Book Review

CONTINUING TO TREAT WORKERS LIKE WIDGETS AND DIGITS

Charles B. Craver†

FROM WIDGETS TO DIGITS: EMPLOYMENT REGULATION FOR THE CHANGING WORKPLACE. By Katherine V.W. Stone. Cambridge, U.K.: Cambridge University Press. 2004.
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In her provocative new book, *From Widgets to Digits*, Professor Katherine V.W. Stone thoughtfully traces the changes that have occurred in the American economic system over the past two hundred years and anticipates those that are likely to occur in the coming years. She discusses the impact of these transitions on workers, labor organizations, and employment statutes, and predicts how future employment relationships will be structured and regulated. This is a scholarly work that should stimulate the thinking of academics, policy makers, labor leaders, workers, and anyone else interested in the future rights of working people.

I. SETTING THE STAGE

In Parts I and II of her book, Professor Stone explores employment arrangements from the 1700s through the present and predicts what future employment relationships will be like in the digital workplace. In the formative years in the United States, there were few independent employer-employee relationships. We were an agrarian society in which family members worked on family farms.[1] They were often assisted by slaves

† Freda H. Alverson Professor of Law, George Washington University Law School. J.D., 1971, University of Michigan; M. Indus. & Lab. Rels., Cornell University School of Indus. & Lab. Rels.; B.S., 1967, Cornell University.

1. KATHERINE V.W. STONE, FROM WIDGETS TO DIGITS: EMPLOYMENT REGULATION FOR THE CHANGING WORKPLACE 13 (2004).

imported from African nations and indentured servants who came from European countries.[2]

Merchants operated stores that carried basic needs, and master craftsmen, journeymen, and apprentices produced needed goods.[3] Skilled artisans enjoyed an independence that distinguished them from modern-day employees.[4] Craft unions codified and protected the relationships between masters, journeymen, and apprentices.[5] These organizations specified who could perform skilled work and who could gain entry into apprenticeship programs. By the late 1800s, mechanization changed the work of artisans, and skilled masters began to direct the work of less skilled employees.[6] The employment-at-will doctrine was developed by courts to allow "masters" to terminate "servants" at any time for any reason.[7]

By the late 1800s, large firms were created to provide railroad services and to manufacture steel and other mass-produced goods.[8] Automobile and steel companies employed semi-skilled and unskilled employees to work on assembly lines, and they sought to prevent labor unions from organizing their facilities.[9] People like Frederick Taylor developed scientific management techniques that were used to structure jobs and to define employment relationships.[10] Jobs were designed to allow employees to learn their required tasks quickly, and firms provided the limited training needed to prepare workers for the functions they would be expected to perform.[11] Companies were encouraged to provide workers with implicit promises of continued job security so long as they performed satisfactorily.[12] Employers provided social welfare benefits through health insurance and pension programs.[13] These job security arrangements and fringe benefit plans were designed to generate worker loyalty and minimize employee turnover.[14]

In Chapter 3, Professor Stone discusses the development of internal labor markets in which jobs are arranged within each firm in progression lines with workers being able to move into higher positions as they obtain needed experience and training.[15] Employees accepted lower wages at the

2. *Id.*
3. *Id.* at 14.
4. *Id.* at 16–17.
5. *Id.* at 18–19.
6. *Id.* at 23–24.
7. *Id.* at 24.
8. *Id.* at 25–26.
9. *Id.* at 27–28.
10. *Id.* at 30–38.
11. *Id.* at 41–42.
12. *Id.* at 42.
13. *Id.* at 43–44.
14. *Id.* at 46–48.
15. *Id.* at 53–56.

beginning of their employment in exchange for firm-specific training that would enable them to move into higher progression line positions. Employees who performed well knew they had secure futures with their present employers.[16]

In Chapter 4, Professor Stone examines the changing nature of employment.[17] By the 1970s, the employment practices of most American businesses began to change due to both new technologies and globalization. Manufacturing facilities were being automated, causing the layoff of millions of production workers. Companies were no longer competing on a domestic level. They had to compete with multinational enterprises manufacturing goods or providing services through facilities in low wage countries like Mexico, China, India, and Ireland. To make themselves more competitive, United States firms demanded more flexibility. They increased their use of temporary workers provided by entities such as Manpower, Inc.[18] Companies maintained core groups of long-term employees and part-time employees, and used "permatemps" to fill in where needed.[19]

