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The Gloves-off Economy: Workplace Standards at the Bottom of America's Labor Market

EDITED BY

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CONTENTS

CHAPTER 1

An Introduction to the "Gloves-off" Economy

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At 6:00 a.m. in New York City, a domestic worker wakes up her employer's children and starts to cook breakfast for them, in a work week in which she will earn a flat $400 for as many hours as her employer needs. In Chicago, men are picked up at a homeless shelter at 8:00 a.m. and bussed by a temp agency to a wholesale distribution center to spend the next 10 hours packing toys into boxes, for the minimum wage without overtime. In Atlanta, workers at a poultry processing plant break for lunch, hands raw from handling chemicals without protective gear. At 3:00 p.m. in Dallas, a new shift of nursing home workers start their day, severely understaffed and underpaid. During the evening rush hour in Minneapolis, gas station workers fill up tanks, working only for tips. In New Orleans, a dishwasher stays late into the night finishing the evening's cleaning, off the clock and unpaid. And at midnight, a janitor in Los Angeles begins buffing the floor of a major retailer, working for a contract cleaning company that pays $8 an hour with no benefits.

These workers—and millions more—share more than the fact that they are paid low wages. The central thesis of this volume is that they are part of the "gloves-off" economy, in which some employers are increasingly breaking, bending, or evading long-established laws and standards

designed to protect workers. Such practices are sending fault lines into every corner of the low-wage labor market, stunting wages and working conditions for an expanding set of jobs. In the process, employers who play by the rules are under growing pressure to follow suit, intensifying the search for low-cost business strategies across a wide range of industries and eventually ratcheting up into higher wage parts of the labor market.

When we talk about the "gloves-off economy," we are identifying *a set of employer strategies and practices that either evade or outright violate the core laws and standards that govern job quality in the U.S.* While such strategies have long been present in certain sectors, such as sweatshops and marginal small businesses, we argue that they are spreading. This trend, driven by competitive pressures, has been shaped by an environment where other major economic actors—government, unions, and civil society—have either promoted deregulation or have been unable to contain gloves-off business strategies. The result, at the start of the 21st century, is the reality that a major segment of the U.S. labor market increasingly diverges from the legal and normative bounds put into place decades ago.

The workplace laws in question are a familiar list of regulations at the federal, state, and local level. They include laws that regulate wages and hours worked, setting minimum standards for the wage floor, for overtime pay, and, in some states, for rest and meal breaks. They also comprise laws governing health and safety conditions in the workplace, setting detailed requirements for particular industries and occupations. Others on the list include antidiscrimination laws, right-to-organize laws, and laws mandating employers' contribution to social welfare benefits such as Social Security, unemployment insurance, and workers compensation.

By contrast, the standards we have in mind are set not by laws, but rather by norms that have enough weight (and organizing force behind them) to shape employers' decisions about wages and working conditions. At least until the past few decades, such normative standards typically included predictability of schedules, vacation and/or sick leave, annual raises, full-time hours, and, in some industries, living wages and employer-provided health insurance and pensions. Though it may seem utopian to focus on standards at a time when even legally guaranteed rights are frequently abrogated, we argue that both laws and standards are being eroded for similar reasons as employers seek to reduce labor costs. Further, we argue that the existence of strategies to subvert or ignore laws by some employers pulls down labor norms farther up in the labor market.

We do not suggest that *all* U.S. employers have shed the gloves of workplace protection, or that *every* strategy to cut labor costs is inherently "gloves-off." Millions of employers comply with current regulations and do their best to uphold strong labor standards. However, we contend that gloves-off strategies have reached such prevalence that they are leaving their imprint on the broader labor market, creating significant challenges for responsible employers, government, and labor unions and other representatives of civil society. Responsible employers are undercut when unscrupulous employers gain unfair advantage by violating labor laws and standards. Government's mandate to enforce worker protections is stressed by widespread and constantly shifting forms of violation and evasion. Unions and other worker advocates face an uneven playing field. When the floor of labor standards is driven down or dismantled altogether, all of us are affected, not just those at the very bottom.

The goal of this volume is to map the landscape of gloves-off workplace strategies, to connect them to the erosion of norms farther up in the labor market, to identify the workers most vulnerable to these practices, and finally and perhaps most importantly, to identify the ways that the floor under job standards can be rebuilt. In what follows, we first explore conceptual tools for analyzing evasions and breaches of workplace standards and then briefly review evidence about the scope of the problem. We next trace the historical trajectory that first led to the upgrading of workplace protections, then to the partial undoing of the protective web of laws and standards—using this narrative as well to introduce the contents of the volume. We close by considering strategies to "put the gloves back on" in order to re-regulate work.

Beyond the Secondary Labor Market and the Informal Sector

Our focus on evasions and violations of labor laws and standards is related to other concepts, including the secondary labor market (Doeringer and Piore 1971), the underground or undeclared economy (European Commission 2004; Mingione 2000; Venkatesh 2006; Williams 2005), and precarious, marginal, or casualized work (Procoli 2004). Each of these was formulated in research on developed economies. The concept of the informal sector, first used to describe work in the developing world, also belongs on the list, since analysts now widely apply it to Western Europe and the United States (Leonard 1998; Portes, Castells, and Benton 1989; Sassen 1997).

However, these antecedents do not coincide exactly with the phenomenon this volume scrutinizes. For example, discussions of the informal sector and the underground or undeclared economy place primary emphasis on microenterprises and self-employment, whereas we focus on employment

relationships in the formal sector, extending even to the very largest employers (including the largest private employer in the world, Wal-Mart, currently facing a spate of overtime violation lawsuits).[1] Peter Doeringer and Michael Piore's notion of the secondary labor market denotes jobs that violate common norms or standards, and subsequent analyses, such as Bulow and Summers (1986) and Dickens and Lang (1985), stretched the concept to encompass a much broader swath of "bad" jobs, defined by wage levels or advancement opportunities. But dual labor market theory did not contemplate direct violations of workplace laws.

