

## BOOK REVIEW

*From Widgets to Digits: Employment Regulation for the Changing Workplace*, Katherine V.W. Stone (Cambridge: Cambridge University press, 2004, 312 pp., \$75.00(U.S.) (hardback), \$29.99(U.S.) (paperback))

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Katherine V.W. Stone has never been shy about advancing big ideas. Over the last quarter century, her major law review articles have helped us to discern previously indistinct developments and shifts in U.S. labor law, and to connect them with broader movements in politics and industrial relations practice. Until now Stone has largely kept to the law review format. *From Widgets to Digits* speaks to a broader audience, and indeed represents that rare effort that will serve as a university textbook (as I have used it) as well as a challenge to the profession and to policymakers. As Stone explains in her preface, the book brings together differing phases of the author's personal history, first as an "aspiring labor historian" (during which she published an influential article on job structures in the steel industry) and then as legal scholar, in order to tell "a bigger story about the U.S. labor relations regime in the twentieth century" (p. ix). The effort combines the seminal ideas contained in her earlier work with ample portions of labor history, recent research, and case law to produce an amazingly comprehensive and theoretically-driven analysis of the evolving system of employment regulation in the United States. Such an ambitious project is bound to appear uneven, depending on the reader's own particular areas of interest and expertise but, ultimately, this one quite remarkably succeeds. In my view, *Widgets* is the best synthesis we now have of where we have been, where we are now, and where we might go with respect to the regulation of employment in the United States.

*Widgets* is written from the vantage point that we are now firmly situated in a new "digital era" of employment relations in the United

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States, but one whose regulatory system has not yet congealed. Stone elucidates a theoretical model of historical change by which to understand the inception of workplace regulation. In brief, an era's regulatory regime is erected upon the foundation of its production regime, which is characterized by specific kinds of job structures, technologies, management ideologies, and union strategies. Thus, "Out of the interaction between employers and labor organizations, there emerged legal regulations that were both compatible with and constitutive of the prevailing job structures of the era" (p. 4).

The book's challenging contention is that the digital era has not yet acquired an appropriate legal regime; the structure of workplace governance remains unfinished, "poised between the industrial and digital eras" (p. 6), and begs our collective involvement in shaping it. "As a result of the transformation of work," Stone says, "the regulatory regime is seriously out of alignment with the reality of today's workplace" (p. ix). The existing legal framework, based on the template provided by the industrial era, assumed the existence of long-term employment relationships and hierarchical promotion schemes. Because those assumptions no longer pertain, many of the problems that arise in the new workplace elude legal remedy. Thus "it is necessary to rethink the nature of employment regulation at a fundamental level" (p. ix). Stone wishes "to provide a picture of the present time of transition that can inspire and empower us to reimagine and reengage with the social world" (p. x).

Part I provides an historical understanding of the two preceding production regimes, artisanal and industrial. Part II contains two chapters examining the characteristics of employment relations in the "new digital era." The chapters comprising Part III take on each of what Stone identifies as the "core" workplace issues that have been generated by the conflict between the realities of the emerging digital workplace and the outdated regulatory regime in which it operates: new forms of employment discrimination, new disputes over employees' human capital, and new difficulties for employee representation. Finally, Part IV analyzes two of the larger social problems that stem from the changing nature of work, the social crisis in health care and retirement, and the alarming growth of income inequality. With respect to each issue, Stone seeks to "make apparent the choices we now face for social policy" (p. ix).

The historical chapters provide an important foundation. *Widgets* demonstrates the strength of historical analysis and the long view in understanding the ramifications of the "current metamorphosis." The chapter on artisan production, for instance, affords an understanding

of the mechanics of inside contracting by which craft workers regulated production and set wages. The first of two chapters on the industrial era contains excellent sections on Taylorism and “personnel management” as answers to the early 20th century “labor problem” created by the imposition of mass production methods. The discussion of piecework systems exemplifies the detail and depth of the treatment given to each period. One note: At more than one point, Stone tells us that “the teachings of scientific management have been discarded.” This is, of course, a gross exaggeration even within the domestic U.S. sectors this book covers, and entirely misleading if one takes a global view of production. More accurately, the new workplace practices described in *Widgets* are reserved for the “core” workers in the global economy while, for most of the rest, old-fashioned scientific management appears alive and well.

The section’s second chapter on the industrial era focuses extended attention on the historical origin and functioning of internal labor markets (ILMs) as the defining feature of the industrial production regime. The overview of the career wage model here is a plus. Consistent with her analysis at other points, Stone considers the role of employers to have been primary in erecting ILMs, while bargaining to codify and enforce them shaped the purpose and structure of the industrial unions, leaving them later without the proper methods to organize the new “boundaryless” workforce.