The implicit psychological contract guaranteeing employees job security in exchange for firm loyalty was eroded by the layoff of thousands of workers from one company after another. Job tenure with particular firms declined, as employees were forced to move from company to company as old positions were closed out and new positions were created.[20] Although most state courts created a public policy exception to the employment-at-will doctrine which prevented the discharge of workers for reasons that contravened significant public policies, few rank-and-file employees benefited from this exception.[21]

In Chapter 5, Professor Stone explores the new employment relationships that have evolved. Few workers will remain for many years with one firm. They will instead move from one company to another as they maintain "boundaryless careers."[22] New implicit psychological employment contracts are developing. Gone is the former commitment to continued employment in exchange for employee loyalty.[23] The more stable firms of the past are being replaced by "competency-based organizations" in which employees are rewarded with performance-based compensation and provided with career training that will enhance their

16. *Id.* at 58–59.
17. *Id.* at 67–86.
18. *Id.* at 67–70.
19. *Id.* at 69–70.
20. *Id.* at 74–83.
21. *Id.* at 83–84.
22. *Id.* at 92–94.
23. *Id.* at 94–95.

mobility.[24] Individuals will change jobs frequently throughout their careers, using their portable skills to maintain their employability.

Skilled employees will work in environments that use self-managed teams, Total Quality Management (TQM) arrangements, quality circles, and similar programs to enhance productivity and quality.[25] Such arrangements will presumably enable workers to share ideas with each other, provide them with greater job flexibility, and enhance their mobility as existing positions are closed out and they are forced to seek new job opportunities. Firms hope that their workers will be sufficiently satisfied with their shorter-term relationships that they will no longer perceive any need for unionization.

II. IMPLICATIONS OF NEW JOB ARRANGEMENTS FOR LABOR AND EMPLOYMENT LAW

In Part III, Professor Stone examines the impact of new employment relationships on existing labor and employment law doctrines. She initially focuses on the National Labor Relations Act and the viability of collective bargaining relationships in a digital world.[26] Traditional labor law was developed during the industrial era, and it reflects the long-term employment relationships created during that period.[27] Other federal enactments established minimal wage and overtime rules and occupational safety and health standards designed to protect individuals not covered by more expansive bargaining agreement guarantees.[28] These statutes have done well to provide minimal protections to individuals in conventional work environments, but they may not function as effectively in work environments of the twenty-first century.

As firms provide specific training and share trade secrets with employees expected to move on to other companies in the coming years, disputes will increasingly arise over the ownership of the human capital obtained with each employer.[29] Employees may reasonably think that they should be able to take most knowledge acquired in previous positions to new employment settings, but employers are increasingly requiring workers to accept covenants not to disclose confidential information to other firms and not to work for competitor organizations for specified periods of time.[30] Professor Stone examines the way such confidentiality

24. *Id.* at 100–103, 110–113.
25. *Id.* at 115–116.
26. *Id.* at 119–126.
27. *Id.* at 120–122.
28. *Id.* at 123–124.
29. *Id.* at 127–156.
30. *Id.* at 128–129.

and non-compete restrictions should be applied in modern employment settings. She explains the unfairness of imposing covenants not to compete upon at-will employees who have minimal bargaining power due to their lack of employment options.[31] Although courts tend to enforce reasonable non-compete covenants, Professor Stone suggests that such provisions should be limited both in terms of their duration and geographic scope.[32] She believes that technologically advanced employer interests can be effectively protected through provisions precluding the disclosure of trade secrets and other confidential firm information such as customer lists and customer needs.[33] When companies provide confidential firm-specific training, restrictions on the subsequent use of such knowledge may be appropriate, while restrictions on the use of more general training knowledge would not.[34]

Professor Stone also discusses whether firms should be able to seek reimbursement for worker training provided at company expense from employees who depart prematurely.[35] Although it is not always easy to know who paid for the training, since individuals may accept lower salaries in exchange for firm-provided training, Professor Stone proposes that firms be allowed to recover the reasonable cost of firm-provided training where employees have agreed to such reimbursement if they leave before their employers have recouped the costs of such training.[36]

As employment relationships continue to change, it may become more difficult for courts to enforce the different civil rights laws.[37] These laws were primarily designed to preclude discrimination within internal labor markets, as firms hired individuals and advanced them through company progression lines.[38] Many firms had overtly preferred white males over women and minorities, and Congress had sought to reverse this trend. It was usually easy to determine who decided the people to be hired or promoted, thus enabling courts to assign culpability for discriminatory decisions.