Perhaps the concepts that correspond most closely to our gloves-off metaphor are *informal employment* and *unregulated work or employment*. The International Labour Organization (2002) defined informal employment as employment without secure contracts or Social Security coverage, whether in the formal or informal sector. Our gaze is similarly motivated, but both narrower (excluding true self-employment) and broader (including jobs that breach standards other than the contract and Social Security). The term "unregulated work" (or employment) is often used interchangeably with the informal sector, but in recent years researchers, particularly in Europe, have increasingly used it in a way that has much in common with gloves-off employer strategies (Bernhardt, McGrath, and DeFilippis 2007; Dicken and Hall 2003; Esping-Andersen 1999; UN-HABITAT 2004; Williams and Thomas 1996). William Robinson (2003:260) offers a helpful distinction: "Casualization generally refers to the new unregulated work that labor performs for capital under 'flexible' conditions. Informalization refers to the transfer of much economic activity from the formal to the informal economy."

In any case, our chief goal here is not to find the right name for employer evasion and violation of laws and standards, but to explain it. Extending a taxonomy proposed by Avirgan, Bivens, and Gammage (2005), there are four major explanations for the existence and/or growth of unregulated work:

- *Dualist:* Unregulated work is a lingering vestige of precapitalist production.
- *Survivalist:* Unregulated work, including self-employment, is the consequence of family survival strategies in the face of inadequate employment growth.
- *Legalist:* Unregulated work is a response to excessive regulation of businesses and employment (a view advanced forcefully by De Soto 1989).
- *Structuralist:* Unregulated work is generated by capitalist strategies to keep labor costs low.

The structuralist school offers at least two versions of its explanation. Some, such as Piore (1980), maintain that flexible employment is a way to meet fluctuating demands that are an intrinsic feature of capitalism. Others (Castells and Portes 1989; Murray 1983; Sassen 1997) argue that particular circumstances—whether labor surplus, increased competition, or strategic innovation—led businesses in developed countries to seek new ways to avoid labor standards and laws beginning in the 1970s and 1980s.

This volume explores the terrain pointed out by the second structuralist camp. While we acknowledge that dualist, survivalist, and legalist forces all contribute to the gloves-off economy, we hold that the main force driving unregulated work consists of new employer strategies growing out of a historically specific conjuncture.

What Do We Know About the Gloves-off Economy?

This volume paints a picture of the ways that workplace protections are increasingly being undermined in many sectors of the U.S. economy. Table 1 provides a useful way to categorize the gloves-off employer strategies that we will examine. This is by no means an exhaustive list. Further, some of the practices described in the table are not invariably gloves-off strategies (though they often are). For example, subcontracting can be used to push down labor standards, but it can also be initiated with other goals in mind, resulting in no degradation of labor standards.

The first row of the table focuses on labor and employment laws. Violation of these laws is straightforward: for example, the employer simply pays less than the minimum wage to her employees, doesn't pay overtime, or blatantly discriminates on the basis of race and gender. Examples of evasion strategies are varied and often more complex, such as using subcontractors, temporary agencies, or other intermediaries to create legal distance between an employer and workers, and using the confusion created by that distance to avoid legal liability.

The second row focuses on the more diffuse concept of the erosion and abandonment of norms in the labor market. Here, the strategies are myriad and, in fact, impact conditions at all levels of the labor market, not just the floor. Declining access to employer-provided health care and defined-benefit pensions is perhaps the most obvious evidence of declining labor market norms. But the expansion of unpredictable scheduling practices and the reemergence of piece-rate or commission pay systems to drive down wages are also in evidence. And increasingly, we also see the outright abandonment of normative standards.

Our focus on what has happened to both legal and normative standards governing the workplace is intentional. In the U.S., employment and labor laws largely set a "floor" of minimum standards (e.g., the minimum wage),

TABLE 1
Examples of Employer Strategies in the "Gloves-off Economy"

	Evasion strategies	Violation strategies
Employment and labor laws	Strategies to evade core workplace laws by creating legal distance between employer and employee, such as these: • Subcontracting on-site and off-site work to outside companies where lower wages are generated via the subcontractor's evasion of labor law • Misclassification of workers as independent contractors • Using temporary, leased, and contract workers to distance and confuse the employment relationship and reduce legal obligations	Outright violation of laws governing the employment relationship, such as these: • Direct violation of core laws: FLSA, OSHA, FMLA, ERISA, Title VII, NLRA, prevailing wage, living wage, etc. • Payment (whole or part) in cash and "off the books" • Failure to contribute to workers' compensation, disability insurance, unemployment insurance, Social Security, etc. • Forced labor and trafficking
	Erosion strategies	**Abandonment strategies**
Normative workplace standards	Strategies that erode normative standards, such as these: • Increases in employee contributions to health insurance and shifts to defined-contribution pensions • Manipulating work hours so that employees do not qualify for benefits • Shift to piece-rate, commission, or project-based pay as a means of lowering wages • Reducing sick days by shifting to package of leave days and/or requiring medical documentation for sick days • Subcontracting and temping out to gain wage and numerical flexibility • Legal union avoidance tactics, such as double-breasting	Outright abandonment of normative standards, such as these: • Wage freezes or outright wage cuts • Failure to provide health insurance and pensions or elimination of programs • Conversion of full-time jobs to part-time • Instituting two-tiered pay systems • Dismantling internal labor markets

while, historically at least, norms have built additional workplace standards on top of that floor (e.g., annual raises, voluntary employer-provided health insurance). Moreover, laws are particularly important in regulating the labor practices of smaller and economically marginal businesses, whereas labor norms are particularly relevant in larger, more profitable enterprises. But laws and norms are inextricably linked. For example, as a growing share of the construction industry moves toward cash payment, the misclassification of employees as independent contractors, and labor brokers (who

facilitate violation of wage and hour laws), the more established and higher-wage contractors face increasingly difficult competition, in some cases driving them to dilute or abandon long-established norms. In other industries, subcontracting by large businesses in order to delink some jobs from their core workforce norms may shift employment to subcontractors who compete by skirting or violating the law. Erosions of both legal and normative labor market standards thus move in mutually reinforcing ways.

