Designing New Ways to Build Worker Power

A Policy Analysis for Jobs for the Future

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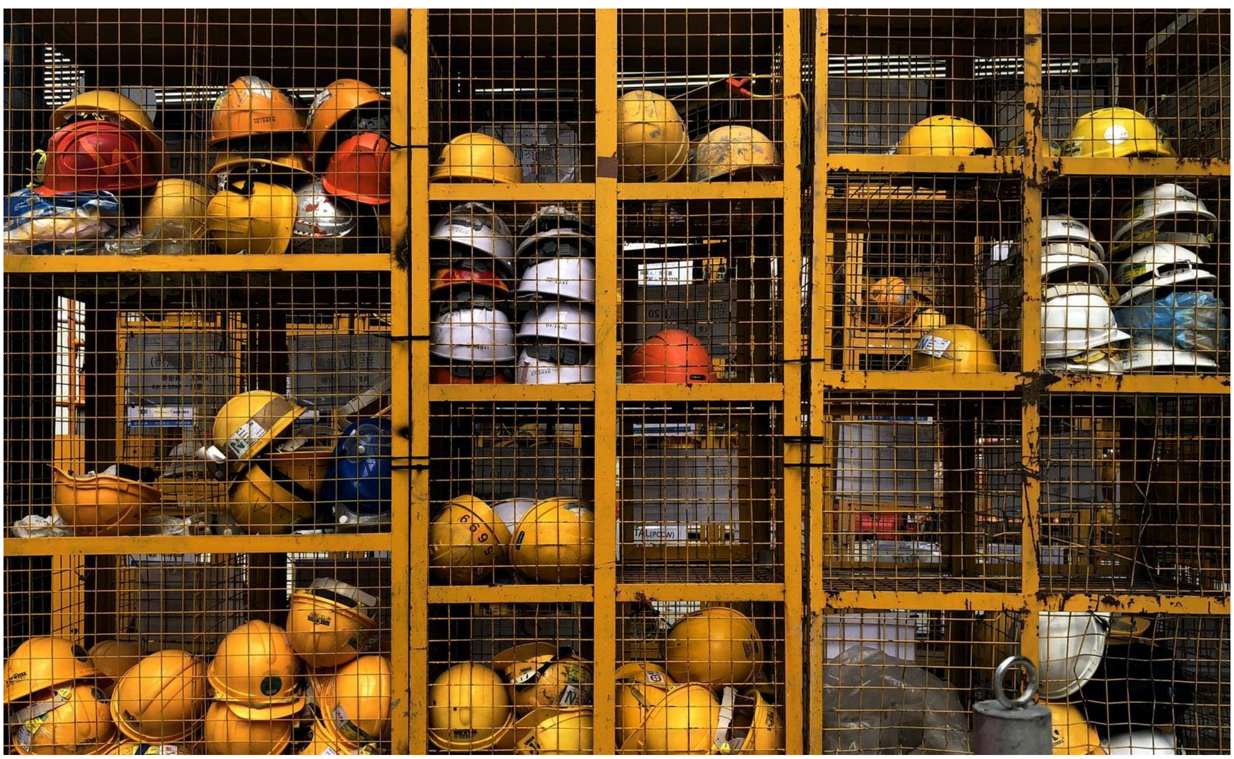

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EXECUTIVE SUMMARY

Too many low-income workers across California are economically vulnerable and unable to influence their conditions of work. Today, over 32 percent of all workers in the state are severely cost burdened and are struggling to move up the economic ladder. Labor dynamics are skewed in the favor of employers and workers have little to no influence over decisions pertaining to their wages, benefits and working conditions.

This problem can be attributed to the dramatic decline in labor unions over the past few decades as well as the proliferation of anti-competitiveness laws that have allowed corporations to gain monopsony power in the labor market and set wages on their own terms. In the light of declining union power in California, this report aims to offer a set of policy interventions that hold the potential to help workers exercise their voice, uphold their rights, and improve their economic circumstances.

By proposing reforms aimed at helping workers build power through sectoral bargaining, employee ownership, corporate governance, labor standards enforcement, and public procurement, we hope to lift up state-level interventions that enable working people to secure greater economic security and mobility. We analyze the merit of these proposed interventions based on their effectiveness, equity, efficiency and political feasibility to demonstrate their ability to improve the lives of low-income workers in California.

BACKGROUND

The evidence is unmistakable: American workers are struggling.[1] Rents are continuously on the rise.[2] Healthcare is unaffordable.[3] Child care is inaccessible.[4] Student-loan debt is overwhelming;[5] college degrees are undervalued.[6] American workers' security, mobility, and well-being suffers.

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[1] Rothwell, Jonathan, and Steve Crabtree. "Not Just a Job: New Evidence on the Quality of Work in the United States." Gallup. Accessed April 20, 2020. Online; Durante, Alex, and Lisa Chen. "Report on the Economic Well-Being of U.S. Households in 2018." Consumer and Community Research Section of the Federal Reserve Board's Division of Consumer and Community Affairs, May 2019. Online.

[2] Lloyd, Alcynna. "Home Prices Are Rising Faster than Wages in 80% of U.S. Markets." *HousingWire*, January 10, 2019. Online; Lowrey, Annie. "The Great Affordability Crisis Breaking America." *The Atlantic*, February 7, 2020. Online.

[3] Abelson, Reed. "Employer Health Insurance Is Increasingly Unaffordable, Study Finds." *The New York Times*, September 25, 2019, sec. Health. Online; Sainato, Michael. "'I Live on the Street Now': How Americans Fall into Medical Bankruptcy." *The Guardian*, November 14, 2019, sec. US news. Online.

[4] Thompson, Derek. "Why Child Care Is So Ridiculously Expensive." *The Atlantic*, November 26, 2019. Online. Bryant, Miranda. "'I Was Risking My Life': Why One in Four US Women Return to Work Two Weeks after Childbirth." *The Guardian*, January 27, 2020, sec. US news. Online; Fraga, Lynette, and Dionne Dobbins. "The US and the High Price of Child Care: An Examination of a Broken System." Child Care Aware of America. Online.

[5] Tatham, Matt. "Student Loan Debt Climbs to $1.4 Trillion in 2019." Experian, July 24, 2019. Online; Cilluffo, Anthony. "5 Facts about Student Loans." Pew Research Center. Accessed April 20, 2020. Online; "Report on the Economic Well-Being of U.S. Households in 2018." The Federal Reserve Board of Governors in Washington DC. June 4, 2019, sec. Student Loans and Other Education Debt. Online.

[6] Emmons, William R., Ana H. Kent, and Lowell R. Ricketts. "Is College Still Worth It? The New Calculus of Falling Returns." *Federal Reserve Bank of St. Louis Review* 101, no. 4 (Fourth Quarter 2019): 297–329. Online; Lowrey, Annie. "The College Wealth Premium Has Collapsed." *The Atlantic*, January 8, 2020. Online.

Why? According to the conventional view, the problem is globalization and automation. International trade competition means that, within some industries, employers export jobs to countries with lower labor standards than the United States.[7] Particularly in manufacturing, American workers experience wage losses, job displacements, long spells of unemployment, and a lack of opportunity in economically depressed communities.[8] Technological forces factor in as well, replacing certain workers with labor-saving machines.[9] To address these issues, policymakers assert, we need human capital investments.[10]

There is a lot of truth to this conventional explanation. But it is not the full picture. To understand why millions of working Americans live in a state of economic insecurity, we need to focus not only on globalization and automation, but also on the threat of concentrated power.

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[7] Autor, David H., David Dorn, and Gordon H. Hanson. "The China Shock: Learning from Labor-Market Adjustment to Large Changes in Trade." *Annual Review of Economics* 8, no. 1 (October 31, 2016): 205–40. Online; Levine, Linda. "Offshoring (or Offshore Outsourcing) and Job Loss Among U.S. Workers." Congressional Research Service, 2012. Online.

[8] One study finds that 156,250 US jobs were lost on net each year between 2001 and 2016 from expanded trade in manufactured goods. *See, e.g.,* Hufabauer, Gary Clyde, and Zhiyao Lu. "The Payoff to America from Globalization: A Fresh Look with a Focus on Costs to Workers." Peterson Institute for International Economics, May 8, 2017. Online.

[9] Devaraj, Srikant, and Michael Hicks. "The Myth and Reality of Manufacturing in America." Cener for Business and Economic Research, Ball State University, June 2015. Online; Autor, David, and Anna Salomons. "Is Automation Labor-Displacing? Productivity Growth, Employment, and the Labor Share." Cambridge, MA: National Bureau of Economic Research, July 2018. Online.

[10] *See, e.g.,* Acemoglu, Daron, and David Autor. "What Does Human Capital Do? A Review of Goldin and Katz's *The Race between Education and Technology*." *Journal of Economic Literature* 50, no. 2 (June 2012): 426–63. Online ("The rise in inequality over the last three or so decades…can be understood as the consequence of a slowing rate of accumulation of human capital, which has not kept pace with skill-biased technological change"); "Press Release: Obama Administration Announces New Regulations to Strengthen Employment and Training Opportunities for Millions of Americans." United States Department of Education, June 30, 2016. Online; Fadulu, Lola. "Why Is the U.S. So Bad at Worker Retraining?" *The Atlantic*, January 4, 2018. Online.

Since the late 1970s, following the turn towards neoliberalism, the United States has experienced a substantial increase in economic inequality.[11] As Gabriel Zucman points out, gaps in income and wealth are at "levels last seen during the Roaring Twenties."[12] This growing concentration of wealth has coincided with a concentration of political power among wealthy individuals and large business firms, which, in a vicious cycle, has led to policies that sustain and expand economic inequality.[13] In the words of Benjamin Sachs, "we [now] face dual crises" of economic and political inequality that undermine not only the American dream, but also the future of American democracy.[14]

Recent public policy debates about economic inequality have focused on income and wealth redistribution through progressive taxation and generous social welfare programs.[15] But what the conversation has often missed is how labor law, with all of its shortcomings, affects

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[11] Jacobs, David, and Lindsey Myers. "Union Strength, Neoliberalism, and Inequality: Contingent Political Analyses of U.S. Income Differences since 1950." *American Sociological Review* 79, no. 4 (August 1, 2014): 752–74. Online; McNichol, Elizabeth, Douglas Hall, David Cooper, and Vincent Palacios. "Pulling Apart: A State-by-State Analysis of Income Trends." Center on Budget and Policy Priorities, November 15, 2012. Online.

[12] Zucman, Gabriel. "Global Wealth Inequality." *Annual Review of Economics*, May 13, 2019. Online; Saez, Emmanuel, and Gabriel Zucman. "Wealth Inequality in the United States since 1913: Evidence from Capitalized Income Tax Data*." *The Quarterly Journal of Economics* 131, no. 2 (May 1, 2016): 519–78. Online.

[13] Who Governs?: Presidents, Public Opinion, and Manipulation. University of Chicago Press, 2015; Gilens, Martin, and Benjamin I. Page. "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens." *Perspectives on Politics* 12, no. 3 (September 2014): 564–81. Online; Gilens, Martin. Affluence and Influence: Economic Inequality and Political Power in America. Princeton University Press, 2012; Druckman, James N., and Lawrence R. Jacobs; Bartels, Larry M. The New Gilded Age: From Unequal Democracy. Princeton University Press, 2012.

[14] Block, Sharon, and Benjamin Sachs. "Clean Slate for Worker Power." Labor and Worklife Program, Harvard Law School, n.d. Online.

[15] Saez, Emmanuel, and Gabriel Zucman. "Progressive Wealth Taxation." Brookings Institute, 2019. Online; Brown Jr., Lewis, and Heather McCulloch. "Building an Equitable Tax Code: A Primer for Advocates." PolicyLink, 2014. Online; Powell, John. "Six Policies to Reduce Economic Inequality." Othering & Belonging Institute, 2014. Online.

organized labor, particularly workers' ability to counterbalance corporate power and have a collective voice in the decisions that affect them and their communities.[16] Labor law matters for how the rights and interests of working people are, or are not, protected by the government; for how the benefits of economic growth are, or are not, shared with low- and middle-income workers; and ultimately for the pace of progress towards economic and political equality.[17]

History shows that when workers join together and make demands for change, the results are extraordinary.[18] From the 40-hour work week, workplace safety standards, and the federal minimum wage, to voting rights, anti-discrimination laws, and the programs of the Great Society—organized labor has been central to securing greater fairness in the economy and the political system.[19] The empirical evidence is compelling.[20] Martin Luther King Jr. put it this

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[16] *See supra* note 14

[17] *See e.g.,*Andrias, Kate. "The New Labor Law." *Yale Law Journal* 126, no. 1 (October 2016): 1–261. Online; Bivens, Josh, Lora Engdahl, Elise Gould, Teresa Kroeger, Celine McNicholas, Lawrence Mishel, Zane Mokhiber, and Heidi Shierholz. "How Today's Unions Help Working People." Economic Policy Institute, August 24, 2017. Online.

[18] *See e.g.,* Heather Boushey, Unbound: How Inequality Constricts Our Economy and What We Can Do About It, 111-12 (2019).

[19] Rosenfeld, Jake. "US Labor Studies in the Twenty-First Century: Understanding Laborism Without Labor." *Annual Review of Sociology* 45, no. 1 (2019): 449–65. Online; Hacker, Jacob S., and Paul Pierson. Winner-Take-All Politics: How Washington Made the Rich Richer--and Turned Its Back on the Middle Class. Simon and Schuster, 2010; Ahlquist, John S. "Labor Unions, Political Representation, and Economic Inequality." *Annual Review of Political Science* 20, no. 1 (2017): 409–32. Online; Grossman, Jonathan. "Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage" U.S. Department of Labor. Accessed April 27, 2020. Online; "African-American's Rights: Unions Making History in America." Accessed April 27, 2020. Online; Weinstock, Deborah, and Tara Failey. "The Labor Movement's Role in Gaining Federal Safety and Health Standards to Protect America's Workers." *NEW SOLUTIONS: A Journal of Environmental and Occupational Health Policy* 24, no. 3 (November 1, 2014): 409–34. Online.