It will be more difficult to assign responsibility for discrimination in the boundaryless workplace due to more diffused and less visible decision-making authority.[39] Twenty-first century firms will have less defined progression lines, making it difficult to monitor "promotional" deter-

31. *Id.* at 131–132.
32. *Id.* at 133–136.
33. *Id.* at 137–143.
34. *Id.* at 144–145.
35. *Id.* at 147–149.
36. *Id.* at 148.
37. *Id.* at 157–195.
38. *Id.* at 160–161.
39. *Id.* at 165.

minations.[40] As groups of working professionals decide among themselves how to divide up work responsibilities, patronage systems may develop that promote the interests of white males.[41] Where multi-component hiring and work assignment systems are used, it will be difficult for individual claimants to satisfy their burden to demonstrate which component caused the discriminatory results being challenged.[42] When workers are harassed by their peers in firms with diffused managerial authority, it will be hard for the harassment victims to establish that firm managers knew about their situations and failed to take appropriate corrective action.[43]

Toward the end of Chapter 8, Professor Stone explores new concepts of liability that might be employed to regulate discrimination in the boundaryless workplace.[44] She suggests that internal dispute resolution systems that use mediation and private arbitration may be more effective than external judicial procedures, since they could more easily discern and rectify subtler forms of discrimination.[45] She also explores the efficacy of employment discrimination laws in other countries that require firms to affirmatively review their established practices on a regular basis to be sure they are operating on a nondiscriminatory basis.[46]

III. COLLECTIVE WORKER RIGHTS IN THE BOUNDARYLESS WORKPLACE

In Chapters 8 and 9, Professor Stone covers unionism and employee representation in the boundaryless workplace. She suggests that it will be more difficult for labor organizations to exist in diffused digital employment environments, but believes that such worker institutions are an essential element of industrial democracy.[47] She notes the recent study by Professors Richard Freeman and Joel Rogers finding that eighty-seven percent of American workers would like some form of representation, but would prefer to have less adversarial labor-management relationships.[48] She cites other experts indicating how labor organizations could function within boundaryless employment environments to enhance employee performance.[49] Unions would have to give up the rigid rules associated with antiquated seniority systems and specific job classifications, and

40. *Id.*
41. *Id.* at 166–167.
42. *Id.* at 172–174.
43. *Id.* at 179–180.
44. *Id.* at 184–195.
45. *Id.* at 186–190.
46. *Id.* at 192–195.
47. *Id.* at 196–198.
48. *Id.* at 198 (citing RICHARD B. FREEMAN & JOEL ROGERS, WHAT WORKERS WANT 147 (1999)).
49. *Id.* at 200–202.

provide firms with greater job flexibility than has been provided in traditional trade union bargaining agreements.[50]

Existing NLRA policies would have to change if labor organizations are to function efficiently within contemporary employment settings.[51] Bargaining units would have to be redefined to include diverse workers from the primary employer and from external temporary employment agencies.[52] Rules restricting secondary union activity would also have to be modified to recognize the difficulty of differentiating between "primary" and "secondary" parties where indirect firm relationships are involved.[53] Even doctrines defining traditional employer-employee relationships would have to be altered to reflect the more complicated relationships associated with boundaryless employment environments.[54]

In Chapter 10, Professor Stone discusses what labor organizations will have to do if they hope to survive in the digital age.[55] They will have to develop new methods of operation and become more active in the political process.[56] Craft organizations may have to expand their jurisdictions to include more expansive groups of employees who work together in modern industries.[57] Professor Stone cites the National Association of Broadcast Employees and Technicians (NABET), which has organized theatrical craft workers on an industrial union basis, and the International Alliance of Theatrical and Stage Employees (IATSE), which has accomplished similar results with respect to film crews.[58] The Service Employees International Union (SEIU) has used similar tactics in its Justice for Janitors campaign to organize the janitorial positions in high-rise office buildings with building owners to cover the employees of any firm providing janitorial services within the covered buildings.[59]

