as a constraint on or an alternative to the market or private institutions. American political culture has always emphasized a limited role for government in private affairs, and especially, in private employment relationships. Therefore, the vision for government that grew out of the New Deal was for government to set minimum standards on a limited set of basic employment rights and then set the rules of the game for the parties’ efforts to improve on these minimums and expand into new areas, as their interests and circumstances warranted.

This is a necessary, but not a sufficient, image or role for government as an actor in the labor market of the future. Instead, government and, most important, government leaders also need to have a clear vision and active strategy for building and supporting the innovative capacities of the complementary, private institutions discussed here.

The consensus starting point for government policy in working with both market forces and local institutions is to support education and training—lifelong

learning opportunities for all workers.¹⁵ Education, skills, and human capital are essential foundations for getting ahead in the labor market today.¹⁶ Knowledge is both a critical asset for individual firms and for the overall economy and a source of power in the labor market. Government’s unique responsibility is to provide the resources to support early childhood and basic education and work in tandem with other business and labor to encourage and support investment in lifelong learning for adult workers throughout their careers. If government leaders share the vision for the new institutional framework proposed here, they need to provide incentives and resources to workplace and labor market education and training programs, which worker, employer, and relevant community representatives govern jointly. This would ensure that scarce public resources are put to use in building *general human capital*, grounded in the skills needed in the local markets, while at the same time creating an incentive for these different stakeholders to work together on a collaborative basis.

A second role for government is also rather traditional, that of setting the basis for employment standards and enforcing the basic human rights that Americans expect at work. What rights to include in this list and at what level these standards should be set will continue to be key political issues, in the best sense of that term. But whatever standards are included and wherever the minimum standard is set, government must take a number of additional steps if it is to serve as a catalyst for innovation and a complement to what private actors are already doing to promote these objectives.

Government policy must be informed by what the best of private firms, unions, and other institutions are doing to address these objectives. This requires both an active research and analysis capability and active involvement of pro-

fessionals, advising and consulting, to provide input to policy making and especially to its administration. This was the legacy of John R. Commons and his approach to employment policy administration.¹⁷ It was the right approach then, and it is the right approach today.

As suggested earlier, government should look for opportunities to provide more flexibility to those employers and workplaces that have the institutional capacity in place to achieve labor policy objectives and that have a record of responsible behavior that justifies entrusting them with self-governance/enforcement responsibilities. Now comes the tough problem. Just what institutional capacity is necessary? Does it have to be limited to where a traditional union is present? If so, we limit the potential of this approach to a fraction of the labor force and reinforce the lines of demarcation across work groups that today's organization of work has rendered anachronistic. Moreover, it would freeze the institutional relations of the past, along with the embedded adversarial culture associated with formal union-management relations. But to simply extend it to any workplace that claims to have any form of employee participation would not be responsible and would lack the legitimacy and independence workers expect and indeed require. So America needs a new institutional form that has sufficient independence and expertise and power to carry out these functions, is representative of the full range of employees covered by the regulations, and is accepted by both employees and managers as a normal part of the workplace culture and process.¹⁸

Workplace safety and health provide the clearest opportunities for taking this approach since there are established performance metrics against which workplaces can be judged, and the elements of a comprehensive system for managing and monitoring safety and health are widely known and generally accepted. A technically competent employee participa-

tion process is widely accepted to be a critical element in this system. Finally, in unionized settings, the grievance procedure provides a channel for resolving disputes and claimed violations of worker rights, and OSHA provides an appeal system for all workers, unionized or not. But these same criteria could be used to extend self-governance systems to other employment standards' areas, wherever there are accepted verifiable performance metrics, knowledge of cause-and-effect practices that contribute to high performance, an effective established system for employee participation, and a system for resolving disputes or claims involving individual rights. Without meaning to limit the possible areas for experimentation, I would suggest family and medical leave, wage and hour (particularly overtime and compensatory time) issues, and equal employment opportunity are especially well suited to different types of experimentation with this approach.

To make this approach work, significant expansions of the use of high quality alternative dispute resolution systems will be needed. There is already significant experimentation under way in the use of alternative dispute resolution (ADR) (essentially mediation and arbitration) in resolving equal employment opportunity cases. Our field pioneered the development of these techniques in labor-management relations. But the stature enjoyed by mediation and arbitration in this domain did not occur overnight. Instead, mediators and arbitrators earned the respect of the parties and the courts the hard way—they learned how to make these processes work in different settings. We need to now do the same with respect to the use of ADR techniques in the broader area of employment rights' disputes. This might

Government should look for opportunities to provide more flexibility to those employers and workplaces that have the institutional capacity in place to achieve labor policy objectives and that have a record of responsible behavior.

best proceed slowly and carefully, because there is tremendous potential for poorly designed systems or poorly trained neutrals to discredit ADR; to wit, the totally inadequate and unacceptable arbitration "system" used in the securities industry that gave rise to the Gilmer decision. In that model, neutrals are not mutually selected or chosen, and employees do not voluntarily choose to use arbitration. Instead, they must accept this proviso as a condition of employment. In short, the system is designed and controlled by the industry. We can do better and have, in the best traditions of our field, articulated a set of "due process protocols" that set minimum standards for these systems.¹⁹ At least one state agency, the Massachusetts Commission Against Discrimination, has now gained nearly three years' experience using the principles embedded in the protocol, and the Equal Employment Opportunity Commission (EEOC) has likewise nearly a year of experience with a mediation program.²⁰ We need further experimentation with different approaches, and, most importantly, we need to monitor and evaluate these programs rigorously.