Part II elaborates on the nature of employment in the new digital era. Chapter 4 highlights the growth of atypical and contingent forms of employment that accompanies the dismantling of ILMs. The distinctions drawn between atypical and precarious employment are astute. *Widgets* properly includes all these groupings as an integral part of the current labor relations system, something that should by now be habitual in labor studies, but is often still a problem. Immigration as an issue, however, does not enter the analysis.

Chapter 5 on “The New Employment Relationship” provides an excellent digest of the main theories (and associated terminology) developed by HR and OB specialists over the last couple of decades. Stone provides capsule examinations of the intricacies of “organizational citizenship behavior” and the “boundaryless career,” and of how these are converted into practice using the techniques of “competency based organizations,” “total quality management,” and “high performance work systems,” deftly pointing out the esoteric differences in tendency each displays. The author does not hold these ideas or practices in derision. In fact, it may appear that she grants a little too much credence to the claims of the human resource gurus,

but the strategy here is judicial. Stone reserves her opinion and leads a careful inquiry into the implied terms of the “new psychological contract” at work, to which she obstinately holds employers accountable in later chapters. As she articulates them, the terms of this new work contract include, in lieu of any job security or set mobility paths within the firm, tacit promises from employers of other benefits that are said to enhance workers’ “employability” in the external job market—opportunities for networking and to develop their knowledge and skills, opportunities for lateral job mobility within and between firms, market-based pay with performance incentives, and internal dispute resolution mechanisms “to foster and preserve a perception of procedural fairness” (p. 289). As her long-term interest in arbitration would suggest, Stone gives much attention to the range of dispute resolution procedures that have emerged.

As an introduction to her analysis in Part III of the ramifications of the new digital workplace practices, Stone reviews in chapter 6 the outlines of the New Deal regulatory framework that is “increasingly out of date” (p. 119). A “two-tiered system,” the framework was constituted of legal support for collective bargaining combined with government-mandated minimum terms of employment for unrepresented workers. The expansion of individual statutory protections in recent decades, the author notes, has not compensated for the rapid contraction of collective bargaining. The main source of worker power remains collective, a strength that law cannot provide.

The next four chapters provide fruitful analysis of three areas in which existing labor and employment law (or the current practices of employers and labor unions) are “out of step” with the reality of digital era job structures. Through several chapters, Stone closely follows the development of the at-will doctrine and its ramifications. The author returns often to the interrelation of workplace change and legal change. Law remains a major player throughout, but not the central subject of the story. Legal developments associated with each specific issue are tilled in nearly every chapter, with a liberal use of recent case law illustrating the controversies.

Chapter 7 explores the current state of the law of post-employment restraints and finds current jurisprudence inconsistent with the implicit terms of the new employment relationship. While courts increasingly use the presence of contact with customers and job training as evidence that a restrictive covenant is legitimate, employees may, by the terms of the new psychological contract, quite rightly view these as assets that “belong” to them when they depart the firm. The chapter expertly dissects the “tangled” state of case law

on these issues and, as throughout the book, there is historical analysis. Stone is critical of the courts' (and state legislatures') growing receptiveness to employers' efforts to limit employee use of human capital, and she illustrates how courts can be more sensitive to implied agreements when deciding whether or not to enforce noncompete clauses. Consistent with the ideology of the new workplace, Stone argues that employees should be given broad rights to acquire, retain, and deploy their own human capital.

Chapter 8 looks at the new forms of discrimination fostered by the digital workplace, and at how these can be redressed. Decentralized decision making (such as peer review) and more subjective criteria for employment decisions intensify the problem of coworker discrimination, while at the same time they increase the difficulties of identifying discrimination and locating the responsible party under Title VII. As Stone explains, "available techniques for demonstrating an unlawful motive only make sense in a world in which employers make employment decisions on the basis of uniform policies" (p. 171–72). The chapter assesses proposals for new conceptions of liability and considers new kinds of remedies that operate on horizontal as well as vertical power relations. Despite the potential for abuses, Stone argues that "it is possible to imagine an internal dispute resolution system that could address the subtle but powerful forms of discrimination in today's boundaryless workplace," but only "if properly structured" (p. 190). She stresses that the process must utilize neutral outsiders and that decisions must be appealable on issues of law.

In Chapters 9–10 Stone puts forth "a vision of employee representation appropriate to the new workplace" (p. 198). Several core practices of American unions are "fundamentally at odds with the boundaryless workplace" (p. 203), including the pillars of seniority and fixed job descriptions, and Stone takes the position that unions must find ways to adapt to, rather than oppose, the new, more flexible job structures. As work becomes detached from a single employer, unions need to move beyond worksite-based collective bargaining, to "find ways to exert influence on a multiemployer basis, across worksites, localities, and regions, and across occupational and industrial boundaries" (p. 219). She propounds two emerging models of employee representation as alternatives to employer-centered unionism. Her extended description of "new craft unionism" in the film and television industry is particularly effective. The other model, "citizen unionism," seeks to enlist all workers and citizens in a given locality to pressure area employers and government to provide

needed labor market protections and public services, and builds bargaining power with tactics such as boycotts, publicity campaigns, informational picketing, and codes of conduct. Stone is correct, I believe, in asserting that this idea of citizen unionism is compatible with the different types of grass-roots organizing today, as well as with company- or industry-specific employee caucuses, and thus can function as an incubator for fledgling organizing efforts that can eventually join the more formally structured union sector.