[20] Western, Bruce, and Jake Rosenfeld. "Unions, Norms, and the Rise in U.S. Wage Inequality." *American Sociological Review* 76, no. 4 (August 1, 2011): 513–37. Online; Freeman, Richard B. "UNIONISM AND THE DISPERSION OF WAGES." *INDUSTRIAL AND LABOR RELATIONS REVIEW* 54, no. 1 (October 1980): 21; Farber, Henry S, Daniel Herbst, Ilyana

way: "The labor movement was the principal force that transformed misery and despair into hope and progress."[21] Eugene Debs, a major figure in the early American labor movement, explained how: "Organization is the great secret of success."[22]

Today, the labor movement is a shadow of its former self.[23] At their height, in the mid-1950s, labor unions represented one in three workers;[24] that figure is now less than one in 16 workers.[25] Two problems have emerged as a result of this dramatic decline of collective organization among working people. First, workers have lost bargaining power in the economy, leading to stagnant or reduced wages, growth in the racial wage gap, and rampant abuse by employers.[26] Without unions to protect them, working people are vulnerable to "authoritarian governance at

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Kuziemko, and Suresh Naidu. "Unions and Inequality Over the Twentieth Century: New Evidence from Survey Data." Working Paper. Working Paper Series. National Bureau of Economic Research, May 2018. Online.

[21] King Jr., Martin Luther. "Dr. Martin Luther King, Jr. Address to Illinois AFL-CIO." Illinois AFL-CIO, October 7, 1965. Online.

[22] Debs, Eugene V. "The Labor Problem." In *Morale: The Supreme Standard of Life and Conduct.*, by G. Stanley Hall, 201–18. New York: D Appleton & Company, 1920. Online.

[23] Rosenfeld, Jake. "The Collapse of Organized Labor in the United States." In *What Unions No Longer Do*, 10–30. Harvard University Press, 2014. Online.

[24] Hirsch, Barry T. "Sluggish Institutions in a Dynamic World: Can Unions and Industrial Competition Coexist?" *Journal of Economic Perspectives* 22, no. 1 (February 2008): 153–76. Online.

[25] U.S. Beureau of Labor Statistics. "Union Members Summary," January 22, 2020. Online; Kochan, Thomas A., Duanyi Yang, William T. Kimball, and Erin L. Kelly. "Worker Voice in America: Is There a Gap between What Workers Expect and What They Experience?" *ILR Review* 72, no. 1 (January 1, 2019): 3–38. Online.

[26] *See e.g.,* Mishel, Lawrence, Elise Gould, and Josh Bivens. "Wage Stagnation in Nine Charts." Economic Policy Institute, January 6, 2015. Online; Estlund, Cynthia; Wilson, Valerie, and William M. Rodgers III. "Black-White Wage Gaps Expand with Rising Wage Inequality." Economic Policy Institute, September 20, 2016. Online; "Rethinking Autocracy at Work." *Harvard Law Review* 131 (January 10, 2018): 765–826.

work."[27] Second, the United States has lost one of the few interest groups that represent the political priorities of working people.[28] Indeed, while organized labor has atrophied, business organizations have expanded their political activity.[29] It is this erosion of worker power, combined with the proliferation of organized wealth in politics and governance, that largely underpins rising economic inequality and insecurity.[30]

What is to be done? Several possibilities exist to reform the law in response to labor unions' ineffectiveness as a vehicle of worker empowerment in the contemporary political economy.[31] A great deal of attention has been focused on reforming labor law in order to enhance workers' ability to organize and bargain collectively with their employers; scholars have also proposed making government both more responsive to employee claims of unfair treatment and more punitive towards employers' anti-union behavior.[32] Others advocate heightened legal

[27] Anderson, Elizabeth. Private Government: How Employers Rule Our Lives (and Why We Don't Talk about It). Princeton University Press, 2017.

[28] Madl, David, and Danielle Corley. "Unions Are Among the Very Few Interest Groups That Represent the Middle Class." Center for American Progress Action, November 14, 2014. Online; Gilens, Martin. Affluence and Influence: Economic Inequality and Political Power in America. Princeton University Press, 2012.

[29] Drutman, Lee. The Business of America Is Lobbying: How Corporations Became Politicized and Politics Became More Corporate. Oxford University Press, 2015.

[30] Shierholz, Heidi. "Working People Have Been Thwarted in Their Efforts to Bargain for Better Wages by Attacks on Unions." Economic Policy Institute, August 27, 2019. Online; Langston, Abigail. "100 Million and Counting: A Portrait of Economic Insecurity in the United States." PolicyLink, December 2018. Online.

[31] Rolf, David. "A Roadmap to Rebuilding Worker Power." The Century Foundation, 2018. Online; Block, Sharon, and Benjamin Sachs. "Clean Slate for Worker Power." Labor and Worklife Program, Harvard Law School, n.d. Online.

[32] S Sachs, Benjamin. "Despite Preemption: Making Labor Law in Cities and States." *Harvard Law Review* 124 (2011): 1153-1223; Andrias, Kate. "The New Labor Law." *Yale Law Journal* 126, no. 1 (October 2016): 1–261; Weiler, Paul.

protections that restore and expand workers' right to strike, walk out, picket, and boycott in support of their bargaining demands.[33] While these strategies are helpful, the analysis of this paper assumes that their usefulness is limited for state and local policymakers.[34] Additional strategies aimed at building worker power through corporate governance, tripartite lawmaking, labor standards enforcement, and public procurement are viable alternatives.[35] Consistent with the scope of this project, building worker power—both through and apart from firm-based unions—could help foster economic security for low-income working people in California.

"Promises to Keep: Securing Workers' Rights to Self-Organization under the NLRA." *Harvard Law Review* 96, no. 8 (1983): 1769–1827. Online.

[33] Getman, Julius G. "Strikes, Picketing, Comprehensive Campaigns, and the Law." In *Restoring the Power of Unions*, 229–41. It Takes a Movement. Yale University Press, 2010. Online; Block, Sharon, and Benjamin Sachs. "Clean Slate for Worker Power." Labor and Worklife Program, Harvard Law School, n.d. Online.

[34] The focus of this analysis is on reforms that can be pursued on the state level. That scope prevents recommendations that propose changes to labor law, since the laws that govern unionization in the private sector are under the sole purview of the federal government. "It would be difficult to find a regime of federal preemption broader than the one grounded in the National Labor Relations Act. (NLRA). Although the statute contains no preemption clause, the Supreme Court has established a series of interlinking doctrines that are intended to foreclose state and local intervention into the rules of union organizing and bargaining." Sachs, Benjamin. "Despite Preemption: Making Labor Law in Cities and States." *Harvard Law Review* 124 (2011): 1153-1223; Befort, Stephen F. "Demystifying Federal Labor and Employment Law Preemption." *The Labor Lawyer* 13 (1998): 429.

[35] In tripartite lawmaking "governments act in areas of law that are entirely unrelated to labor organizing and bargaining but that are of acute interest to employers — areas ranging from medical malpractice rules, to telecommunications policy, to zoning and permitting decisions. These governmental actions, in turn, are exchanged for private contractual agreements through which unions and employers bind themselves to new rules for organizing and bargaining." Sachs, Benjamin. "Despite Preemption: Making Labor Law in Cities and States." *Harvard Law Review* 124 (2011): 1153-1223.

PROBLEM DEFINITION

Too many low-income workers across California are economically vulnerable and unable to influence their conditions of work. Low-income workers, who earn less than two-thirds of the median full-time wage in California, comprise 32 percent of the state's workforce — 4,900,000 as of 2017.[36] The estimated hourly living wage in California for a family of four (with two children) is $32[37], whereas the current median hourly wage is $21, which deprives more than 50 percent of the state's workforce from accessing decent living wages. This is especially difficult for low-income workers, as an income of $14 or less propels them into chronic poverty and deprives them of any opportunity for upward economic mobility. Virtually all low-income workers in the state are severely rent burdened. Californian families need a minimum hourly wage of $32.68 to afford a two-bedroom rental home. With the state's specified minimum wage of $12 per hour, low-income individuals with dependents will have to work three full-time minimum wage jobs to afford housing.[38] With such crippling cost burdens, low-income workers have to forgo essential expenditures such as healthcare and food,

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[36] "Low-Wage Work in California." *Center for Labor Research and Education*, UC Berkeley Labor Center, laborcenter.berkeley.edu/low-wage-work-in-california/#the-numbers.

[37] Glasmeier, Amy K. "Living Wage Calculator." *Living Wage Calculator - Living Wage Calculation for California*, 2020, livingwage.mit.edu/states/06.

[38] Aurand, Andrew. "Out of Reach: The High Cost of Housing (2018)." *National Low-Income Housing Coalition*, JP Morgan Chase & Co, 2018, nlihc.org/sites/default/files/oor/OOR_2018.pdf.

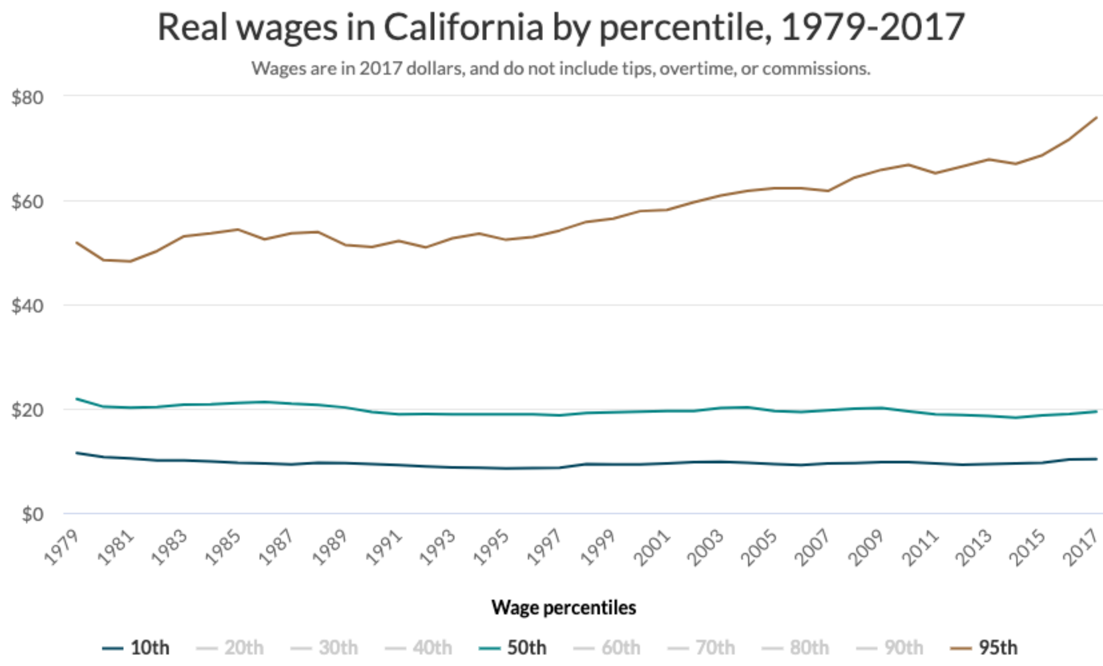
and are compelled to underinvest in crucial long-term benefits including education and retirement savings.

Estimated Living Wage in California	1 Adult			2 Adults (One working)			2 Adults (both working)		
	0 Kids	1 Kid	2 Kid	0 Kids	1 Kid	2 Kid	0 Kids	1 Kid	2 Kid
	$14.99	$31.25	$37.46	$23.28	$29.17	$31.91	$11.64	$17.09	$20.17
Median Wage	$21	$21	$21	$21	$21	$21	$21	$21	$21
Minimum Wage	$12	$12	$12	$12	$12	$12	$12	$12	$12
Low-income Wage	$14	$14	$14	$14	$14	$14	$14	$14	$14

Sources: MIT Living Wage Calculator (2018); UC Berkeley Labor Center (2017)

Further, the distribution of this adversity is disproportionate across racial and ethnic groups, as workers of color constitute a majority of California's low-income workforce at 76 percent. Latino workers account for 56 percent of all low-income workers in the state, even though they only account for 39 percent of the total workforce.[i] Predictably, they also constitute a majority of California's cost-burdened population. For example, among the state's rent-burdened households in 2017, over two-thirds were people of color, and about 45 percent were Latinos.[39]

[39] "California's Housing Future: Challenges and Opportunities." *California Department of Housing and Community Development*, 2017, State of California https://hcd.ca.gov/policy-research/plans-reports/docs/California's-Housing-Future-Main-Document-Draft.pdf



Source: UC Berkeley Labor Centre Analysis of EPI Current Population Survey, 1979-2017

The problem of economic vulnerability for low-income workers extends far beyond absolute poverty, and is rooted in extreme income inequality perpetuated by skewed labor relations. In California, the real (inflation adjusted) wages of workers in the 10th income percentile have stagnated since 1979, whereas those of workers in the 95th income percentile have increased by 1.5 times.[i] The CEO-to-median worker pay ratio has amplified exponentially, wherein some companies in the state such as Tesla Inc. and Gap Inc. exhibit ratios as large as 40668:1 and 3566:1 respectively.[40] Needless to say, the CEO-to-low income worker ratio is even higher. The continual increase in income inequality places low-income workers in a position of competitive disadvantage in the

[40] "Company Pay Ratios: AFL-CIO." *AFL*, American Federation of Labor & Congress of Industrial Organization, 2020, aflcio.org/paywatch/company-pay-ratios.

consumer market as prices of essential services such as healthcare, housing, food and education continue to inflate.