Finally, a word about the legislative exclusion of a number of occupations from coverage by employment and labor laws (as is the case for certain domestic workers, home care workers, and agricultural workers). These exclusions are widely regarded as historical legacies of the more narrow (and, frankly, racist) legal frameworks for worker protections that existed in the first half of the last century. In fact, these workers are clearly in an employment relationship, and, in what follows, we consider their jobs as squarely within the realm of our analysis.

Violation and Evasion of Workplace Laws

Research on workplace violations is still very much an underdeveloped field, and there are currently few comprehensive estimates of the prevalence of violations. However, the evidence available points to a significant level of violations in some industries. The best evidence we have to date stems from a series of rigorous "employer compliance surveys" conducted by the U.S. Department of Labor in the late 1990s, focusing on minimum wage and overtime violations. For example, the department found that in 1999, only 35% of apparel plants in New York City were in compliance with wage and hour laws; in Chicago, only 42% of restaurants were in compliance; in Los Angeles, only 43% of grocery stores were in compliance; and nationally, only 43% of residential care establishments were in compliance (Department of Labor 2001). Confirming this, Weil (2005), in an independent analysis of Department of Labor administrative compliance data, found that 46% of garment contractors in Los Angeles were in compliance with the minimum wage in 2000. Unfortunately, however, these surveys were largely limited to only a handful of industries and/or regions, and most are no longer being conducted.

As a result, academics and applied researchers have recently begun to generate their own studies of workplace violations, especially of minimum wage and overtime laws. One of the most carefully constructed is a national survey of a random sample of day labor hiring sites across the country; the authors found that 49% of day laborers reported at least one instance of nonpayment of wages and 48% reported at least one instance of underpayment of wages in the preceding two months (Valenzuela et al. 2006). More common are studies relying on convenience samples of

workers; while not representative, these often yield suggestive evidence of minimum wage and overtime violations in key industries including restaurants, building services, domestic work, and retail (Domestic Workers United and Datacenter 2006; Make the Road by Walking, and Retail, Wholesale, and Department Store Union 2005; Nissen 2004). For example, in a survey of New York City restaurant employees, researchers found that 13% earned less than the minimum wage, 59% suffered overtime law violations, 57% had worked more than four hours without a paid break, and workers reported a plethora of occupational safety and health violations (Restaurant Opportunities Center of New York and the New York City Restaurant Industry Coalition 2005).

Shifting to other workplace violations, we have recently seen a spate of studies that make innovative use of state administrative data to suggest that 10% or more of employers misclassify their workers as independent contractors (Carré and Wilson 2004; DeSilva et al. 2000; Donahue, Lamare, and Kotler 2007). Breaches of the right to organize unions, guaranteed by the National Labor Relations Act, have become common (Bronfenbrenner 2000). A study by the Fiscal Policy Institute (2007) estimated that between half a million and one million eligible New Yorkers are not receiving workers compensation coverage from their employers, as they are legally due. And while data are rarely available on health and safety violations in the workplace, a study of Los Angeles garment factories in the late 1990s is suggestive, finding that 54% had serious Occupational Safety and Health Administration (OSHA) violations (Appelbaum 1999). As an indirect measure of workers at risk, the Department of Labor has documented that workplace fatalities are disproportionately concentrated in the private construction industry and especially among Latino men (Bureau of Labor Statistics 2006).

The most extreme form of workplace violations is forced labor and trafficking, where the worker is totally controlled by the "employer" and prevented from leaving the situation. Though such practices are very difficult to document, experts estimate that between ten and twenty thousand workers are trafficked into the United States every year and that the average amount of time spent in forced labor as a result of trafficking is between two and five years.[2] One of the most extreme examples is a slave labor operation discovered in 1995 in El Monte, California, where 72 Thai garment workers were forced to work 18 hours a day without pay in a small apartment building enclosed by barbed wire, patrolled by armed guards (Su 1997).

Employer strategies to bend, twist, sidestep, and otherwise evade the laws governing the U.S. workplace are even harder to measure than

outright violations, because such strategies are not illegal and so are not monitored by regulatory agencies. Academic researchers have for several decades tracked changes in how employers are reorganizing work and production, but they have often been stymied by the inherent challenges in measuring workplace practices and business strategies (see, for example, Appelbaum et al. 2003; Cappelli et al. 1997; Herzenberg, Alic, and Wial 1998; Kochan, Katz, and McKersie 1989; Osterman 1999). As a result, the best documentation comes largely from in-depth studies focused on particular industries, offering a rich, qualitative understanding of why employers use particular strategies and of the impact they have on workers and job quality; comprehensive quantitative data generally are not available.

Probably the most important evasion strategy is to subcontract certain jobs or functions to outside companies. The workers performing those jobs may still be located on-site (as with subcontracted janitorial workers) or be moved off-site (as with industrial laundry workers cleaning linens for hotels and hospitals). Of course, greater use of subcontracting in and of itself does not necessarily imply an attempt to evade workplace laws—but it certainly can facilitate such evasion. As shown in Table 1, subcontracting can help employers evade responsibility for compliance with employment and labor laws, creating greater legal distance in cases where, for example, a fly-by-night cleaning subcontractor pays less than the minimum wage.