Finally, no updating of national labor and employment policies will be complete, and the new institutional structure and strategy outlined here will not be possible, unless we restore the right for workers to choose whether or not to be represented by a union or some other organization. American labor law and our inability to update it are nothing short of a national disgrace. Study after study has documented the failure of labor law to provide workers with the means to implement what the international community has (correctly) described as a fundamental human right,

the right to join a union.²¹ And the issues that need to be addressed to fix the documented flaws are likewise clear. Delays in processing elections must be reduced; strong measures are needed to eliminate discharges for union organizing, and those that occur should be dealt with expeditiously and severely; and the ability to get a first contract, when a majority votes for union representation, must be ensured by arbitration if necessary. While I, along with many others, have specific views on how to address these and other problems with the law,²² the specifics are clearly legitimate topics of debate. What should be unassailable is the need to address them.

But fixing the recognition process is only the beginning of comprehensive updating of our national labor relations policy. If we are to encourage and build on the new forms of employee voice and next generation unions suggested here, American labor law needs to support these alternative forms of participation and representation. If this is done on a contingent basis, i.e., new forms of participation would only be allowed in settings in which the employer fully respects workers' freedom of association rights (to be specific, where the firm does not have a past record of, or is not guilty of, unfair labor practices when workers attempt to organize), we would create further incentives for employers to comply with this principle.²³ While these are new and, I recognize, controversial ideas, I believe they can work and fit into the American traditions of decentralized, flexible, and ultimately pragmatic workplace cultures and institutions. Like the changes in the representation process called for previously, the specifics should open to debate, but there should be no serious debate about the need to update this part of national labor policy. Workers want to participate in decisions affecting their work; employers depend on significant worker input to improve quality, productivity, and customer satis-

faction. These issues cannot be separated from working conditions or other issues the law reserves for collective bargaining, and changes in the law are needed for public agencies to implement self-governance systems.

The final plank in a new role for government would be to promote building institutional capacity. The full arsenal of approaches needs to be employed, including grants to local committees and organizations to develop their infrastructures and professional skills, similar to the "New Directions" program used during the Carter Administration to support training of a cadre of industrial hygienists to tax incentives for joint training funds to presidential leadership aimed at building a new culture of legitimacy and collaboration among employer, labor, and community group leaders.

The Need for Leadership

This last point—the need for presidential leadership—is especially important. If Franklin Roosevelt could provide the leadership needed to enact the New Deal labor policies, and Ronald Reagan could usher in an era of aggressive managerial actions against unions by firing air-traffic controllers, the next president can surely energize the country around an effort to support policies and institutions needed to build a new social contract based on the full range of human, economic, and social expectations and obligations we have for work today.

Neither we in the IRRA nor our national leaders can do this alone. We need to continue taking our ideas and message to the American public. Unless we engage a broad cross section of the public—young and old, women and men, entry-level and professional-managerial workers—our message will fall on deaf ears. And we must reach out to and include in these discussions the same wide web of groups and leaders from business, labor, community groups, family advocates, and others who share an interest in these issues. If we do our job

well, then we can hold elected leaders' feet to the fire and insist they carry out their responsibilities by putting these issues front and center on the national agenda. As I said at the outset, the next generation of professionals in our field will judge us by how well we discharge this responsibility.

NOTES

1. This is an abridged text of the presidential address to the 52nd Annual Meeting of the Industrial Relations Research Association. The full text will appear in the *Proceedings*. Support for this work from the Edna McConnell Clark Foundation, the Alfred P. Sloan Foundation, the Ford Foundation, the Rockefeller Foundation, and the U.S. Department of Labor is gratefully acknowledged. Many of the ideas expressed here reflect the joint work with my colleagues and students at MIT and the participants in the Task Force on Reconstructing America's Labor Market Institutions. I am particularly indebted to Robert McKersie and my fellow coordinators of this project, Paul Osterman, Michael Piore, and Richard Locke. I remain responsible, however, for the views expressed here.
2. For a more complete discussion of these points, see the summary of the IRRA's First National Policy Forum in *Perspectives on Work*, vol. 3, no. 2, December 1999.
3. Thanks are due to the Task Force on Reconstructing America's Labor Market Institutions Working Group on the Social Contract and the Corporation for crafting this definition of the social contract.
4. Milton Derber, *The American Idea of Industrial Democracy, 1865–1965*. Urbana, IL: University of Illinois Press, 1970.
5. See Margaret Blair, *Ownership and Control*. Washington, DC: The Brookings Institution, 1994; Margaret Blair and Thomas A. Kochan (eds.), *The New Relationship: Human Capital in the Corporation*. Washington, DC: The Brookings Institution, forthcoming, 2000.
6. I am indebted to Richard Locke for emphasizing this point. See also, Saul Rubinstein and Charles Heckscher, "Partnerships or Alliances: Alternatives or Complementary Models for

Labor Management Relations?" Rutgers University School of Management and Labor Relations, 1999.