The most disquieting outcome of income equality is also its catalyst. Intergenerational economic immobility and income inequality symbiotically encourage each other, ensuring that economic hierarchies are preserved through generations. Income earners in the top quintiles are able to multiply their wealth through investments, enabling further opportunities for higher income and inordinate power in labor dynamics. The Great Gatsby Curve developed by Miles Corak and popularized by Alan Krueger depicts the relationship between income inequality and intergenerational mobility, rendering that countries or states with higher income inequality have higher Intergenerational Income Elasticity (IGE). In other words, higher income inequality makes it more difficult for people to move above the income quintile they were born into.[41] In theory, the effects of income inequality can be alleviated to a certain extent if the likelihood of people born into low-income families climbing the income ladder is high. However, a 2014 study on intergenerational economic mobility in the United States measures the possibility of upward mobility in California's six largest commuting zones (San Jose, San Francisco, San Diego, Los Angeles, Sacramento and Fresno). It concludes that the average probability of a child born in the lowest income

[41] Krueger, Alan B. "The Rise and Consequences of Inequality in the United States." *Economics for Public Policy*, WordPress, 12 Jan. 2012, milescorak.files.wordpress.com/2012/01/34af5d01.pdf.

quintile ending up in the highest quintile is only 10.4 percent, whereas the average percentage of population that lies below the poverty line in the state is 72.8 percent.[42]

In addition to economic vulnerability, low-income workers in California are subjected to substandard conditions of work and have little to no sway in the decision-making process pertaining to their benefits and rights. As of 2015, of the 1.8 million Californians without health insurance, 62 percent were employed. More than half of the uninsured people who were employed had annual incomes of $25,000 or less. 71 percent of uninsured workers worked in firms with less than 50 employees, which are not required to provide health insurance to their workers by law.[43] Latinos in the state constituted 55 percent of the insured population, even though they account for only 40 percent of the total population. It is no surprise that on average, Californians spend 26% more in health care premium than the rest of the country.[44] The burden of this premium is too high to be borne by low-income workers who are already struggling to meet housing costs. In 2018, only 32 percent of firms that employ a significant number (more than a third) of low-income workers offered health insurance to their workers.[45]

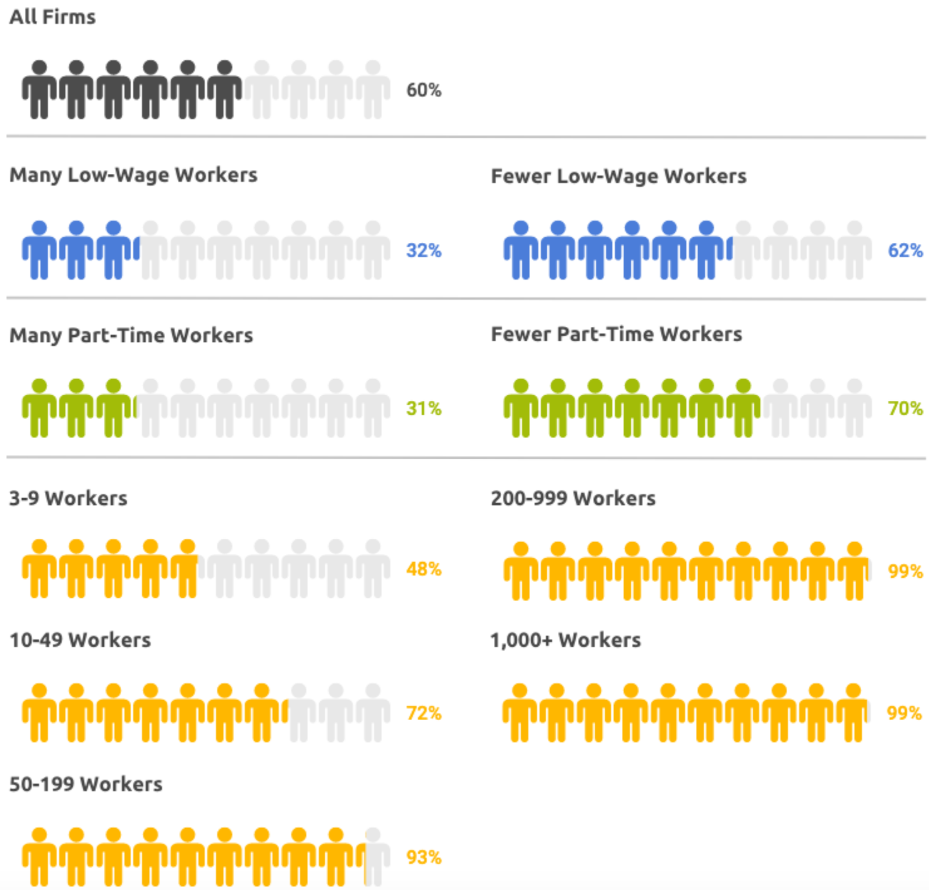
Healthcare Coverage among firms in California (2018)

[42] Chetty, Raj, et al. "Where Is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States." *Opportunity Insights*, Harvard University, June 2014, www.equality-of-opportunity.org/assets/documents/mobility_geo.pdf.

[43] Fronstin, Paul. "California's Uninsured: As Coverage Grows, Millions Go Without." *California Health Care Almanac*, California Health Care Foundation, 2017, www.chcf.org/wp-content/uploads/2017/12/PDF-CaliforniaUninsuredDec2016.pdf.

[44] Seegert, Paul. "Opinion: California Needs to Innovate on Health Care to Lower Employer Costs." *The North Bay Business Journal*, 7 Feb. 2020, www.northbaybusinessjournal.com/opinion/10647684-181/opinion-california-health-insurance-business.

[45] Whitmore, Hiedi. "2019 Edition - California Employer Health Benefits." *California Health Care Foundation*, 2019, www.chcf.org/publication/2019-edition-california-employer-health-benefits/.



Source: California Healthcare Foundation. *Note: Low-wage is defined as workers with an annual income of $23,000 or less, many is 35% or more, and fewer is less than 35%.*

Further, 85 percent of low-income workers in the state lack access to employer sponsored retirement plans, and a significant majority of these workers have no retirement assets at all, either through an employer or through individual retirement savings accounts.[46] [47] The situation is worse for Latino workers — 7 in 10 Latino workers in the state lack access to pension benefits compared to 3 in 10 white workers.

[46] "Median Hourly Wages in California." *Center for Labor Research and Education*, UC Berkeley Labor Center, http://laborcenter.berkeley.edu/low-wage-work-in-california/#job-profile.

[47] Rhee, Nari. "Half of California Private Sector Workers Have No Retirement Assets." *Center for Labor Research and Education*, UC Berkeley Labor Center, June 2019, laborcenter.berkeley.edu/pdf/2019/Retirement-in-California.pdf.

The deficiency of worker power in California's employment ecosystem is also manifested in the number of worker safety violations in the state. In 2012, the California Department of Industrial Relations' Division of Occupational Safety and Health (Cal/OSHA) identified more than 60 safety violations in warehouses, which are predominantly occupied by low-income workers who are typically hidden from public view. A majority of the violations pertained to fall protection, storage stacking, excessive heat and machine guarding.[48] The growing use of mandatory arbitration agreements imposed by employers in state further undermines worker power. These agreements prevent workers whose rights are violated, for example through wage theft or safety negligence, from pursuing litigation by compelling them to submit to arbitration procedures that research shows overwhelmingly favor employers. California's Assembly Bill 51, signed by Governor Newsom in January 2020, banned mandatory arbitration contracts, however the law was challenged as being in direct contradiction with the Federal Arbitration Act, and would, therefore, be repealed.[49] This gives employers the power to continue to oppress workers and dissuade them from seeking legal action when their rights are violated.

Diagnosing the Problem

Historically, labor unions in the United States have served as the primary instrument for upholding and advancing worker power. They have successfully increased wages and benefits,

[48] Walter, Laura. "Cal/OSHA Uncovers Dozens of Safety Violations at California Warehouses." *StackPath*, 2012, www.ehstoday.com/standards/osha/article/21906713/calosha-uncovers-dozens-of-safety-violations-at-california-warehouses.

[49] Benarocche, Alex. "AB51: Court Delays California's Arbitration Agreement Bill." *Levelset*, 15 Apr. 2020, www.levelset.com/blog/california-court-delays-arbitration-agreement-bill-ab51/.

enabled decent conditions and hours of work, as well as provided workers with agency during grievance redressal processes. When unions were at their peak until late 1970s, there were no less than 10 million strikes a year and low-income workers enjoyed high income premiums. Unions held political leverage and were able to collectively bargain at the enterprise level for better wages and benefits. Further, the effect of unionization percolated to non-unionized workers as management in workplaces were threatened by the possibility of their workers unionizing. Many breakthrough labor laws including the eight-hour work-day and five-day work-week were negotiated by labor unions.

The declining strength of labor unions since late 1970s propelled an increase in wage inequality and decrease in worker power. A study by Western and Rosenfed (2011) found that between 1973 and 2007, as union membership plummeted at a steady rate, inequality in hourly wages increased by 40 percent.[50] Based on a regression of income inequality on organized labor, the study concluded that decline in union power contributed to one-fifth to one-third of the growth in income inequality.

In California, between 2004 and 2014, the decline in union membership resulted in the loss of 56,000 jobs and led to a $10 reduction in average weekly earnings. The total loss in wage earnings from the decrease in union membership rates during the decade was $6077 million.[51] According to a 2018 study by the UC Berkeley labor center, union workers in California earn 12.9 percent more on average than non-union workers. These increased wages account for

[50] Western, Bruce, and Jake Rosenfeld. "Unions, Norms, and the Rise in U.S. Wage Inequality." *American Sociological Review*, Sage, 2011, www.asanet.org/sites/default/files/savvy/images/journals/docs/pdf/asr/WesternandRosenfeld.pdf.

[51] Gitis, B. and Sara Rizik (2106). Union membership and Economic Growth. American Action Forum. https://www.americanactionforum.org/research/union-membership-economic-growth/

$18.5 billion in earnings. Further, the study asserts that union representation in the state increases wages by 26 percent for women, compared to 15 percent for men. Workers of color see an even greater benefit — union representation increased wages for black workers by 19 percent and Latinx workers by 40 percent, compared to 15 percent for white workers.[52] Today, only 17 percent of the state's workers are covered by union contracts, and a majority of them are relatively high-skilled. Only 9 percent of low-income workers are unionized.[53] In the face of declining union strength, it is pertinent, now more than ever to identify new ways of building worker power.

In addition to the deteriorating influence of unions, anti-competitiveness laws perpetrated by the federal government have contributed to inefficiencies in the labor market and led to monopsonies that exploit workers by setting wages as they please. While the Taft-Hartley Act of 1947 triggered the fall of union power by prohibiting many effective organizing tactics such as jurisdictional strikes, solidarity or political strikes, secondary boycotts, mass picketing, closures, etc., it was the Raegan administration during the 1980s that proliferated the right-to-work laws and deterred active organizing. The administration introduced new merger standards that allowed for bigger, more powerful companies, and the biggest companies continued to get bigger and more profitable. For example, three drug chains (CVS, Walgreen's,

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[52] MacGillvary, J., & Jacobs, K. (2018). The Union Effect in California# 3: A Voice for Workers in Public Policy. http://laborcenter.berkeley.edu/union-effect-in-california-1/

[53] Perry, I. (2017) Low Wage Work in California Data Explorer. UC Berkeley Labor Center analysis of EPI Current Population Survey Outgoing Rotation Files. http://laborcenter.berkeley.edu/low-wage-work-in-california/#job-profile

Rite Aid) control 99 percent of the drug stores today, and a single company (Walmart) accounts for 30 percent of all products consumed by Americans and controls over half of all groceries sold in some major cities. Looser antitrust enforcement and more anti-competitiveness tactics over the years have increased the bargaining power of corporations versus the bargaining power of workers and wage setting has become a one-sided affair. They have also enabled outsourcing, contracting and franchising, thereby weakening labor power even more. California's state laws have been inadequate in preventing anti-competitiveness in the labor market. Even though California does not generally enforce non-compete agreements, 22 percent of workers in a 2016 survey reported that they had signed one.[54] Further, the collective bargaining power of employers in the state has been detrimental to workers' rights. For example, in California's Silicon Valley, employers have made use of legally dangerous no-poach agreements with each other precisely because California employment law forbids non-compete agreements.[55]

Rationales for Policy Interventions

Unacceptable Distributional Outcomes

The absence of worker power prevents virtually all low-income workers in California from accessing basic necessities such as a living wage, affordable housing, healthcare, etc. without being severely cost-burdened. This represents unfairness in the distribution of a necessity

[54] Council of Economic Advisers. (2016b). Labor Market Monopsony: Trends, Consequences, and Policy Responses [Issue Brief]. Retrieved from https://obamawhitehouse.archives.gov/sites/default/files/page/files/20161025_monopsony_labor_mrkt_cea.pdf

[55] Gibson, M. (2019). Employer market power in Silicon Valley. Working paper. http://conference.iza.org/conference_files/JuniorSenior_2019/gibson_m10269.pdf

good, wherein the labor market has failed to express the true benefits of the good. People's willingness to pay is limited by their income, and government intervention is pertinent to enhance the efficiency of this market.

Positive Externalities

The social benefits of worker power are greater than reflected by individual benefits. Generally, all community members benefit from marginal gains in access to income, health services and fringe benefits. Better wages will boost expenditure towards important markets and pump money into the economy through investments. It will also enhance productivity of the workforce by improving workers' access to healthcare and education.

OBJECTIVE AND SCOPE OF THE ANALYSIS

This paper seeks to identify and analyze policies that can build worker power to improve wages, benefits and job quality in the face of declining union power. For the purpose of our analysis, we will define 'power' as the ability to influence or control one's circumstances in a given environment and 'worker' as one who supplies labor rather than capital to an organization/firm's production. In this sense, we understand worker power to be a worker's ability, whether individually or collectively, to influence the circumstances relating to their employment/labor. This can be exercised structurally or economically. The structural exercise of worker power pertains to the worker's ability to influence conditions of work and gain political sway in the firm's governance structure. The economic exercise of power refers to the worker's ability to increase their economic mobility as well as ensure that their economic wellbeing is independent of the firm's business decisions such that the choices made by a firm's capital-suppliers (e.g. investors, shareholders, corporate management, etc.) do not deteriorate the worker's economic position. These two can be interrelated or independent. For example, workers might be able to structurally exercise their power so that they have a voice in their firm's decision-making process which could, in turn, allow for them to demand higher wages and greater benefits. Conversely, workers might have little to no influence in how their employers make decisions and thus be structurally powerless in this sense, but could still have a measure of economic power if their government provides them with unemployment insurance, which they can use as leverage. Accordingly, in proposing and evaluating policy alternatives, we intend to measure 'worker power' through tangible parameters including such as wages, access to healthcare and retirement benefits, job security, participation in corporate governance and ownership in company assets.

This paper analyzes four policy propositions to build worker power in California and offers recommendations for California state level officials based on the results.

(a) **Sectoral Bargaining**: To counterbalance the limitations of enterprise-based collective bargaining, California should consider reviving its wage boards and spurring them to adopt industry and occupation specific minimum wages that are up-to-date with current approximations for decent living wages in the state. These wage floors should be determined as a result of negotiations at the sectoral level between trade union representatives and industry representatives, and arbitrated by a neutral third party.

(b) **Co-Enforcement:** To combat underenforcement of labor standards and help workers exercise their legal rights, the state of California should fully leverage the industry expertise, cultural competency, and trust of worker organizations. By creating a high-level advisory committee made up representatives from worker organization, the state could bolster labor standards compliance in low-wage industries and provide funding and legitimacy to worker organizations.

(c) **Employee Ownership and Board Representation**: The state legislature should make an effort made to convert existing businesses, especially those closely held, into worker cooperatives or majority employee owned businesses. There should also be a continued focus on supporting organizations that educate the entrepreneurs about the benefits of employee ownership and governance, and that help train workers to build the skills necessary to start their own worker cooperatives and majority employee owned businesses.

(d) **Government Procurement:** In order to incentivize the private sector to support worker power, the state legislature should create novel procurement certifications for private sector suppliers based on measures and that have a demonstrable impact on increasing worker power in a firm. The certifications could be based on business organization, such as a certification for cooperatives, or be based on a specific measure, such as the number of workers that sit on the corporate board. The comparative advantage that these procurement certifications would provide authorized private suppliers in California's procurement market has the potential to influence private sector behavior.