Similarly, for some employers the motivation for using temp, leased, or contract workers is to lessen legal liability for working conditions and social welfare contributions. The deliberate misclassification of employees as independent contractors is perhaps the most extreme version of this strategy, since independent contractors are not covered by most employment and labor laws (Ruckelshaus and Goldstein 2002).

In this row of Table 1 (as in the next), the distinction between violation and evasion strategies is not always clear. For example, an employer may subcontract with the explicit recognition that the contractor will do the dirty work of violating the law by underpaying or failing to make employer unemployment insurance contributions. Still, the distinction between violations and evasions is an important one, not just descriptively but also legally and, by extension, in terms of options for public policy responses.

Erosion and Abandonment of Workplace Standards

The second row of Table 1 deals with workplace strategies that chip away at workplace standards and norms. Each example is of a broadly

accepted labor standard that has been eroded or abandoned by some subset of employers.

Some strategies directly erode (nonlegal) normative standards governing wages and working conditions, while still retaining the appearance of compliance. These include the well-documented shift over the last several decades to larger employee contributions to health insurance and to defined-contribution pensions (Boushey and Tilly 2008). Indicative is a recent *Boston Globe* article (Dembner 2007) documenting how a number of Massachusetts businesses evaded that state's new health insurance requirements: A Burger King franchisee extended health coverage but halved the employer contribution so that only three of 27 employees bought in; a large human service provider raised its health insurance eligibility requirement to 30 hours of work per week, disqualifying 100 low-wage employees; another business owner split his company into smaller firms that fell below the 11-employee threshold where the state's requirement kicks in.

Other forms of standards evasion include shifting to methods of payment (such as piece rates or project-based pay) that effectively translate into lower hourly wages. Further, some employers hold the line on hours of employment in order to ensure that workers never qualify for benefits. Included as well are legal tactics to avoid unions, such as double-breasting and subcontracting to non-union sources.

Above, we discussed subcontracting and temping-out as strategies to evade compliance with employment and labor laws. But more often, these two strategies are used to evade normative standards about wages and job stability—a means of lowering wages and gaining greater staffing flexibility week to week without upsetting the employer's internal structure of decent wages and stable jobs. Again, accurate numbers are difficult to come by, and for subcontracting in particular, the practice varies greatly by industry. But a recent example shows how deeply the practice can penetrate: In the institutional food sales industry, fully 51% of sales come from subcontracted food service providers (Hagerty 2002). Somewhat better data are available on contingent work: The Center for a Changing Workforce and the Iowa Policy Project recently estimated that more than 3.3 million U.S. workers are "permatemps": long-term workers misidentified as "temp" workers, contract workers, or independent contractors (Ditsler and Fisher 2006).

Given their very nature, standards are more often eroded than completely abandoned—but increasingly there is evidence of abandonment. Under that heading we include dropping health or retirement benefits altogether, shifting to a part-time workforce and two-tiered wage systems, and eliminating internal labor markets. Abandonment is most

visible as change over time, so we sketch some of the evidence for it in the next section.

Trends in "Gloves-off" Workplace Practices

Above we described the difficulty in obtaining data on the types of workplace strategies shown in Table 1. Even more difficult is identifying *trends* in those strategies—whether they have become more or less prevalent. We know that violations of laws and standards have always been part of the mix, especially in smaller businesses. But by triangulating among different types of data, our assessment is that the erosion and outright rejection of labor standards have become increasingly common, to varying degrees depending on the strategy, industry, and time frame in question. Some of this increase reflects more frequent transgressions by smaller operators as enforcement of existing laws has weakened. A second part stems from shifts of jobs from more-regulated to less-regulated businesses and sectors via subcontracting, the use of temporary agencies, and the like. Yet another portion consists of degradation of standards and in some cases violation of laws by a subset of the large, profitable businesses that previously kept the gloves on.[3]

A few direct measures indicate increases in outright violations of labor law. Françoise Carré and Randall Wilson (2004) reported that the percentage of Massachusetts employers misclassifying workers climbed from 8% to 13% in 1995 to 1997 to 13% to 19% in 2001 to 2003 and that the percentage of employees misclassified by offending employers likewise increased over this period. Researchers have also documented a marked weakening in compliance with the National Labor Relations Act over the past several decades, with a particularly steep rise in the 2000s relative to the last half of the 1990s in illegal firings of pro-union workers (Bronfenbrenner 2000; Human Rights Watch 2000; Mehta and Theodore 2005; Schmitt and Zipperer 2007). For example, recent research has found that almost one in five union organizers or activists can expect to be fired as a result of their activities in a union election campaign, up sharply from the end of the 1990s (Schmitt and Zipperer 2007).

There is also evidence of growing evasion or erosion of labor standards. Employment in temporary help services increased twentyfold between the early 1960s and mid-1990s, an evasion strategy of both normative standards and, potentially, legal liability for working conditions (Carré and Tilly 1998). Hard numbers also document recent shifts in health and pension coverage. Whereas in the 1970s employers typically paid the full cost of health insurance premiums, by 2005, fully 76% of employees were contributing to their individual coverage premiums

(Employee Benefit Research Institute 1986; Mishel, Bernstein, and Allegretto 2007). Similarly, defined-benefit pension plans (which specify the amount of the pension, unlike a 401k) tumbled from covering 84% of full-time workers holding pensions in 1980 to 33% in 2003 (Boushey and Tilly 2008). So while on paper both health and pension benefits are still offered, in reality their cost has become prohibitive for some, with very low take-up rates for low-wage workers in particular.