To facilitate “boundaryless unionism,” changes in labor law and current NLRB doctrine are needed. Stone offers cogent arguments for a number of reforms to deal with the inherent bias in American practice in favor of single-establishment bargaining units that is rooted in the outmoded assumption of a stable employment relationship. These proposals include the following: 1. The NLRB should encourage multi-employer bargaining and utilize a broader community of interest test to include occupational clusters and mobility paths beyond a single firm; 2. European-style extension laws should be adopted that extend negotiated standards to all firms of the same type in a given region; 3. The prohibition on secondary boycotts should be eliminated to permit unions to bring economic pressure against all the firms within a production and supply network; 4. The law should permit non-discriminatory hiring halls to bargain for closed shop agreements; 5. Congress should adopt the economic realities test for determining employee status and modify the definition of supervisor to enable lead workers, independent contractors, and temps to join and form unions; and, 6. overturning the Supreme Court’s decision in *Communication Workers v. Beck* would enable unions to engage in more effective political lobbying in order to bring these changes about.

Chapter 11 contemplates the crisis in the American system of social insurance, which was originally structured to tie workers to their employers. Exacerbating the problem is the “ethos of the new workplace, the new benefit plans [that] represent a retreat from the principle of risk sharing and a shift to the principle of individual choice” (p. 245). Stone points out a fundamental fallacy with this new paradigm, namely that the “sustainability of the boundaryless workplace depends on the existence of a social safety net that can effectively ease worker transitions when they change jobs” (p. 257). The new structure of benefits, she says, should be based on “the twin ideals of fairness and social protection,” and be portable and affordable, goals that she says would be satisfied by a national single payer scheme. Examining the collection of piecemeal programs and

tax reforms that have so far been implemented or proposed, Stone finds them lacking on these counts. With respect to private pensions, the best answer would be to foster their portability by requiring immediate vesting and 100% rollover. But as we move toward terminating employers' role in pensions altogether, funds for public programs will be needed.

The book's final chapter investigates the relationship that suggests itself between the widespread implementation of "digital" workplace practices and the considerable growth of income inequality in the United States, a development that, Stone says, "threatens the integrity and moral authority of the social order [and] offends our sense of decency" (p. 258). The author marshals evidence showing that the dominant theory of growing income inequality—that it is the result of skill-biased technological change—is insufficient and must be supplemented with other explanations. In addition to the commonly cited institutional factors—the turn away from redistributive policies, diminished union strength, globalized production—Stone focuses specifically on human resource practices as one important factor driving increased income inequality. Prominent here are the new compensation practices that "lead to vast disparities between employees at the same level" (p. 268).

Since arresting the spread of new workplace practices is not feasible, reducing income inequality means developing "a macroeconomic and political program to ameliorate their effects" (p. 269). After weighing earnings enhancement against poverty reduction approaches, Stone decides to draw on some elements of both, and ultimately endorses five proposals that she believes hold the most promise of effectuating meaningful redistribution. Her interest is greatest in proposals that "address the vulnerabilities that the new workplace creates," those that assist workers in periods of transition and help upgrade their skills. Given the privatization of the employment service, Stone is probably overly upbeat about One Stop centers.

The appearance of this final chapter on inequality is satisfying, I think, because it inevitably brings us back to the larger political questions that circumscribe the "workplace" issues, and that have been largely put aside through the course of the book. Stone directly addresses this problem. "While the programs and proposals discussed in the preceding chapters have considerable merit," she says in the conclusion, "political realism compels me to acknowledge that the prospects for their adoption is dim. There is presently no organized group that can effectively press for reforms that can address the

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problems faced by workers in this new world of work . . . Beyond the specific proposals, the analysis presented demonstrates the need for a mechanism to realize the social goals” (p. 290–91). With the author I believe that the work of envisioning a different framework (a recurring theme throughout the book) is a crucial and often neglected part of realizing it. “Once such a framework exists in the imagination, it becomes possible to construct it in the real world” (p. 292). *Widgets to Digits* is a work of grand synthesis. While other books have talked about the “new deal” imposed *on* workers by corporate employers, Stone has theorized and drafted what could realistically be put forth as a “New Deal” *for* workers in the larger political sense, should that needed organizational change “mechanism” appear, or should economic collapse once again force political change.