The alternatives will be evaluated based on the following criteria:

- **Effectiveness**: The alternative's ability to positively or advantageously influence
  a) Financial gains for workers including wages and shares in company profits
  b) Worker benefits including healthcare, pension, childcare and vacation days
  c) Conditions of work including safety provisions, job security, and grievance process
  d) Autonomy for workers including board representation and self-management
- **Equity**: Distributional implications of the alternative (by race, gender, etc.)
- **Efficiency:** The alternative's ability to ensure that its benefits outweigh its costs
- **Political Feasibility:** The alternative's acceptance by decision makers and the general public

Wherever possible, each of these criteria are supported by quantitative research into outcomes for workers. In some instances, quantitative data do not exist to assess a proposition and the evaluation is based on a qualitative information and review of the literature.

The criteria are listed in the order of their priority (highest to lowest). Effectiveness is the highest priority because a policy proposition must, first and foremost, have a positive effect to serve its purpose. Equity is next because in the context of workers' rights, people of color and women are particularly deprived of the dignity of labor and have historically remained vulnerable to social and economic exploitations. Unless a policy intervention is inclusive, it perpetuates inequities that are based on similar structures of hierarchies that the intervention is trying to subvert. Efficiency is next because it is pertinent to evaluate the affordability of an intervention, especially since public resources are limited and should be used in a way that optimizes public benefit. Feasibility is last because although a broad range of people need to support an alternative for it to succeed, the relative power of the first three can act as a strong persuader to adopt an otherwise novel or unpopular intervention.

SECTORAL BARGAINING

Sectoral bargaining is a form of collective bargaining that facilitates labor negotiations at the multiemployer or industrywide level rather than the enterprise level. It provides contract coverage and sets compensation and benefit floors for most workers in a particular occupation and/or industry. Sectoral bargaining is typically enabled through a tripartite establishment called a 'Wage Board' with representation from industry specific trade unions, employers and the general public or government officials. It serves as the primary form of bargaining in most European countries, and has manifestly led to higher coverage, greater collective labor power and more frequent conversations at the bargaining table.

As discussed above, the declining power of enterprise-based unions and the surge in union busting tactics undertaken by employers have made it difficult for workers today to organize and bargain — merely 9 percent of California's low-income workers are covered by a collective bargaining agreement. In some of the fastest-growing industries in the state—including food service and retail—layers of contracting make traditional union organizing and bargaining challenging. The restaurant and food services industry in the state has one of the highest concentrations of low-income workers at 65 percent, but a unionization rate of only 1.4 percent.[56] Further, worker protective labor laws currently applicable in the state are set primarily at the federal level and leave out millions of workers, many of whom are women and people of color. The protections of the National Labor Relations Act, for example, exclude domestic workers, agricultural workers, and independent contractors. This disregards a significant section of low-income workers in California, as 66 percent of all

[56] US Department of Labor Bureau of Labor Statistics, "Union Members—2019," p. 1; accessed May 10, 2020. https://www.bls.gov/news.release/pdf/union2.pdf

agricultural workers and 65 percent of all personal care workers in the state are classified as low-income workers.[57]

Source: UC Berkeley Labor Center Analysis of IPUMS American Community Survey

To counterbalance the limitations of enterprise-based unionization in California, sectoral bargaining offers a new platform for labor negotiations that responds to the changes in the economy over the recent decades. Through wage boards, sectoral bargaining covers all workers in an industry/occupation, and ensures standardized wage minimums across the industry.

[57] Perry, I. (2017) Low Wage Work in California Data Explorer. UC Berkeley Labor Center analysis of IPUMS American Community Survey, 2017. http://laborcenter.berkeley.edu/low-wage-work-in-california/#industries-and-occupations

Sectoral Bargaining in California

Sectoral bargaining in California was introduced in 1913 through the Industrial Welfare Commission (IWC), which was established to regulate wages and conditions of work at the industry and/or occupation level. The IWC carried out investigations and made recommendations on wages, hours and working conditions through wage boards what were composed of two union representatives, two industry representatives and one neutral third party. Following the investigations and negotiations, recommendations that received support from at least two-thirds of the wage boards' members were adopted into the IWC's proposed set of regulations, which were further deliberated upon through public hearings. If ratified, the propositions were incorporated into the California Code of Regulation. Thus far, the IWC has issued 17 individual wage orders — thirteen industry orders, three occupation orders, one general minimum wage order.[58] In addition to setting industry specific minimum wages, the IWC considered whether the hours or conditions of labor are prejudicial to the health, morals, or welfare of employees.

However, the IWC has been defunded since 2004 and has not convened in 16 years. The California Division of Labor Standards Enforcement continues to enforce the existing wage orders (last defined in 2004), and the legislature has not revoked the IWC's legal responsibilities, but the current status of the IWC can be described as an unfunded legislative mandate.

[58] State of California Department of Industrial Relations. Industrial Welfare Commission (IWC) website. Accessed May 10, 2020. https://www.dir.ca.gov/iwc/wageorderindustriesprior.htm

Proposition to Revive and Reform Wage Boards

California's legislature should consider refunding the IWC and spurring it to adopt industry specific minimum wages that are up-to-date with current approximations for decent living wages in the state. These wage floors should be determined as a result of negotiations between trade union representatives and industry representatives, and arbitrated by a neutral third party. The investigation and negotiation process should take into account both the labor market dynamics in specific industries as well as the consumer market dynamics. The neutral member in a wage board should be appointed based on their expertise in the field of labor economics and welfare, along with industry specific knowledge as required.

In addition to wages, hours and conditions of work, wage boards through the IWC should introduce benefits (healthcare, pensions, and childcare), autonomy (board representation and self-governance) and limitations on outsourcing of jobs to the bargaining table. The wage floors in an industry or occupation should progress across different levels of experience, wherein workers with more experience should have a higher minimum wage.

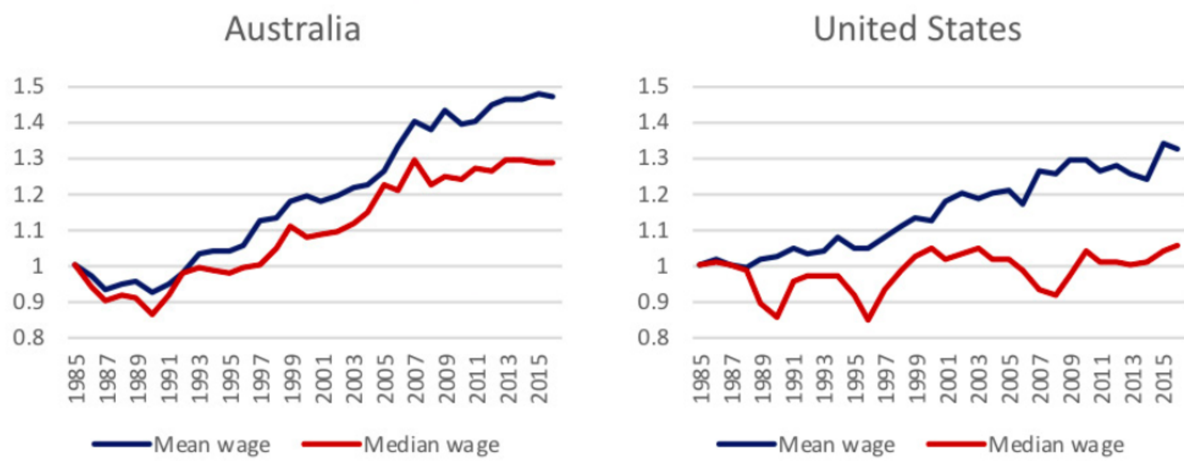
Analyzing Sectoral Bargaining - Effectiveness

Unlike enterprise based collective bargaining, sectoral bargaining covers all the workers in an industry or occupation, whether employees or independent contractors and whether or not they are unionized. For instance, in France, even though the total unionization rate is 8 percent (not dissimilar from the unionization rate for low-income workers in California), 95 percent of its workforce is covered through wage boards.[59]

In Australia, sectoral bargaining is practiced through the "Modern Awards" system that sets wage floors for specific industries and occupations. This supplements enterprise-based collective bargaining (which covers 36 percent of the nation's population) and the federal minimum wage in the country. The system contributes towards a consistent increase in industry and occupation specific minimum wage each year for most pay grades, with adjusted wage floors during some years to increase pay for low-income workers and thereby reduce the income gap. General trends pertaining to income growth in Australia suggest a positive correlation between sectoral bargaining and reduced inequality. In comparison to the United States, the mean wage in Australia has grown in cohesion with the median wage in the last two decades, implying lower rates of income inequality. In the United States, the median wage has seen negligible increase in real terms since the 1980s. Australia's subdued growth in inequality as compared to the United States cannot be attributed to differences in labor market efficiency as the two countries have had similar rates of unemployment over the years. For instance, between 2005 and 2015, the average unemployment rates in Australia and the United States were 5.5 percent and 6.9 percent respectively.[xxv]

Growth in Mean vs. Median Wages - Comparing Australia and US

[59] Dube, A. (2019). Using Wage Boards to Raise Pay. Policy Brief, 4. Accessed May 10, 2020. https://econfip.org/policy-brief/using-wage-boards-to-raise-pay/

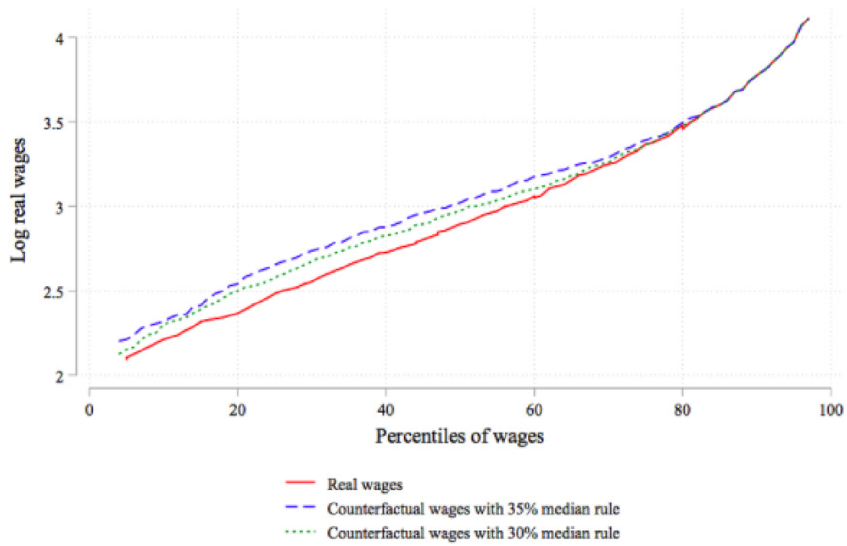


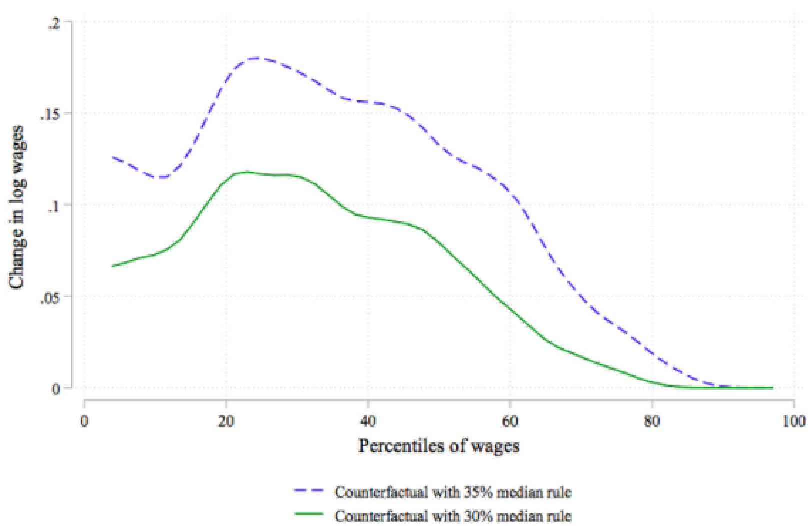
Source: Using Wage Boards to Raise Pay, Arindrajit Dube (2019)

Assessing the Effect of Hypothetical Wage Boards in the United States

As per a recent simulation exercise by economist Arindrajit Dube, wage boards are likely to set minimums more granularly, for instance offering more to more experienced workers. Even so, they are expected increase wages for low-income workers at a higher rate than high-income workers, bridging the income gap to a significant extent. The simulation, which is for national wage boards in the United States, produces 102 wage standards across 17 industries, six occupations and nine regions. It considers two scenarios: 'low' wage standard where the wage minimum is set at 30 percent of the median wage in each of the 102 groups and 'high' wage standard where the wage minimum is set at 35 percent of the median wage. The model concludes that both the high and low standard situations lead to a significant increase in wages for the bottom quintiles of the income distribution. When the minimum wage is set at 30 percent of the median, hourly wage for the 20th income percentile rises by 13 percent, whereas that for the 60th income percentile rises by only 4 percent. The results lend credibility to the assertion that wage boards are particularly instrumental in improving financial outcomes for low-income workers.

Effect of Hypothetical Wage Boards on Wages in the United States





Source: Using Wage Boards to Raise Pay, Arindrajit Dube (2019)

Impact of Wage Boards on Benefits

By expanding coverage to include a greater number of low-income workers and introducing employee benefits to the bargaining table, wage boards can be effective in ensuring that low-income workers in California have greater access to employer sponsored healthcare, childcare and pension benefits. A 2018 study on the impact of unionization on low-income workers used timeseries data (from the period between 1936 and 1973) on household union membership rates to show that union density is inversely corelated to relative skill of union members. This means that as union coverage declines, predominantly high-skilled workers tend to remain members. The study also estimated that income premium and benefits for unionized households during the same period and found that irrespective of union density, the benefits and income premiums for workers remained steady.[60] The study makes a strong case for the correlation between union coverage and increased benefits, wherein as coverage expands, it tends to draw in a higher proportion of low-income workers and consequently raises their relative wages and benefits. Wage boards, by covering virtually all workers in an industry, thus ensure greater benefits for low-income workers.

Analyzing Sectoral Bargaining - Equity

By setting an industry minimum at each level of employment for low-income workers, sectoral bargaining reduces the gender and race pay gap to some extent, thereby precluding employers from paying white men more than other race and gender groups. In 2015, amongst low-income workers in California, black men earned 73 percent of what white men earned, and Latino men earned 69 percent of what white men earned. It is even worse for women of color: while white women earned 82 percent of white men's earnings, black women earned just 65 percent, and

[60] Farber, H. S., Herbst, D., Kuziemko, I., & Naidu, S. (2018). Unions and inequality over the twentieth century: New evidence from survey data (No. w24587). National Bureau of Economic Research.