Significant numbers of employers have crossed the line from erosion to abandonment of standards. For example, the percentage of workers covered by any employer-provided health plan declined from 69% in 1979 to 56% in 2004 (Mishel, Bernstein, and Allegretto 2007). At the same time, the proportion of U.S. workers covered by any retirement plan dropped from 91% of full-time employees in 1985 to 65% in 2003 (Employee Benefit Research Institute 2007, Chapter 10, Table 10.1a). Another instance of standards abandonment is the permanent conversion of full-time jobs to part-time, a practice widespread in retail, where large food stores now typically employ 60% to 80% part-timers (Carré and Tilly 2007; Tilly 1996). More generally, companies that dismantle internal labor markets are walking away from historical job standards (Cappelli 2001; Osterman 1996).

Beyond direct measures of changing employer practices, there is considerable indirect evidence that points to likely increases in gloves-off practices. In particular, to the extent that subcontracting has become more common, we would infer that there is a strong likelihood that evasions or violations of workplace laws and standards have increased as well. Again, while subcontracting in and of itself does not necessarily constitute a gloves-off practice, there is ample evidence that the competitive pressures pushing firms toward subcontracting often encourage the erosion of labor standards. While some industries (e.g., construction and apparel) have incorporated subcontracting for over a century, research on other industries suggests that the practice has spread throughout the U.S. economy. Both the case study literature and aggregate industry and occupational statistics show an increase in contracting and outsourcing (Deloitte Global Financial Services Industry Group 2004; Lane et al. 2003; Mann 2003; Moss, Salzman, and Tilly 2000).[4] In some cases, subcontracting has become so prevalent that entire new industries have been created or dramatically expanded, as with security services, food services, janitorial services, call centers, and dry cleaning and laundry services (serving institutions such as hospitals).

Similarly, to the extent that union density has declined, we would infer a likely increase in gloves-off workplace practices, through two mechanisms. First, in industries that had high union density, loss of

union membership typically results in an industry-wide lowering of wage standards and working conditions. Employers compete on the basis of labor costs instead of quality services and products, lowering the wage floor toward the minimum and increasing the likelihood that some employers will go below that floor (or adopt other erosive strategies such as subcontracting or adopting two-tiered wage systems). Second, unions have historically been, and continue to be, key agents in enforcing employment and labor laws, actively monitoring their workplaces for adherence to wage and hour, health and safety, right to organize, and other laws. The decades-long decline in union density in the U.S., therefore, does not bode well. In 1948, almost one in three workers was in a union; by 2005, the fraction had fallen to just one in eight (Schmitt and Zipperer 2007).

Finally, federal capacity to enforce labor standards has waned. The Brennan Center for Justice reports that "between 1975 and 2004, the number of [Department of Labor] workplace investigators declined by 14 percent and the number of compliance actions completed declined by 36 percent—while the number of covered workers grew by 55 percent, and the number of covered establishments grew by 112 percent" (Bernhardt, McGrath, and DeFilippis 2007:31). In similar fashion, the Occupational Safety and Health Administration's budget has been cut by $25 million in real dollars since 2001, and at the same time the agency has shifted resources away from enforcement and deterrence toward "compliance assistance" (AFL-CIO Safety and Health Office 2007). At its current staffing and inspection levels, it would take federal OSHA 133 years to inspect each workplace under its jurisdiction just once (AFL-CIO Safety and Health Office 2007).

Up to this point, we have stayed at a descriptive level, mapping out the types of workplace strategies that constitute the gloves-off economy. But understanding how we got here is critical for understanding how to respond going forward; in what follows, we give a brief tour of the trajectory of labor market regulation that has landed us at the threshold of broken labor standards.

How the Gloves Went On and Came Off Again: The Rise and Fall of the Regulation of Work

The gloves-off economy did not appear out of nowhere. Employers' decisions about how to organize work and production are shaped by competitive forces and institutional constraints, each of which they also influence. Indeed, we see the trajectory toward labor cost reduction progressing along four axes: business has become less inclined toward self-regulation, government regulation of business has increasingly gone

unenforced, the decline in unions has limited civil society regulation of business, and government has reduced the social safety net and adopted policies that expand the group of vulnerable workers.

The Gloves Go On: Rising Regulation of Work in the United States, 1890–1975

The first to regulate employment in the United States were businesses themselves. In the late 19th and early 20th centuries, the vertical integration documented by Alfred Chandler (1977, 1990), as well as horizontal integration—for example, at U.S. Steel and General Motors—came to fruition. This had a number of consequences. Oligopoly power shifted competition away from price competition and allowed large corporations to pass on added costs including labor costs (Freeman and Medoff 1984). Companies enjoyed sheltered capital markets, since the major source of finance was retained earnings, and managerial capitalism flourished. To increase control over production processes, businesses standardized their hiring and supervision, rather than leaving them to the whims of individual managers (Jacoby 1985; Roy 1997; Zunz 1990).

The combination of large companies, the importance of firm-specific knowledge, and personnel management oriented toward adding value rather than cutting costs led to widespread development of internal labor markets featuring long-term employment, upward mobility, and company-run training. Of course, labor unrest and union pressure also played a strong role (Gordon, Edwards, and Reich 1982; Jacoby 1997).

At the same time, government regulation of employment began to develop alongside business self-regulation, spurred to action by the muckraking journalists and crusading advocates of the Progressive Era. States led in the innovation, instituting "Workman's Compensation" programs, regulating child labor, and passing safety and women's minimum wage legislation.

In the crucible of the Great Depression, the federal government finally stepped forward in concerted fashion to establish a system of employer regulation via the New Deal legislation of the 1930s. The cornerstone of this system was the 1938 Fair Labor Standards Act (FLSA), which set the floor for wages and overtime. Initially, the FLSA excluded some groups of workers, but it was expanded from the 1940s through the 1980s to include most workers except for employees of state and local government, small-farm workers, and some domestic and home care workers (Department of Labor 2007). The 1935 National Labor Relations Act (NLRA) provided private-sector workers with the right to organize around working conditions, to bargain collectively, and to strike.