7. Credit is due to Amy Dean for first coining this term.
8. Gallup poll surveys and many other surveys continue to report that a majority of Americans continue to agree that unions are valuable institutions in society. For a statement on the importance of unions to a democratic society, jointly written by a group of leading business and labor leaders, see the most recent report of the Collective Bargaining Forum, "Principles for New Employment Relationships," *Perspectives on Work*, vol. 3, no. 1, 1999, pp. 22–29.
9. Dorothy Sue Cobble, "Historical Perspectives on Representing Non-Standard Workers," in Françoise Carre et al., *Non-Traditional Work Arrangements and the Changing Labor Market*, Madison, WI: Industrial Relations Research Association, forthcoming, 2000.
10. Worker surveys and opinion polls have been consistent on this point for many years. For the most complete recent documentation and analysis of worker preferences for participation and representation on the job, see Richard B. Freeman and Joel Rogers, *What Do Workers Want?*, Ithaca, New York: Cornell University ILR Press, 1999. See also the various polls conducted for the AFL-CIO by Peter Hart Associates.
11. See the data reported in Freeman and Rogers and the Peter Hart polls cited in note 10.
12. Sidney and Beatrice Webb, *Industrial Democracy*. London: Longmans, 1897.
13. Peter Hart and Associates 1998 poll reports 28 percent of the nonunion workforce were union members at some prior point in their careers.
14. "Giving Life to a Living Wage," *Faith Works*, Newsletter of the National Interfaith Committee for Worker Justice, Chicago, Illinois, October/November 1999. See also, Louis Uchitelle, "Minimum Wages, City by City," *New York Times*, November 19, 1999, p. C1.
15. See the emphasis placed on education and training in the Secretary of Labor's 1999 Labor Day report, *Futurework*, <http://www.dol.gov/dol/asp/public/futurework>.
16. For a recent review of the evidence showing increased returns to human capital, see Frank Levy, *The New Dollars and Dreams*, New York: Russell Sage Foundation, 1998.
17. John R. Commons, *Industrial Administration*. New York: Macmillan, 1923.
18. For various proposals for how to implement this approach to monitoring and enforcing workplace regulations, see David Levine, "They Should Solve Their Own Problems: Reinventing Workplace Regulation," pp. 429–474; Ray Marshall, "The Role of Management and Competitiveness Strategies in Occupational Safety and Health Standards," pp. 499–512; and Thomas J. Schneider, "The Choice Is Simple: A Strong Independent Labor Movement or Federal Government Regulation," pp. 521–532, in Bruce E. Kaufman (ed.) *Government Regulation of the Employment Relationship*, Madison, WI: Industrial Relations Research Association, 1997. For my own suggestions on how to do this, see Thomas A. Kochan, "Labor Policy for the 21st Century," *University of Pennsylvania Journal of Labor and Employment Law*, Vol. 1, 1998, pp. 117–130.
19. See Arnold Zack, "Bringing Fairness and Due Process to Employment Arbitration," *The Negotiations Journal*, Vol. 12, April 1996, pp. 163–169.
20. For an evaluation of the Massachusetts experiment, see Thomas A. Kochan, Brenda Lautsch, and Corinne Bendersky, "Massachusetts Commission Against Discrimination Alternative Dispute Resolution Program Evaluation," MIT Institute for Work and Employment Research, 1999.
21. For a review of the evidence, see the *Fact-Finding Report of the Commission on the Future of Worker Management Relations*, Washington, D.C.: U.S. Departments of Commerce and Labor, 1994, chapter 3.
22. These are laid out in more detail in Kochan, "Labor Policy for the 21st Century."
23. See Kochan, "Labor Policy for the 21st Century."



Thomas A. Kochan

Thomas A. Kochan is the George M. Bunker Professor of Work and Employment Relations at MIT's Sloan School of Management. He has served as head of the behavioral and policy sciences area in the Sloan School. He also served as a member on the MIT Commission on Industrial Productivity and as a member of the Clinton Administration's Commission on the Future of Worker/Management Relations. Professor Kochan came to MIT from Cornell University where he was on the faculty of the School of Industrial and Labor Relations.

Professor Kochan is a past president of both the International Industrial Relations Association (IIRA) and the Industrial Relations Research Association (IRRA).