Latina women just 58 percent, of white men's earnings.[61] Wage boards can mitigate this by setting industry standards for wages and holding employers accountable for them. However, for relatively high-skilled workers within the low-income spectrum, the minimum wage could be comparatively less successful in reducing income parity as employers may choose to pay male and/or white workers at a rate above the minimum wage while paying women and workers of color at lower rates.

In addition to addressing outcome equity, wage boards can ensure process equity by actively representing the interests of women and people of color. IWC can mandate or propose reservations for women and people of color in boards, ensuring that wage board members on behalf of employers as well as workers constitute women and people of color. This empowers them to take control of decisions that directly affect them, especially when a significant majority (76 percent) of low-income workers are people of color.

Analyzing Sectoral Bargaining - Efficiency

While reinstituting the Industrial Welfare Commission has substantial direct costs, the benefits of the intervention far outweigh these costs. During 2007, in response to pressure from the democratic state legislature over increasing the minimum wage, then Governor Schwarzenegger considered refunding the IWC and put forth a funding allocation of $449,000 out of his enormous state budget of $143 billion.[62] This estimate is not nearly adequate to have

[61] Patten, E. (2016). Racial, gender wage gaps persist in US despite some progress. Pew Research Center, 1. https://www.pewresearch.org/fact-tank/2016/07/01/racial-gender-wage-gaps-persist-in-u-s-despite-some-progress/

[62] Fochtman, M. (2007). From the Experts: Will the Revival of California's Industrial Welfare Commission Reduce the Explosion of Wage and Hour Litigation for California Employers? HR Daily Advisor, HR Management and

a fully functioning wage board that accommodates the 22 major industries with a substantive population of low-income workers and extends conversations beyond wages and conditions of work. However, the estimate serves as an anchor to determine the potential costs of reinstituting wage boards in California today. Since data on the budgetary implications of wage boards is limited, we can use the proposed budget in 2007 to extrapolate that the budgetary burden of refunding the IWC should not be more than 0.005 percent even with a liberal estimate of $8 million.

Conversely, at the current unionization rate of 17 percent, the increased wage earnings for union workers in comparison to non-union workers account for $18 billion. Instead of 17 percent, if a significant majority of the state is covered by collective bargaining agreements — as the wage boards would facilitate — the increase in total wage earnings would be exponentially higher. Either way, the cost of refunding the IWC is negligible in comparison to these benefits. In addition, higher wages and greater benefits would lead to positive social externalities such as a more efficient consumer market and a more productive workforce. Further, the costs of reinstituting the IWC can be offset to a large extent as wage boards would boost local employment and increase some workers' state EITCs[63], which would increase the cost of providing a state EITC, but also add EITC income into the state economy through increased consumption, which in turn would raise state tax collections.

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https://hrdailyadvisor.blr.com/2007/03/01/from-the-experts-will-the-revival-of-california-s-industrial-welfare-commission-reduce-the-explosion-of-wage-and-hour-litigation-for-california-employers/

63

Analyzing Sectoral Bargaining - Political Feasibility

As public opinion in the country sways in favor of unions, wage boards have garnered significant support across partisan lines. A 2018 poll conducted for the Center for American Progress demonstrates that Americans very strongly support wage boards. As per the poll, 77 percent of registered voters in the country supported the creation of wage boards. 82 percent of the women supported the initiative, 78 percent of workers who live in rural areas, and 84 percent of those who felt their income was inadequate to meet the cost of living came out in favor.[64] California, owed to its progressive politics and historically pro-union stance, should have depict even higher approval ratings for wage boards.

[64] Halpin, J. and Karl Agne (2018). Ensuring Basic Living Standards for All. Center for American Progress. https://www.americanprogress.org/issues/poverty/reports/2018/03/07/447412/ensuring-basic-living-standards/

Rieger, S. (2016). Reducing economic inequality through democratic worker-ownership. The Century Foundation.

Olsen, E. K. (2013). The relative survival of worker cooperatives and barriers to their creation. Sharing Ownership, Profits, and Decision-Making in the 21st Century (Advances in the Economic Analysis of Participatory and Labor-Managed Firms, 14, 83-107.

Abell, H. (2014). Worker cooperatives: Pathways to scale. Takoma Park: The Democracy Collaborative.

Blasi, Joseph R., and Douglas L. Kruse (2019). "Building the Assets of Low- and Moderate-Income Workers and Their Families: The Role of Employee-Ownership." Rutgers University: Institute for the Study of Employee Ownership and Profit Sharing. https://smlr.rutgers.edu/sites/default/files/rutgerskelloggreport_april2019.pdf

Palmer, T. (2019). 2019 Worker Cooperative State of the Sector Report. Democracy at Work Institute.

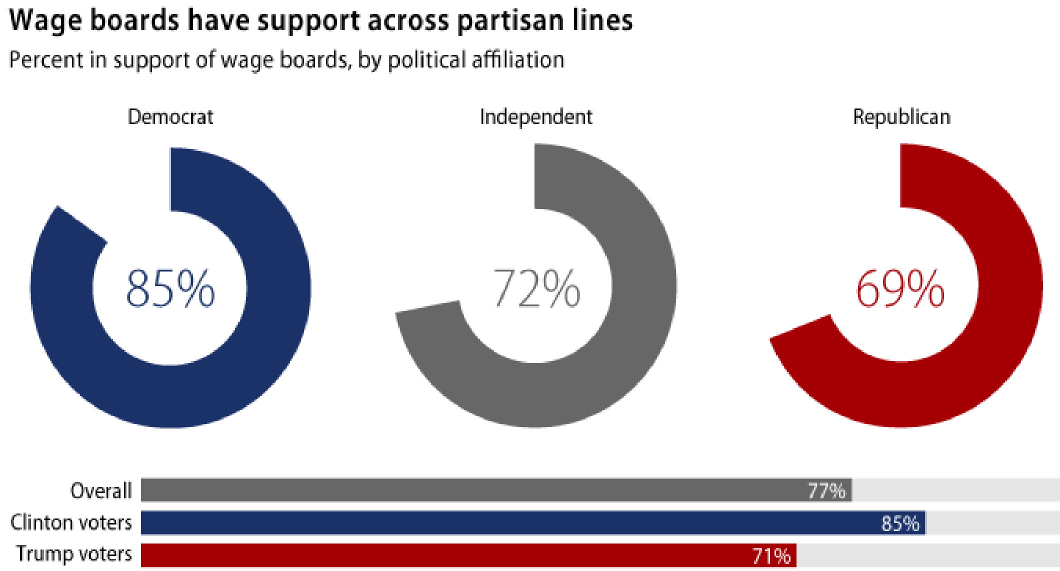
Bell, D. (2006). Worker-owners and unions: Why can't we just get along. Dollars & Sense.

Dammann, J., & Eidenmueller, H. (2020). Codetermination: A Poor Fit for US Corporations. European Corporate Governance Institute-Law Working Paper, (509).

Cal e Procure. *State Leveraged Procurement Agreements*, 1 May 2020, caleprocure.ca.gov/pages/LPASearch/lpa-search.aspx.

Public Contract Code. Div. 2. 1110 – 223555. Part 2. 101000 – 19150. Chp. 1. 10100 – 10285.5. Article 1.5. *Minority and Women Business Participation Goals for State Contracts*. *https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PCC&division=2.&title=&part=2.&chapter=1.&article=1.5.*. Web. Mar. 2020.

Hall, and Hueso. "SB-1219 Small Business Procurement and Contract Act: Employment Social Enterprises." *California Legislative Information*, State of California, 18 Feb. 2016, leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB1219.



Source: Center for American Progress (2018): Ensuring Basic Living Standards for All

Sectoral Bargaining: Assessment Outcomes

Criterion	Score
Effectiveness	High
Equity	Medium
Efficiency	High
Political Feasibility	High

Based on the analysis, the table above summarizes the scores assigned to sectoral bargaining for each criterion. Sectoral bargaining through tripartite wage boards in California can be highly effective and cost-efficient in increasing wages and benefits for low-income workers as well as ensuring to some extent that the income distribution is equitable across genders and races. In addition, it has high approval ratings across diverse groups of people.

CO-ENFORCEMENT

A well-documented problem motivates the analysis in this section: state and federal labor standards, which govern the employer-employee relationship, are under-enforced.[65] Basic worker protections—from minimum wages, overtime pay, and meal breaks, to safe working conditions, anti-discrimination laws, and the right to organize and bargain collectively—are systematically violated by employers throughout the economy. Particularly for low-wage workers—a disproportionate number of whom are women, Black, Latinx, and unauthorized—the empirical evidence of workplace violations is substantial.[66]

Labor standards are typically enforced through three mechanisms: (1) public agencies—local, state, and federal departments of labor, attorneys general, and district attorneys implement and enforce workplace standards;[67] (2) private litigation—workers bring suits, either individually or through class actions, against employers who break the law;[68] (3) organized labor—unions, worker centers, and other worker organizations educate workers about their rights, take direct

[65] Bernhardt, Annette, Ruth Milkman, and Nik Theodore. "Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities." National Employment Law Project, September 21, 2009. Online; Fine, Janice. "New Approaches to Enforcing Labor Standards: How Co-Enforcement Partnerships between Government and Civil Society Are Showing the Way Forward." *University of Chicago Legal Forum* 2017 (2018)..

[66] *Id.*

[67] "Los Angeles Office of Wage Standards." Accessed May 9, 2020. Online; "San Francisco Office of Labor Standards Enforcement." Accessed May 9, 2020. Online; "California Division of Labor Standards Enforcement." Accessed May 9, 2020. Online; "U.S. Departement of Labor Wage and Hour Division." Accessed May 9, 2020. Online.

[68] Weil, David. "Workers Shouldn't Have to Sign Away Their Rights to Class Action Lawsuits." *Harvard Business Review*, June 5, 2018. Online.

action on their behalf, and protect employees from employer retaliation.[69] Unfortunately, however, significant challenges exist across each of these avenues of enforcement.

First, public agencies are often "woefully under-resourced" and lack the political will to engage in proactive enforcement.[70] Not only has staffing within public agencies lagged behind the growing workforce;[71] enforcement strategy has failed to keep up with the rise of the "fissured" economy.[72] Second, private litigation on an individual basis is both prohibitively expensive for workers and financially unattractive for lawyers, leaving class action lawsuits as one of the only viable options for private enforcement.[73] At the same time, however, a series of recent Supreme Court decisions has allowed employers to require their employees to sign mandatory arbitration agreements in which workers waive their right to sue their employers for workplace violations.[74]

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[69] Weil, David. "Enforcing OSHA: The Role of Labor Unions." *Industrial Relations: A Journal of Economy and Society* 30, no. 1 (1991): 20–36. Online; Weil, David. "Individual Rights and Collective Agents The Role of Old and New Workplace Institutions in the Regulation of Labor Markets." In *Emerging Labor Market Institutions for the Twenty-First Century*. University of Chicago Press, 2004. Online.

[70] Yoon, Haeyoung, and Tsedeye Gebreselassie. "Building Robust Labor Standards Enforcement Regimes in Our Cities and Counties." *National Employment Law Project*, 2015. Online.

[71] " In 2015, the Wage and Hour Division (WHD) of the U.S. Department of Labor…employed roughly the same number of investigators as it did nearly 70 years ago…Yet today, the agency is expected to protect a workforce nearly six times larger than it did in the 1940s—22.6 million in 1948 and more than 135 million in 2015." Cooper, David, and Tessa Kroeger. "Employers Steal Billions from Workers' Paychecks Each Year." Economic Policy Institute, 2017. Online.

[72] Weil, David. "Enforcing Labour Standards in Fissured Workplaces: The US Experience." *The Economic and Labour Relations Review* 22, no. 2 (2011): 33–54. Online. (Using the term "fissured" to describe the shift in employment practices towards subcontracting.)

[73] Economic Policy Institute. "Two Billion Dollars in Stolen Wages Were Recovered for Workers in 2015 and 2016—and That's Just a Drop in the Bucket." Accessed May 9, 2020. Online.

[74] *See e.g.,* Colvin, Alexander J.S. "The Growing Use of Mandatory Arbitration: Access to the Courts Is Now Barred for More than 60 Million American Workers." Economic Policy Institute. Online; Colvin, Alexander J. S., and Mark D. Gough. "Individual Employment Rights Arbitration in the United States: Actors and Outcomes." *ILR Review* 68, no. 5 (October 1, 2015): 1019–42. Online; Campbell, Alexia Fernández. "Hollywood and Silicon Valley Can No Longer Silence Women with This Contract Clause." *Vox*, October 11, 2019. Online (reporting that California outlawed forced arbitration in 2019).

Finally, the decline of unions has created an environment in which the vast majority of workers cannot rely on the protections that come from a strong collective organization of their peers.[75] To be sure, new forms of worker organization have attempted to fill the void,[76] but these efforts have been undermined by the judiciary. Take, for example, the Supreme Court ruling in *Janus v. AFSCME*, which severely weakened public sector unions—America's last stronghold of organized labor.[77] The court ruled that requiring government employees to pay "agency fees" is unconstitutional, meaning that unions representing teachers, bus drivers, sanitation workers, nurses, and other civil service employees now have fewer resources to help enforce workplace standards.[78]

The result is that millions of working people suffer from unsafe and unhealthy working conditions, wage theft, racial discrimination, and sexual harassment.[79] A 2009 study of the low-wage workforce in America's three largest cities—Chicago, Los Angeles, and New York—found that more than two-thirds of workers suffered at least one wage violation in the week prior to being surveyed, including three in four workers who were entitled to but did not

[75] *See, e.g.,* Weil *supra* note 42 at 23; U.S. Beureau of Labor Statistics. "Union Members Summary," January 22, 2020. Online; Bivens, Josh, Lora Engdahl, Elise Gould, Teresa Kroeger, Celine McNicholas, Lawrence Mishel, Zane Mokhiber, and Heidi Shierholz. "How Today's Unions Help Working People." Economic Policy Institute, August 24, 2017. Online (highlighting how unions help enforce labor standards and guard against wage theft).
[76] Larcom, Megan, Jeremy Avins, and Jenny Weissbourd. "New Forms of Worker Voice in the 21st Century." Harvard Kennedy School of Government and MIT Sloan School of Management, January 2018. Online.