Later, Title VII of the 1964 Civil Rights Act prohibited discrimination by covered employers (with a small number of exclusions, such as the federal government itself) on the basis of race, color, religion, sex, or national origin. Legislative and judicial extensions of the act banned sexual harassment and discrimination on the basis of pregnancy, age, or disability. Finally, the regulation of health and safety on the job was established by the 1970 Occupational Safety and Health Act, which is enforced by OSHA.

In step with heightened government regulation of the terms and conditions of employment, civil society expanded its regulatory role as well. Labor unions took the lead. Though unions in the United States date back to the 18th century, the critical turning point for the country's labor movement came with the organizing drives of the Congress of Industrial Organizations (CIO)—and of the American Federation of Labor (AFL) from which it had emerged—in the 1930s and 1940s. In 1935, when the NLRA was passed, the AFL (prior to the CIO's departure) claimed 2.5 million members. By 1945, the AFL and CIO combined claimed 14.8 million workers, over one-third of the nonagricultural workforce (New York Public Library 1997).

A less widely recognized element of civil society regulation of the workplace was launched in 1974 with the federal government's creation of the Legal Services Corporation (LSC). LSC disburses federal funds to independent local groups of public interest attorneys, with a mission to "promote equal access to justice and to provide high-quality civil legal assistance to low-income Americans" (Legal Services Corporation 2008a). While local legal services agencies address a wide range of issues, their portfolio typically includes labor, both through individual lawsuits and through litigation directed more broadly at the implementation of "the unemployment system, wage and hour laws, low wage worker protections, and training for disadvantaged families" (Greater Boston Legal Services 2008).

In addition to direct regulation of employment, government took on a stronger role in regulating labor supply from the 1930s forward. From the 1930s to the 1970s, regulating labor supply chiefly meant limiting the extent to which economically vulnerable workers were forced into taking any job, regardless of the pay, working conditions, or their family's needs. The 1935 Social Security Act was the key law in this regard, creating income streams for several distinct groups—widows and single mothers, the elderly, the disabled, and those unemployed through no fault of their own—to protect them from destitution when they could not work. The net effect of the act was to provide income to vulnerable groups in the workforce, making them less desperate for work.

Immigration policy can also directly expand or contract the number of vulnerable workers in an economy. For example, during a critical two decades, 1942 to 1964, the U.S. Bracero Program managed a large flow of legal, regulated immigrants from Mexico. The program, aimed at limiting illegal immigration and meeting the labor needs of agribusiness (which faced labor shortages during World War II), offered 4.5 million work contracts to Mexicans over its lifetime, about 200,000 per year. *Braceros* had far from full rights as workers: They were temporary and tied to an individual employer, and they often suffered abuse at the hands of farm owners and the U.S. and Mexican governments. Still, the program offered an attractive alternative to illegal immigration, which would have left immigrants even more vulnerable (Gammage, this volume).

Thus, regulation of the U.S. workplace followed an upward arc for the first 75 years of the 20th century. Businesses built rules and bureaucracies that reshaped jobs, and an important subset of companies achieved market dominance and shared some of the resulting "rents" with their workforce. Government took an increasingly active role in mandating and enforcing employment rights and standards; civil society, especially in the form of unions, did the same. Government policies also provided supports and opportunities that moderated the whip of desperation for particular groups of potential workers. American workplaces in the early 1970s were no workers' paradise, but many workers were sheltered by a set of norms and regulations that, from today's vantage point, look quite impressive.

The Gloves Come Off: Declining Regulation of Work in the United States, 1975–Present

Then it all began to unravel. A historical map of the deregulation of work in the United States—and recent attempts at re-regulation—can also serve as a map of the major themes of this volume.

How Employers Take the Gloves Off

Starting in the mid-1970s, business self-organization moved in new directions. Whereas vertical integration characterized most of the 20th century, disintegration has been a business watchword since the 1980s. Corporations are increasingly subcontracting and outsourcing work, creating extended supply chains (Gereffi 2003; Harrison 1994; Moss, Salzman, and Tilly 2000). The public sector as well has turned to subcontracting, in the privatization trend that has swept governments from federal to local in recent decades (Sclar and Leone 2000). Globalization and rapid technological change have rendered market dominance more transitory. Capital has become more mobile, undermining job stability

(Bluestone and Harrison 1982; Silver 2003). Businesses draw increasingly on nonstandard forms of work, often mediated by a third party: even the largest corporations have distanced themselves from lifetime employment (Baumol, Blinder, and Wolff 2003). As AT&T geared up to lay off an estimated 40,000 workers in early 1996, vice president for human resources James Meadows told *The New York Times*, "People need to look at themselves as self-employed, as vendors who come to this company to sell their skills." Instead of "jobs," people increasingly have "projects" or "fields of work," he remarked, leading to a society that is increasingly "jobless but not workless" (Andrews 1996:D10).

The chapters in the next section of this volume, How Employers Take the Gloves Off, highlight key aspects of these shifts in employer behavior. Noah Zatz sets the scene by reviewing the core employment and labor laws protecting workers on the job, then teases out the myriad ways that some employers dodge or violate them. Ruth Milkman, followed by Nik Theodore, Edwin Meléndez, Abel Valenzuela Jr., and Ana Luz Gonzalez, offers related discussion of the role that new forms of business organization play in the degradation of work. Exploring construction, building services, and trucking in southern California, Milkman documents the emergence of business strategies like subcontracting, double-breasting, and converting truckers from employees to "owner-operators" and the direct negative impact these practices have on job quality in these sectors. Theodore and co-authors focus on the growing phenomenon of day labor, especially in construction, and provide evidence from a survey of day laborers in the Washington, DC, area that this work is primed for and riddled with abuse of basic labor standards. Laura Dresser reminds us that caring and cleaning work in the home includes both old and new elements: child care and cleaning work as old as human society as well as the recent explosion in home health care stemming from changes in the family and in the health care industry. An analysis spanning these different occupations, Dresser argues, highlights a shared and structural vulnerability to abuses of labor rights and standards.

At the same time that businesses have restructured over the past three decades, government regulation of employers has declined. The laws and agencies established in the middle of the 20th century to regulate business still exist, and there are more workplace regulations, but there have not been commensurate increases in the government's capacity to investigate and ensure compliance with these laws. According to David Weil (this volume), between 1940 and 1994, the number of workplace regulations administered by the Department of Labor grew from 18 to 189; currently there are nearly 200 statutes to oversee. But as we noted above, federal resources for enforcement have been scaled back

considerably. Thus, although regulation may be increasing on paper, in practice there is strong evidence that some of our most basic workplace laws are not being enforced. Noah Zatz, in his chapter in this volume, drives the point home by distinguishing between the reach (coverage) and grasp (enforcement effectiveness) of government workplace regulation.

Moreover, the standards set by some of those laws are weaker today than they were several decades ago. The core standards of the FLSA have become weaker as the wage floor provided by the minimum wage has fallen (though recent legislation at the state and federal level has boosted it somewhat), and federal regulatory changes recently reduced the reach of the overtime pay provisions by exempting more workers. In 2003, analysts estimated that this redefinition would remove an added eight million workers (about 6% of the total employed workforce) from eligibility for overtime pay (Eisenbrey and Bernstein 2003).

Part of the deregulation occurred simply by choosing agency directors skeptical of—or even hostile to—the regulation of business. For example, beginning with President Reagan in 1981, Republican presidents making appointments to the National Labor Relations Board began to choose board members opposed to unions, creating an ever-less-favorable terrain for union representation (Miller 2006, Moberg 1998). In some cases, businesses themselves are playing an important role in driving down government-mandated labor standards. For example, it was the restaurant and retail industries, which employ the bulk of low-wage workers, that led the drive to reduce the real value of the minimum wage (Tilly 2005).

Alongside the weakening of governmental institutions regulating employers, civil society's grip has also loosened as unions have lost much of their historic strength. Declining union membership has been driven by a number of factors, but concerted (often illegal) anti-union activity has clearly played a role. For example, Bronfenbrenner (2000) has documented that employers threaten to close all or part of their business in more than half of all union organizing campaigns and that unions win only 38% of representation elections when such threats are made, compared to 51% in the absence of shutdown threats.[5] Research on deunionization in the construction, trucking, and garment industries shows that gloves-off workplace practices increase as a result (Belzer 1994; Milkman 2007; Milkman this volume, Theodore this volume). Finally, about one third of non-union workers in the U.S. would prefer union representation (Freeman and Rogers 1999), another indicator that the decline in private-sector union membership has had more to do with employer strategies than with the preferences of American workers.

With unions on the defensive and reduced to a small corner of the private sector, employers have had a relatively free hand to contain and even reduce wages and benefits in non-union settings. As a result, the gap between union and non-union compensation yawns wide. Full-time workers who are union members earn 30% more per week than their non-union counterparts (Bureau of Labor Statistics 2007). Seventy percent of union workers have defined-benefit pension plans; only 15% of non-union workers do (Labor Research Association 2006). Union members are also 25% more likely to have employer-provided benefits, like health insurance or a retirement plan (Schmitt et al. 2007).

Less momentous than union atrophy, but perhaps more insidious, is the trimming of funds for the Legal Services Corporation. In 2007 dollars, nationwide federal funding for LSC stood at $757 million in 1980, but following deep cuts in 1981 and 1995 had fallen to $332 million in 2007, with the number of clients served dropping from 1.6 million to 1 million (Hoffman 1996; Iowa Legal Aid 2008; Legal Services Corporation 2007; Legal Services Corporation 2008b). Federal legislation also barred use of LSC funds for class-action lawsuits (Hoffman 1996) and limited immigrant representation to permanent residents and a few other selected categories (such as refugees and asylum seekers). These cuts have muted important voices advocating for low-wage workers' rights.

Workers at Risk

Whether intentionally or not, federal and state policy makers have in recent years exacerbated the trend toward deregulation by adopting policies that leave growing numbers of workers increasingly vulnerable to gloves-off practices. This has occurred along multiple dimensions: immigration policy, safety net and welfare policy, and policies affecting ex-offenders. The three chapters making up our section on "Workers at Risk" tell these stories in more detail.

Sarah Gammage leads off in chapter 6 with a history of shifting U.S. immigration policy and a vivid depiction of the shaky labor market position of undocumented—and even some documented—immigrants. Widely regarded as dysfunctional on a host of dimensions, U.S. immigration policy has effectively increased the number of workers vulnerable to gloves-off strategies, because undocumented workers are largely unable to access core rights in the workplace. In particular, the 1986 Immigration Reform and Control Act legalized nearly three million immigrants but simultaneously criminalized the knowing employment of undocumented immigrants. This criminalization, coupled with escalating enforcement of employer sanctions in recent years, consigns undocumented immigrant workers, estimated at 7.2 million in March 2005

(Passell 2006) to a shadowy existence, without status and vulnerable to workplace abuse. The Supreme Court's 2002 *Hoffman Plastic Compounds* decision (discussed both by Gammage and by Amy Sugimori in chapter 9) has only made things worse, as the first recent decision to chip away undocumented immigrants' recourse to formal protection under law.