[77] JANUS v. AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 31, ET AL., 585 U.S.; Jones, Janelle, and Celine McNicholas. "Black Women Will Be Most Affected by Janus." *Economic Policy Institute* (blog). Accessed May 9, 2020. Online.
[78] "Agency fees" are expenses paid to unions by non-members in exchange for collective bargaining services. *See e.g.,* Semuels, Alana. "Is This the End of Public-Sector Unions in America?" The Atlantic, June 27, 2018. Online.
[79] Thiess, Rebecca. "The Future of Work: Trends and Challenges for Low-Wage Workers." Economic Policy Institute, 2012. Online.

receive overtime pay and one in four of workers who were not paid the minimum wage.[80] Moreover, in the 10 most populous states alone, there are an estimated 2.4 million victims of wage theft each year who are robbed out of a combined $8 billion.[81]

In 2018, the U.S. Equal Employment Opportunity Commission (EEOC), the agency responsible for enforcing laws against discrimination and harassment in the workplace, received an average of 146 claims of sexual harassment every week—more than 20 allegations a day.[82] The vast majority of these charges were filed by women and more than half were filed by women of color.[83] These statistics, however, do not represent the full scope of workplace sexual harassment; in 2016, the EEOC estimated that between 87 to 94 percent of those who experience sexual harassment do not file a formal legal complaint.[84]

The reality is that workplace violations are hard to quantify. Enforcement agencies usually report only the number of cases brought before them.[85] Workers, on the other hand, often hesitate to speak up about wrongdoing in the workplace out of fear or futility or both; in some cases, workers do not know their rights; at other times, they may be unaware that their rights are being violated.[86] As EEOC Commissioner Charlotte Burrows points out, the complaints that

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[80] *See generally* Bernhardt et. al. *supra* note 36.

[81] *See generally* Cooper et. al. *supra* note 42.

[82] U.S. Equal Employment Opportunity Commission. "Charges Alleging Sex-Based Harassment FY 2010 - FY 2019." Accessed May 9, 2020. Online.

[83] Rossie, Amanda, Jasmine Tucker, and Kayla Patrick. "Out of the Shadows: An Analysis of Sexual Harassment Charges Filed by Working Women." The National Women's Law Center, 2018. Online.

[84] Feldblum, Chai, and Victoria Lipnic. "Select Task Force on the Study of Harassment in the Workplace." U.S. Equal Employment Opportunity Commission, June 2016. Online.

[85] *See generally* Bernhardt et. al. *supra* note 36 at 11.

[86] Porter, Nicole Buonocore. "Ending Harassment by Starting with Retaliation." *Stanford Law Review* 71 (June 2018): 13 (arguing that filing complaints about workplace violations are "fraught with risk and often [bring] very little reward"); U.S. Equal Employment Opportunity Commission. "Retaliation - Making It Personal." Accessed May 10, 2020. Online.

agencies receive are only the "tip of the iceberg."[87] Surveys conducted by the Census Bureau do not provide much help. For whatever reason, they often do not collect information that describes the true nature and degree of workplace violations.[88] All in all, it is estimated that a significant share of workplace violations goes undocumented every year.[89]

Still, available data reveals an economy that regularly harms frontline workers in low-wage industries. Workplace hazards killed an average of twelve workers per day in 2013.[90] Many of these deaths could have been prevented had health and safety laws been properly enforced.[91] To make matters worse, racial discrimination is rampant in the workplace. A 2003 study found that black job applicants were less likely to receive consideration by employers compared to their white counterparts, even if the white applicants had a criminal record and the black applicant did not.[92] A recent meta-analysis of field experiments on racial discrimination in hiring echoed these results, finding that white applicants received significantly more callbacks than both black and Latinx applicants.[93] Consistent with these analyses, EEOC data confirms that a disproportionate number of annual claims of racial discrimination are filed by black and Latinx workers.[94]

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[87] Jameel, Maryam. "Workplace Discrimination Is Illegal. But Our Data Shows It's Still a Huge Problem." Vox, February 28, 2019. Online.

[88] The United States Census Bureau. "List of Business Surveys." Accessed May 10, 2020. Online.

[89] *See* Feldblum et. al. *supra* note 55; Dwyer, Kelly Pate. "Taking Action Against Discrimination." *The New York Times*, October 2, 2005. Online.

[90] *See e.g.,* Fine, Janice. "New Approaches to Enforcing Labor Standards: How Co-Enforcement Partnerships between Government and Civil Society Are Showing the Way Forward." *University of Chicago Legal Forum* 2017 (2018) 143.

[91] *Id.*

[92] Pager, Devah. "The Mark of a Criminal Record." *American Journal of Sociology* 108, no. 5 (2003). Online. 960.

[93] Quillian, Lincoln, et. al. "Meta-Analysis of Field Experiments Shows No Change in Racial Discrimination in Hiring over Time." *Proceedingss of the National Academy of Sciences* 114, no. 41 (2017). Online.

[94] *See* Jameel *supra* note 58. "Black workers are 13 percent of the US workforce, but racial discrimination against this group accounts for 26 percent of all claims filed with the EEOC and its partner agencies."

To understand why American labor standards, fail to protect workers, one must first understand how those standards are enforced. Consider, for example, the Fair Labor Standards Act (FLSA), which guarantees a minimum wage, overtime pay, and a host of other basic worker protections. The Department of Labor enforces the FLSA through a flawed, complaint-driven process.[95] This reactive approach is inadequate for several reasons. As described above, fear of retaliation and limited knowledge about workplace rights prevent many from speaking up about workplace violations in the first place. And when workers do come forward with complaints, the agency often responds in a careless manner. According to an undercover investigation conducted by the Government Accountability Office (GAO), the Department of Labor's Wage and Hour Division (WHD) sent most employee calls to voicemail with no callbacks, provided inaccurate information about how to file a complaint, and encouraged employees to resolve issues themselves.[96]

In recent years, a consensus has begun to emerge among labor scholars on what effective labor standards enforcement ought to look like.[97] This consensus has converged on an approach termed "strategic enforcement," which is premised on a principle of proactive enforcement, focused on high-violation industries.[98] Rather than a reactive approach in which enforcement agencies pursue complaints on a "first in, first out" basis and resolve issues

[95] U. S. Government Accountability Office. "Department of Labor: Wage and Hour Division Needs Improved Investigative Processes and Ability to Suspend Statute of Limitations to Better Protect Workers Against Wage Theft," July 23, 2009. Online (Demonstrating that the Department of Labor's Wage and Hour Division frequently responds inadequately to complaints). "WHD staff deterred [complainants] from filing a complaint by encouraging employees to resolve the issue themselves, directing most calls to voicemail, not returning phone calls to both employees and employers, and providing conflicting or misleading information about how to file a complaint."
[96] *Id.*
[97] Gerstein, Terri, and Jane Flanagan. "State and Local Labor Standards Enforcement during COVID-19: Protecting Workers' Health and Economic Security during a Pandemic." *Economic Policy Institute* (blog). Accessed May 10, 2020. Online.
[98] Weil, David. "Creating a Strategic Enforcement Approach to Address Wage Theft: One Academic's Journey in Organizational Change." *Journal of Industrial Relations*, 2018. Online.

workplace-by-workplace, the proactive approach involves a tiered triage system for worker complaints that attempt to drive lasting compliance across entire industries such as foodservice, hospitality, janitorial, agricultural, and home health care.[99] Additionally, the strategic enforcement approach seeks to achieve deterrence through maximal use of available enforcement tools, including monetary penalties, liquidated damages, "hot goods" authority, and public shaming.[100]

Building on the proactive approach, some labor scholars have proposed using enforcement as a means of worker empowerment. In 2010, Janice Fine and Jennifer Gordon laid out a vision for "a new enforcement regime to supplement complaint-driven and targeted inspections."[101] Under this new regime of "co-enforcement," government agencies partner with worker organizations to augment the agencies' reach and increase the likelihood that workplace standards are met, particularly in high-noncompliance industries. Fine and Gordon argue that worker organizations possess deep knowledge of industry standards and positive relationships with workers that government lacks but would benefit from. As such, they advocate giving worker organizations "a formal, ongoing role" in the enforcement of labor standards.[102]

Based on the literature, collaborations between government and worker organizations provide two main advantages.[103] First, co-enforcement increases compliance, which in turn improves

[99] *Id.*
[100] *Id; See also* Johnson, Matthew S. "Regulation by Shaming: Deterrence Effects of Publicizing Violations of Workplace Safety and Health Laws." *American Economic Review* Forthcoming (2020).
[101] Fine, Janice, and Jennifer Gordon. "Strengthening Labor Standards Enforcement through Partnerships with Workers' Organizations." *Politics & Society* 38, no. 4 (2010): 552–85.
[102] *Id.*
[103] Weil, David, and Amanda Pyles. "WHY COMPLAIN? COMPLAINTS, COMPLIANCE, AND THE PROBLEM OF ENFORCEMENT IN THE U.S. WORKPLACE" 27 (2006): 86–92.

working conditions. Second, co-enforcement provides funding and institutional power to worker organizations, which in turn facilitates organizing campaigns. Particularly for those worst-off, co-enforcement helps working people exercise their voice and uphold their rights.[104]

In an series of articles, Fine and her collaborators have thoroughly documented why and how co-enforcement works.[105] Logistically, co-enforcement works because its political feasibility is high: These partnerships can be implemented administratively and without new legislation.[106] Substantively, co-enforcement works because worker and community organizations occupy a distinctive position in the economy, one that allows them to build trust with workers and gain tacit knowledge of workplace practices. When such organizations are granted a role in enforcement, compliance is improved through several mechanisms. First, worker organizations conduct educational outreach. Through informational visits and trainings for both workers and employers, worker organizations cultivate knowledge among workers about their legal rights and foster understanding among employers about their obligations under the law. Educational

[104] Patel, Seema, and Catherine Fisk. "California Co-Enforcement Initiatives That Facilitate Worker Organizing." Harvard Law School, 2017. Online. "When enforcement agencies work closely with community groups, the cooperative relationships (1) produce better compliance and better enforcement in the short term; (2) improve the professional development, sophistication, and commitment of enforcement officials, which may have longer term payoff in better enforcement even after the pilot programs end or the pioneering agency leaders leave office; and (3) provide modest revenue increases, better legitimacy, and a strengthened institutional framework for groups working with, and composed of, low-wage workers most vulnerable to wage theft and other substandard working conditions."

[105] *See generally* Fine *supra* note 72; Amengual, Matthew, and Janice Fine. "Co-Enforcing Labor Standards: The Unique Contributions of State and Worker Organizations in Argentina and the United States." *Regulation & Governance* 11, no. 2 (2017): 129–42. Online; Fine, Janice. "Enforcing Labor Standards in Partnership with Civil Society: Can Co-Enforcement Succeed Where the State Alone Has Failed?" *Politics & Society* 45, no. 3 (2017). Online.

[106] Fine *supra* note 72 at 561.

outreach to firms also enables agencies to consider employers "willful violators" should they break the law after learning of their obligations.[107]

Second, worker organizations channel workplace violations to government agencies that they might not otherwise receive. Because of the trust that worker organizations have built in marginalized communities and the social networks they have access to, worker organizations are more successful than government at soliciting claims against employers. Third, worker organizations serve as a proactive resource for enforcement agencies. Using their knowledge and positionality, worker organizations conduct targeted investigations and collect not just individual worker complaints but also evidence about industry standards and bad actors.

Several examples of co-enforcement exist in California. Since 2006, the San Francisco Office of Labor Standards Enforcement (OLSE) has contracted with community-based organizations in order to inform "low-wage and immigrant workers about their rights and [create] conditions in which these workers are more likely to report labor law violations."[108] In a major success, OLSE's co-enforcement strategy has been credited with the historic $4.25 million settlement reached in 2014, which made labor standards real for nearly 300 workers who suffered from wage theft and other workplace violations at a popular dim sum restaurant in San Francisco known as Yank Sing.[109]

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[107] Yoon, Haeyoung, and Tsedeye Gebreselassie. "Building Robust Labor Standards Enforcement Regimes in Our Cities and Counties." *National Employment Law Project*, 2015.

[108] Fisk *supra* note 75 at 7.

[109] *Id.* at 15; Tom, Alex. "Immigrant Workers Transform Their Workplace & Win $4 Million Settlement." *Chinese Progressive Association* (blog). Accessed May 11, 2020. Online.

In 2016, the California Labor Commissioner's Office (LCO) implemented a statewide co-enforcement program similar to the one in San Francisco.[110] The primary goal is to combat wage theft in low-wage, high-violation industries and create a sustainable culture of compliance.[111] But another equally important goal of the program is to "increase worker engagement in advocating for better working conditions."[112] Put another way, the goal is to empower workers.

Notably, the program entails intensive collaboration between the LCO and fourteen worker organizations that fosters ongoing relationships, planning, and communication. Regular meetings are held in which worker groups and the LCO share knowledge about various enforcement tools and discuss strategic cases and emergent complaints. In a symbiotic relationship, worker organizations leverage government authority, industry expertise, and community ties to organize workers and lift up wages and working conditions in high-violation industries.

Of course, there is potential for deeper integration of worker organizations in government enforcement. To take co-enforcement one step further, scholars propose creating a vehicle for worker organizations to assume an advisory role to government agency leadership.[113] These vehicles function as independent advisory committees, composed of representatives from worker organizations in low-wage industries, that regularly meet with the heads of state and

[110] "California Strategic Enforcement Partnership." National Employment Law Project, 2018. Online.
[111] *Id.* The six low-wage targeted by the program are agriculture, carwash, construction, janitorial, restaurant, residential care, and warehousing.
[112] *Id.*
[113] *See e.g.,* Sachs and Block *supra* note 14 at 90.

local agencies to inform agency priorities and operations.[114] In the same way that lobbyists and trade groups routinely sway regulatory agencies, these advisory committees would provide worker organizations with access to and influence over governance in the administrative state. Models of these committees already exist in New York.[115]

Ultimately, the benefits of co-enforcement are too numerous to count. But the advantages of government-community partnerships are felt by women, immigrants, people of color, and other marginalized workers who have long been excluded from participation in the government systems that affect their lives and their communities. Conversely, the dominance of employers in the political and legal arena impedes the interests of working people and forces millions of workers into a state of economic insecurity. Economic advancement for all depends on the fortification of power-building collaboration between government and worker organizations. The foundation exists for more partnerships in the future.

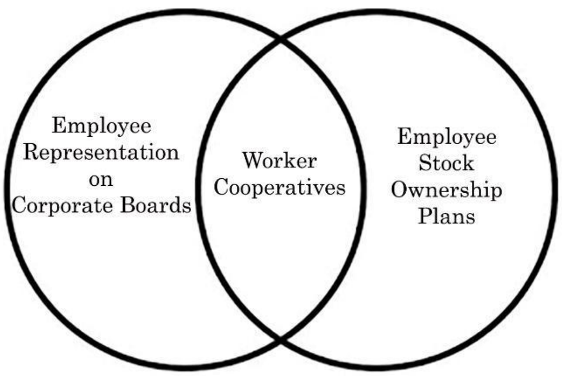
[114] *Id.*

[115] NY State Senate. "NY Labor Law Section 154: Child Performer Advisory Board to Prevent Eating Disorders," April 25, 2020. Onliine. "The commissioner, in consultation with the commissioner of health and the commissioner of mental health, shall establish a child performer advisory board…The advisory board shall consist of…representatives of professional organizations or unions representing child performers or models…[and] advocacy organizations working to prevent and treat eating disorders[.]"

EMPLOYEE GOVERNANCE AND OWNERSHIP

Overview

Employee governance builds worker power because when workers are part of the decision-making process in a firm, they can make sure that their needs and concerns are considered. Issues around job quality become a priority on par with profitability, and the strategic vision of the firm shifts away from short-term gains and toward long-term planning.



While governance helps to build worker power through direct participation, employee ownership helps to more equitably distribute the wealth of the firm. Workers have a better opportunity to build capital for themselves beyond simply savings from wages and a stronger incentive to help make the firm succeed. These two methods of worker participation frequently overlap but can also be distinct. A worker could participate in a profit-sharing plan in a firm where they do not have a significant voice on the governing board, or they could have representation on a board without owning any part of the firm. The business entity where these two participation opportunities overlap is in the worker cooperative. Workers who are responsible for the labor, management, and strategic planning of the firm have the highest level of engagement, not only in their firm, but also in their communities. Since worker cooperatives combine both governance and ownership to build worker power, we will consider them first.

Worker Cooperatives

Benefits:

- Good outcomes for workers: higher pay, build wealth, more equitable
- Reduced employee turnover, more productive
- Benefits local communities: engagement, resist capital flight

Challenges:

- Relatively unknown/stigmatized
- Requires management skills, embrace of culture and philosophy
- Smaller scale, poorly networked
- Capital problems

Solutions:

- Build capacity: training, networking; use anti-poverty programs (AmeriCorps)
- Conversions of existing firms to worker cooperatives
- Preference in state procurement
- Revise unemployment insurance to help workers raise seed capital

Worker cooperatives have two major foundational characteristics: worker-members own and invest in the firm, which distributes a "patronage" surplus to them correlated with their work contributions, and decision-making is democratic according to the principle of one member-one vote. Worker cooperatives in the United States are still a relatively small sector compared to other countries. This has been attributed to the lack of a national framework for cooperatives [Century], to financial constraints around credit and collateral, and to collective action problems [Olsen]. California is a leader in addressing these barriers to entry for worker cooperatives. The 2016 California Worker Cooperative Act helped to clearly define worker cooperatives, improving the framework by which they operate. The Act also made it easier for cooperatives to raise investment capital from the community by relaxing financial reporting requirements and eliminated a requirement for annual meetings in collective board cooperatives. These actions were a necessary step to improving the regulatory environment for worker cooperatives.

Studies dismiss the idea that worker cooperatives are less popular because of lower efficiency or negative outcomes [Olsen]. In fact, worker cooperatives are associated with a broad range of positive outcomes. Since outside agents are limited in their investment, cooperatives keep a larger share of profits than conventional firms. Worker cooperatives are usually locally based. This incentivizes purchasing from local vendors and leads to worker-owners living in the communities they serve with a higher level of community involvement. This high level of engagement in turn leads to less turnover of workers, which decreases training costs and increases the retention of human capital. Engaged workers have a higher level of job satisfaction, which produces more efficiency and productivity for the firm and better health outcomes for the worker [Blasi/Kruse].

In general, people do not know much about worker cooperatives. They think of them as an outlier, not as mainstream. Although part of the stated purpose of the California Cooperative Worker Act was to "create more visibility for worker cooperatives," the relative obscurity of the worker collective as a business model persists. This knowledge gap is also evident in the history of conversions of traditional businesses to majority employee ownership. In 1974, the Employee Retirement Income Security Act (ERISA) established a basis by which traditional firms could be converted to employee ownership. A tax incentive in IRS code known as the

“1042 rollover” allows business owners to defer capital gains tax on the transfer of stock ownership in a company to a majority of employee owners with certain restrictions on the investment of capital. This led to a significant expansion of Employee Stock Ownership Plans (ESOPs), but although this same measure could be used to convert a traditional business into a worker cooperative, it has happened much less often. Converting an existing business into a worker cooperative would help to overcome the barrier to credit and collateral and improve opportunities for investment. This should be a focus of worker cooperative incubators, especially considering there is an anticipated demographic-driven shift of capital from “baby boomers” as they retire.

Hilary Abell of the Democracy Collective identifies five high-level strategies for cooperative development:

1. Develop more worker cooperatives and accelerate the growth of successful ones.

2. Create sector-wide programs to build capacity over time.

3. Strengthen regional and national co-op federations, associations, and support organizations.

4. Advocate co-op–friendly public policies and tax incentives.

5. Inspire and facilitate conversions of existing businesses.

6. Solve the capital problem.

The first three involve supporting institutions that develop the capacity within the existing sector. In fact, it is through the third strategy that the first two can be accomplished. Although tax incentives already exist, these can be improved, although this is a federal-level intervention. Conversion of existing businesses helps to overcome the capital problem, and further development of capital resources for worker cooperatives should be supported. Incubators can take advantage of national anti-poverty programs like AmeriCorps/VISTA to help build capacity in worker cooperative organizations. Currently, unemployment insurance is only payable to workers seeking full time work with a traditional employer. Workers who want to come together to start a cooperative should be able to access their unemployment funds to use as start-up capital along with other workers.

Outcomes for Worker Cooperatives

The job quality outcomes for members are very good. Worker cooperatives effectively narrow the gap between the lowest and highest paid worker. A study from the Democracy at Work Institute states that the "vast majority" of cooperatives have a 2-to-1 ratio between the highest and lowest paid worker, compared to an average 303-to-1 ratio for the "average large US corporation" [DWI]. Cooperative Home Care Associates, the largest worker cooperative in the United States, reports a pay ratio of 11-to-1 [Century].

The DWI survey found that the average wage at worker cooperative was $19.67/hour, more than $7.00/hour higher than minimum wage, and the average patronage distribution was $8,241 to each worker owner per year.

Although membership in a worker cooperative has very good results, the business design has limitations that hamper its proliferation. A relatively small number of low-income workers overall could be affected by the expansion of worker cooperatives. Most of the opportunities for employment are in traditional firms with capital held by an investor/owner class. Although worker cooperatives can help in specific instances, there are prohibitive requirements of capital and management expertise.

Worker cooperatives are an effective tool for underserved populations. Where marginalized people are forced to work under the table or independently, worker cooperatives provide a model to better empower and organize themselves. In a survey of 106 businesses, Democracy at Work Initiative found that most workers at cooperatives, 64.2%, identify as female or non-binary [DWI]. A majority of workers are non-white, with nearly 38% Latinx, 12.7% black, and 6.2% other [DWI].

California is ahead of the curve in creating a framework conducive to the creation of worker cooperatives. There are significant tax incentives to converting a traditional business into a worker cooperative. The difficulty is in building a culture to sustain such an entity.

Employee Stock Ownership Plans (ESOPs)

Benefits:

- Better outcomes for workers: build wealth, equity, better training, higher engagement
- Boosts productivity and efficiency, increased employee engagement, longevity
- Strong legal framework, great conversion potential

Challenges:

- Does not necessarily improve democracy
- Could be a tool to discourage organizing

- Solidarity/culture improves outcomes

Solutions:

- Incubators: facilitate transition from traditional firm to ESOP
- Estate planning: educate attorneys and CPAs regarding tax implications of ESOPs
- Preference in procurement: Senate Bill SB-553

ESOPs involve offers of stock to employees of a company, usually as a merit bonus for performance, longevity with the firm, or some other allocation not related to wages. In many instances, ESOPs are used by owners of a company upon retirement to transfer ownership to workers. This is incentivized by the 1042 rollover provision mentioned earlier, which defers capital gains from the transfer of ownership to a majority of worker stockholders. ESOPs stand in contrast to employee stock purchase plans (ESPPs), which allow employees to buy company stock with after-tax wages at a reduced price, or 401(K) plans which similarly are retirement savings built with wages and often with a matching amount contributed by the employer. Since these other financial instruments involve a commitment of wages, they have more of an impact on the budget of a low-wage worker. A 401(K) is often diversified to include stock outside the firm and so cannot properly be considered a form of firm ownership, although they are instrumental in helping build wealth.

Compared to worker cooperatives, ESOPs are much more common in the United States and have been studied more extensively. The Employee Retirement Income Security Act with its 1042 rollover contributed to the growth of ESOPs since 1974. The ESOPs tend to be created in larger companies, while cooperatives are often smaller. A study in 2005 found that 100% employee-owned firms were one third as likely to fail than publicly traded companies, they are more productive, and have less employee turnover [Abell]. ESOPs usually do not provide democratic control of the firm as in cooperatives, and they are not required to include employees in management decisions or provide workers access to company performance information. The trustee of an ESOP is responsible only for the value of the stock and not for other worker interests like job security. An ESOP can borrow money to acquire stock, which is a powerful method of extending credit and capital to workers and gives them a tax advantage in acquiring their firm. Nearly 40% of the 12,000 ESOP companies in the US are 100% worker-owned [Abell]. A 2019 Rutgers study found that ESOPs help support asset building for low- and moderate-income employees, with increased retirement security, enhanced job quality, better health outcomes, reduced gender/race wealth inequality, and improved overall economic and social stability and security [Blasi/Kruse]. The study also found that although ownership alone had a positive effect on wealth and knowledge building for workers, these outcomes were more pronounced when combined with increased decision-making responsibility in the firm. This points to a possible strategy for increased ownership and democratization overall. Traditional firms can exploit incentives to become majority employee owned, then those employee-owned firms can transform themselves into more democratically controlled enterprises.

Outcomes for ESOPs

ESOPs help workers to build wealth, but not necessarily democratic control. There are still issues around company culture that need to be addressed.

Significant tax incentives are already in place, and there are increasing opportunities to convert existing firms to majority employee stock ownership as baby boomers retire. The model still involves a traditional management structure and can include outside investment.

Although ESOPs can have good outcomes for individuals from underserved groups, people of color and women are already less represented in firms likely to implement ownership plans. Researchers had to alter their research methodology in order to invite the participation of women and people of color [Blasi/Kruse].

Employee governance of traditional firms

Benefits

- Includes priorities of workers in decision making
- Information about operations moves efficiently to management
- Enhanced efficiency and productivity

Challenges:

- Entrenched adversarial attitudes of workers and management
- Requires increased engagement of workers and a robust culture of responsibility

Solutions:

- Require 30% worker-elected representation on corporate boards
- Encourage the development of benefit corporations/B corporations
- Preference in procurement for firms with worker governance

As noted earlier, worker cooperatives already have a structure which makes the worker-owners responsible for governance, either through direct vote or through the election of a management board. ESOPs are more effective when employees are engaged in the affairs of the firm, but often their ownership does not include active participation in governance. The intersection of competing priorities is illustrated by the example of the employee buy-out of United Airlines in

1994. There were several different unions representing workers—mechanics, flight attendants, pilots—and they did not all agree on the terms of the buy-out agreement. Some of these workers were not included in the ownership plan as a result. Long-standing tensions between workers and management contributed to the impetus for the buy-out, and the new worker owners made wage concessions without gaining democratic control. New employees were not allowed to join the ownership plan. All these schisms contributed to the failure of the employee ownership scheme, and United declared bankruptcy in 2002.

The lesson learned from United and other attempts to increase worker engagement through governance and ownership is that a culture of responsibility and solidarity is crucial for success. This example also shows that the tensions among various stakeholders—worker-owners, management, and unions—needs to be recognized. Dan Bell of the Ohio Employee Ownership Center at Kent State University makes an apt comparison to the separation of powers in the US government. The board of directors sets policy much like the legislative branch, which management implements as the executive. Even with employee participation in electing board members for governance, individual workers may not be protected. The union works like the judicial branch to protect workers from the power of management to make capricious decisions that affect their job status and quality. In this analogy, the countervailing power of each actor pushes toward equilibrium. Any intervention to alter the governance of corporate boards directly must take these tensions into consideration.

Policy Intervention: Require worker-elected representation on corporate boards

The policy interventions suggested in the other parts of this paper—sectoral bargaining and government procurement—could significantly impact employee governance and ownership and therefore restore power to low income workers. The policy intervention that has been suggested most to directly influence employee governance is to mandate a percentage of employee-elected representation on boards, also called codetermination. This measure was part of the platform of presidential candidates Elizabeth Warren and Bernie Sanders, with a suggested percentage of corporate boards mandated to be either 40% or 45% respectively. As with many possible policy interventions, a change at the federal level has different implications than at a state level.

A different but related measure has been implemented in California, Senate Bill 826, which mandates a minimum number of women on corporate boards over a certain size whose principal office is in California. The measure has seen a 96% compliance rate despite a lawsuit moving through the courts which opposes it. This measure is a little different since it addresses equity among individuals. Since governance is usually seen as stemming from ownership, mandating it directly could be considered inefficient and injurious to principles of free association and property. Corporations could leave the state, form different entity types, or shift control of key aspects of the corporation to non-worker committees [Dammann]. Another possibility would be to require all firms incorporated in California to be benefit corporations with a fiduciary duty to a wider degree of stakeholders, including workers. This would direct firms to consider outcomes for workers, communities, the environment and other stakeholders other than merely shareholder value when making strategic decisions for the firm. This intervention would be unpopular for similar reasons as mandating codetermination. The best outcomes are realized when all the participants in the firm agree to pursue a course of action in business that is of the highest benefit to company value, worker outcomes, and the wider community.

Based on the analysis, the table below summarizes the scores assigned to mandating employee governance on corporate boards for each criterion.