Other social policies have added to the pool of vulnerable workers. The "welfare reform" of 1996, which essentially ended government financial support for nonworking single mothers, marked the culmination of a long series of state and federal restrictions and benefit reductions of welfare programs through the 1980s and early 1990s, pushing millions of single mothers into employment. The landmark 1996 legislation focused on moving families from welfare into self-sufficiency as quickly as possible and signaled the end of the government's willingness to provide cash assistance to able-bodied adults, regardless of their status as parents or caretakers.[6] In chapter 7, Mark Greenberg and Elizabeth Lower-Basch conclude that most single mothers are better off economically as workers than as welfare recipients; however, many remain trapped in low-wage jobs or struggling to survive without a (reported) job or access to welfare funds—again, a group vulnerable to gloves-off employer strategies.

Other social programs have also been hard hit by the shift toward reducing the social wage. Unemployment insurance today reaches a smaller proportion of the unemployed than it did 30 or 40 years ago: Whereas in 1970, 44% of the unemployed received unemployment insurance, in 2006 that percentage had fallen to 35% (calculated by the authors from Council of Economic Advisors 2007; Employment and Training Administration 2007a, 2007b). Unemployment insurance eligibility depends on reaching certain thresholds of earnings and hours worked in the period preceding unemployment. Ironically, the spread of low earnings has reduced the percentage of unemployed workers who are eligible for support.

Also expanding the stock of vulnerable workers has been the dramatic climb in incarceration rates, which has led to a mushrooming ex-offender population that faces significant formal and informal bars to employment. Over two million persons, disproportionately black and Latino, are currently behind bars, a 500% increase over the last 30 years (The Sentencing Project 2008). The United States has the highest incarceration rate of any nation in the Organisation for Economic Co-operation and Development, much of which stems from the high rates of incarceration for drug offenses.[7] Of the state prison population, African American and Hispanic prisoners are more likely than whites to have been sentenced for drug offenses: 15% of whites, 25% of African Americans, and

27% of Hispanics. According to Maurice Emsellem and Debbie A. Mukamal (chapter 8), many of those now being released from prison were convicted on drug offenses (37%), and nearly two thirds overall served time for nonviolent offenses (Glaze and Bonczar 2007). As they are released from prison, ex-offenders face significant challenges integrating into stable employment, especially since many more sectors of the labor market are using background checks and limiting employment for felons, pushing yet another population to the margins of the world of work.

Since most forms of evasion and violation of workplace standards are not measurable in standard data sets, we cannot definitively say which workers are touched by such practices. Here we have focused on three groups of workers whose power in the workplace has been significantly shaped—and more often than not reduced—by public policy, resulting in greater vulnerability to substandard working conditions. But it is not an exhaustive list, and clearly there are many more groups of workers trapped in the gloves-off economy, whether because of their skill level, lack of work experience, skin color, gender, or other reasons. From the standpoint of this volume, however, the key lesson is that the workers most often impacted by "gloves-off" workplace practices are those that, for varying reasons, have little or no recourse to either challenge an employer's behavior or to seek employment elsewhere.

Putting the Gloves Back On

Fortunately, there is more to the story of the gloves-off economy than unscrupulous employer practices, the loosening of state and civil society regulation of the workplace, and the policy-fueled expansion of vulnerable groups of workers and job seekers. Advocates, organizers, and policy makers are increasingly developing new strategies to enforce employment and labor laws and reestablish standards in the workplace, sometimes with the cooperation of parts of the employer community. The final section of this volume, "Putting the Gloves Back On," highlights a number of recent successes and promising directions for re-regulating work.

These drives to put the gloves back on take varied forms, but all involve reactivating government, unions, or other elements of civil society to restore worker protections. In chapter 9 Amy Sugimori surveys a wide range of innovative state and local initiatives to safeguard the rights of immigrant workers in the context of increasingly punitive policy implementation and escalating numbers of workplace violations. Stephen Lerner, Jill Hurst, and Glenn Adler, themselves architects of some of the most successful union organizing strategies of the last two decades, describe in chapter 10 how the Service Employees International Union successfully reorganized the building cleaning industry against steep odds

and assess the prospects for a repeat performance with security guards. In chapter 11 Paul Sonn and Stephanie Luce trace the broadening and deepening of the living wage movement, which has stepped up from local to state to national victories, and now is even beginning to go global. David Weil closes the volume in chapter 12 by exploring under what circumstances the business community may accept or even welcome new regulations and under what circumstances it closes ranks to oppose regulation. Weil particularly focuses on potential divergences in perceived self-interest between large and small businesses and between "high road" employers who already exceed proposed standards and their "low road" counterparts who would feel the bite of new regulation.

This volume does not exhaust the full variety of illegal or evasive strategies by employers, the groups of vulnerable workers, or the new solutions being developed on the ground. Instead, our goal is to put the gloves-off economy squarely onto the radar screen of policy makers, researchers, and practitioners, because it is our belief that without intervention, the trend toward unregulated work will only worsen. Given the often hidden nature of these jobs and workplace strategies, researchers will need to apply innovative methods to more accurately map such practices. The search for solutions, too, is at the stage of experimentation. There is no returning to the typical job of 1970 (nor would we want to go there, for any number of reasons). But as the chapters in this volume show, there are promising models for revitalizing job standards in the 21st-century workplace as well as promising examples of the diverse coalitions that are needed to drive change. In the end, the core truth is that workers, government, unions, and responsible employers all have a stake in finding ways to put the gloves of worker protections back on.

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Endnotes

[1] Likewise, informal and underground transactions violate or evade a wide range of laws, notably tax laws, while we limit our attention to avoidance of labor laws and standards.