Mandated Employee Governance: Assessment Outcomes

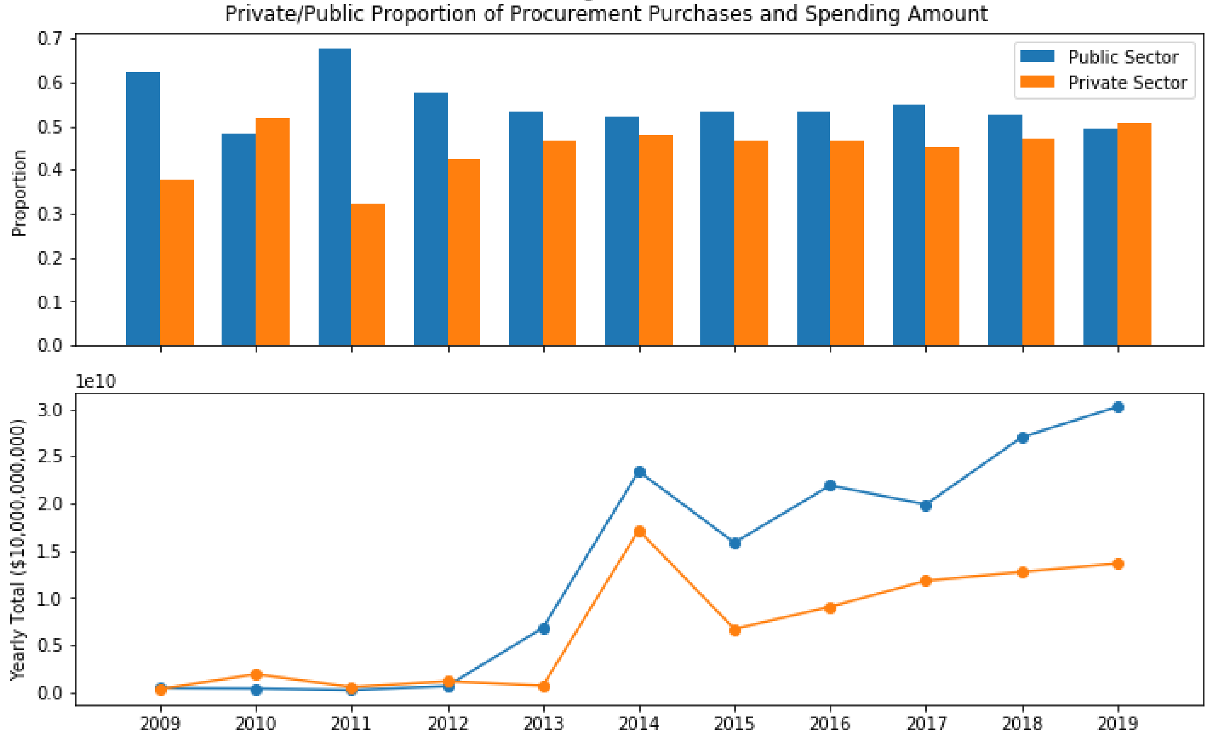
Criterion	Score
Effectiveness	High
Equity	Medium
Efficiency	Low
Political Feasibility	Low

PROCUREMENT

Government procurement is the process by which government agencies solicit authorized suppliers in order to purchase goods and services. Procurement is highly regulated, with the approval process for suppliers wanting to enter the procurement market being laborious and difficult to navigate for both seller and buyer. Because procurement purchases are often made using tax-payer money, the process is purposefully designed to be restrictive in order to ensure against fraudulent financial transactions, wasteful public spending, corruption, and protectionism. California's Department of General Services' oversees and manages the state's procurement market; setting procurement policies, providing purchasing services, and authorizing suppliers to participate in the procurement market. Both the private and public sector operate in this market.

Figure 1

Private/Public Proportion of Procurement Purchases and Spending Amount



The data displayed above in was taken from the state's Cal E-Procure database which includes all active, closed, and terminated, contracts on the California procurement market [Cal E-Procure]. As it shows, while the proportion of purchases made from each sector have balanced out over the past 10 years, a greater amount of money is spent on goods and services produced by public sector suppliers.[116]

Though the procurement market has a high barrier to entry, this same barrier often makes government contracts incredibly lucrative for private sector suppliers. If a supplier can be approved, then they are able to do business with a reliable client, within a market with comparatively limited competition, and often for contracted durations longer than they would be able to secure in the private sector. This is especially true for private sector suppliers working with Californian public agencies due to the state government's use of Leveraged Procurement Agreements, which allow public agencies to directly buy from suppliers if through already-existing contracts and agreements with other public agencies.

Procurement Certifications and State Agency Initiatives

While public procurement is fundamentally an economic transaction, California's Procurement Division provides a number of supplier certifications to recognize beneficial supplier and product characteristics that the procurement market alone would not be able to identify. These certifications provide authorized suppliers preferential advantages over their non-certified competitors in the procurement market, often either allowing them to forego specific procurement requirements or else providing public agencies incentives to purchase from them.

California State Government Procurement Certifications	
Small Business (SB) &	Permits a state agency to award specified types of contracts with

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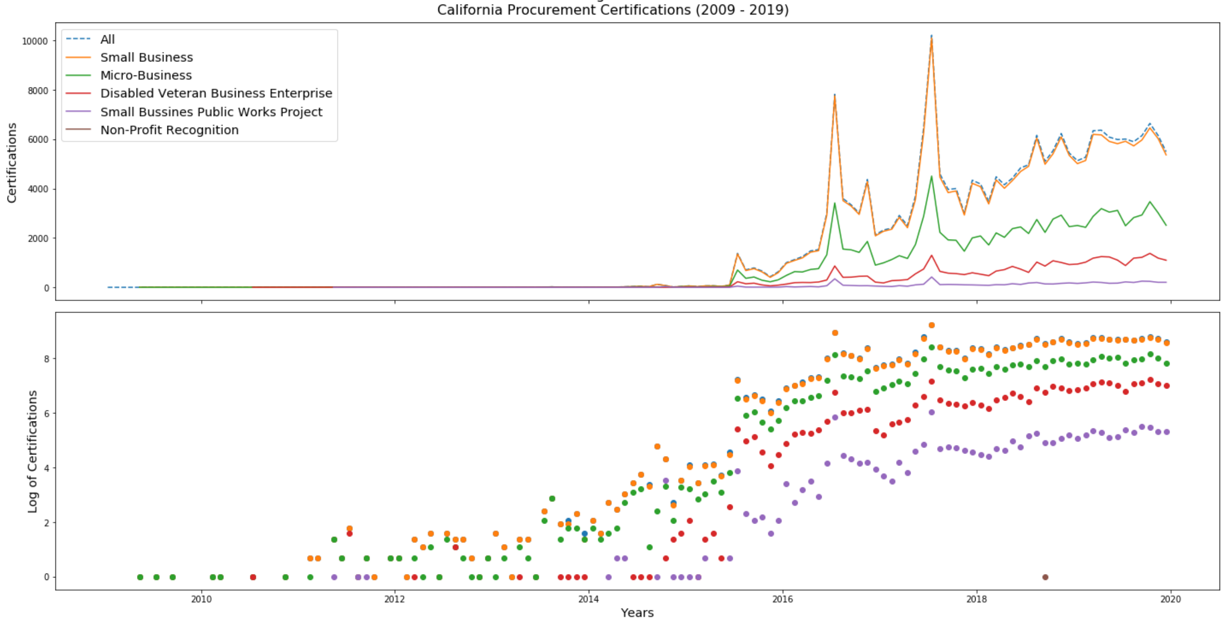
Micro-Business (MB)	a value of between \$5,000 and \$250,000 to certified small businesses and microbusinesses, without complying with certain competitive bidding requirements.
Small Business Public Works Project (SBPW)	Expands Small and Micro Business classification for suppliers providing goods and services towards authorized public work projects.
Disabled Veteran Business Enterprise (DVBE)	Similar to SB and MB but targeted specifically as business enterprises ran by disabled veterans. Provides the California government with a goal of awarding 3% of all state contracts to certified DVBEs.
Non-Profit Recognition (NP)	Allows certified NP suppliers to participate in the Prompt Payment Program which expedites the invoice payment process. Additionally, NP suppliers receives higher interest penalties when the public buyer does not pay within the normal 45-day limit state.
Non-Profit Veteran Service Agency (NVSA)	Similar to authorized DVBE, NVSA suppliers are entitled to the preferential treatment received by certified small businesses, without having to meet all the requirements of a small business.

In this way procurement certifications are a recognition by the California state government that certain suppliers have non-economic benefits and characteristics that the state government has some responsibility to support and subsidize.

Figure 2
California Procurement Certifications (2009 - 2019)



These certifications have increased throughout the years, with various combinations of certifications (i.e. a supplier that is both a Small Business and Disabled Veteran Business Enterprise) allowing for many otherwise non-competitive suppliers to compete in the public procurement market, with nearly all certified suppliers being a Small Business or some combination thereof.

Separate from the certifications offered to private suppliers by the Procurement Division, state initiatives mandated by the governor's office or laws passed by the state legislature can impact how private suppliers sell and how public agencies buy. These initiatives can come in two forms.

First, they can be tied to certifications offered by the Procurement Division. This includes Executive Order D-43-01 by Governor Gray Davis, which required state agencies to have at least 3% of their procurement contracts be with certified Disabled Veteran Business

Enterprises, and Executive Order S-02-06 by Governor Arnold Schwarzenegger, which required state agencies, departments, boards, and commissions, to have at least 25% of their procurement contracts be with certified Small and Micro Businesses.

Second, they can be outside the certification system or else rely on some separate method for authorizing private suppliers. This includes the Buy Clean California Act, which signed into law on October 15, 2017 and took effect at the beginning of this year, requires the Department of General Services to establish and publish the maximum acceptable “Global Warming Potential” of different goods and services purchasable by state agencies. This act specifically targets construction and the use of certain materials in state-funded building projects.

California Public Contract Code and Recent State Legislation

While current certifications and mandates are relatively few and strictly applied, so that the state’s ability to support private suppliers for non-economic reasons is significantly narrowed, California Public Contract Code outlines a much broader scope.

> The preservation and expansion of [free] competition is basic to the economic well-being of this state and that well-being cannot be realized unless the actual and potential capacity of minority, women, and disabled veteran business enterprises is encouraged and developed. Therefore, it is the declared policy of the state to aid the interests of minority, women, and disabled veteran business enterprises in order to preserve reasonable and just prices and a free competitive enterprise, to ensure that a fair proportion of the total number of contracts or subcontracts for commodities, supplies, technology, property, and services are awarded to minority, women, and disabled veteran business enterprises, and to maintain and strengthen the overall economy of the state. [Public Contract Code]

As the article's title states, these objectives are only goals and are not binding for public agencies purchasing from private suppliers. Yet, as both Executive Orders D-43-01 and S-02-06 show, originally unenforceable Public Contract Code can be used as the basis to implement enforceable procurement policies.

In line with this, there has also been a recent push to amend and expand the certifications offered by California's Procurement Division. SB-1219 Small Business Procurement and Contract Act: employment social enterprises and SB-1176 Small Business Procurement and Contract Act: business size was both passed by the California State Senate in 2016, yet were ultimately vetoed by then Governor Brown due the costs of implementing these bills. SB-1219 sought to expand the definition of small and micro-business so that valid employment social enterprises could receive similar certifications and preferential treatment in the procurement process. An employment social enterprises being understood to be "...as a California-based social purpose corporation, a benefit corporation, or a nonprofit corporation that earns 51% or more of its enterprise revenue from the production or assembly of goods or the provision of services and that demonstrates evidence in its articles of incorporation or bylaws of its mission to provide employment with on-the-job and life skills training to a direct labor force that is comprised of 80% or more of enterprise participants who face multiple barriers to employment." [Hall and Hueso] SB-1176 sought to expand the average annual gross receipts threshold defining small businesses from $10 million or less over the previous 3 years to $15 million and the average annual gross receipts threshold defining micro-businesses from $2.5 million or less over the previous 3 years to $5 million.

While these bills failed to pass, SB-605 Small Business Procurement and Contract Act: small business, which incorporated SB-1176's threshold expansion for small businesses and introduced the Small Business Public Works Project certification, was passed by the California State Senate and approved by Governor Brown in 2017.

Relation to Worker Power

Given the California state government's direct control over the procurement process, of the policy options so far presented, government procurement is the most direct, immediate, and controllable way that governments and public stakeholders might help to foster and support worker power in the private sector. In 2019 alone, more than $13.5 trillion dollars' worth of goods and services was contracted from the private sector by California state agencies. With its certification system and public procurement mandate of state agencies, the state government has the means to both incentivize private sector behavior and provide these preferentially certified suppliers with an assured market of buyers. Current California Public Contract Code already outlines the state's responsibility to support and subsidize suppliers on a non-economic basis. While the current number of certifications are few and do not meet many of the goals laid out in California's Public Contract Code, recent state legislation, such as SB 605 and SB 1219, provide an example of how the state legislature can expand current certifications or create new ones. Using metrics that adequately measure worker power in a private firm, such as those laid out earlier in this report, and making these requirements for a new set of certifications would provide already existing firms that support worker power to advantageously compete for government contracts. This could either take the form of certifications for cooperatives similar to already existing certifications for disabled veterans.

This kind of approach is both highly politically feasible and, if pursued as is laid out in Public Contract Code, highly equitable. It is difficult to predict how private suppliers will react to these certifications. It could be that the incentivizes are high enough to push some firms to reorganize their corporate structure along the guidelines required by these potential certifications in order to have an edge in the procurement market. In which case this would be a highly effective approach. Or else the preferential advantage the certification could provide might not justify the costs of meeting their requirements, leading too poor uptake by private suppliers and ineffectual results. Both the effectiveness and the efficiency of this approach then rely on the certifications and state initiatives' ability to adequately incentivize private suppliers to change their businesses practices.

RECOMMENDATIONS

The following are our major policy recommendations:

- Restore funding to the Industrial Welfare Commission (IWC) to establish sectoral bargaining through tripartite wage boards.

This intervention would bring about the best worker power outcomes by covering more workers outside of traditional enterprise unions. Sectoral bargaining can respond deftly to changes in the economy, help to address inequality, establish better working conditions and benefits, as well as establishing wage floors across industries.

- Enact legislation (SB553) requiring any state government entity awarding a contract to provide a 3% bid preference to qualified Employee Stock Ownership Plan bidders, including worker-owned cooperatives.

Government procurement is the one of the most direct, immediate, and controllable ways that California can foster and support worker power in the private sector. Implementing a measure preferencing Employee Stock Ownership Plan companies including worker-owned cooperative organizations would not only encourage the establishment of such enterprises but also provide a much-needed boost to public awareness of such entities.

We considered but do not recommend pursuing legislation to mandate a minimum percentage of worker-elected board representatives. Although outcomes for worker power would be positive, taking steps to encourage enterprises to pursue greater worker involvement through their own volition will be more efficient and feasible than a government mandate.

We encourage the support of the continuing co-enforcement efforts of the California Strategic Enforcement Partnership. We also encourage continued efforts to help new businesses form as worker-owned cooperatives, and efforts to help existing closely held businesses to convert to majority employee-owned enterprises.