By expanding their jurisdictional limits and seeking industry-wide protections, either locally or nationally, labor organizations could reach more employees and define employment terms more expansively. Unions must recognize that in the twenty-first century labor force, they need to seek portable training rights, child care for parents with young children, and movable pension plans and provide legal assistance to individuals seeking to enforce labor and employment laws.[60] They must also function

50. *Id.* at 201–206.
51. *Id.* at 206–212.
52. *Id.* at 207–209.
53. *Id.* at 210–211.
54. *Id.* at 214–215.
55. *Id.* at 217–239.
56. *Id.* at 217–218.
57. *Id.* at 220–221.
58. *Id.* at 220–224.
59. *Id.* at 225–226.
60. *Id.* at 228–229.

as "citizen unions" to work with public interest groups and special interest groups (e.g., NAACP, MALDEF, 9to5) to further worker rights generally, even for those not formally represented in bargaining units.[61]

IV. SOCIETAL JUSTICE IN THE DIGITAL ERA

In Part IV of her book, Professor Stone examines the implications associated with the demise of the private welfare system (Chapter 11) and the expanding gulf between the rich and the poor in the U.S. (Chapter 12). As worker mobility increases, health coverage and pension issues arise, causing employees to lose coverage for pre-existing medical conditions and forfeit unvested pension rights.[62] Professor Stone suggests that health care plans be modified to make them more portable. Employers might establish defined contribution programs in which they provide employees with premiums they can use to purchase health care they can retain as they move from firm to firm.[63] She also mentions possible legislative changes that would provide workers with similar health care portability.[64] As employers have been moving from defined benefit to defined contribution pension plans, employees have obtained greater portability, since they can roll over funds from one plan to another as they relocate.[65]

In the last chapter, Professor Stone tackles a social issue inherent in our movement toward a post-industrial economy – the growing gap between the rich and the poor. She notes how the income earned by individuals in the top decile has increased, while the earnings of lower groups have declined in recent years.[66] As we move away from internal labor markets in which firms retained set differentials between more skilled and less skilled jobs to external labor markets in which different firms may pay vastly different salaries for similar work, the gap between highly skilled people and less skilled individuals has grown.[67] Globalization has exacerbated the problem as higher-wage jobs have been exported to lower-wage countries, and displaced American workers have had to accept lower-paying service sector positions.[68] To offset the impact of decreasing real earnings for lower-income workers, Professor Stone proposes an increase in the minimum wage and the expansion of the earned income tax credit, wage subsidies, and similar options.[69] She also recommends publicly

61. *Id.* at 231-237.
62. *Id.* at 244-245.
63. *Id.* at 248-249.
64. *Id.* at 249-250.
65. *Id.* at 252-255.
66. *Id.* at 259.
67. *Id.* at 267-268.
68. *Id.* at 268-269.
69. *Id.* at 270-279.

financed training programs and government sponsored child care.[70]

V. DISCUSSION

From Widgets to Digits is a book filled with diverse ideas relevant to the rapidly changing world of work. Professor Stone does an excellent job of raising the issues associated with our transition from an industrial to a post-industrial economy. Millions of middle-class manufacturing jobs have been replaced by technology within existing plants and lower-wage labor in developing countries through outsourcing. Displaced employees have been forced into lower-wage service sector jobs that tend to provide less generous health care and pension coverage. As a result, the gap between the wealthy and the less wealthy has grown substantially.[71] It is not entirely coincidental that these economic changes have occurred while membership in labor organizations has declined.

The decline in unionization over the past half-century has had a significant impact. With the industrial revolution of the first half of the twentieth century and the formation of industrial unions like the United Automobile Workers, the United Steelworkers, and the International Union of Electrical Workers, the major manufacturing firms were organized and representative unions negotiated generous wage rates and fringe benefits.[72] By the late 1950s, thirty-five percent of private sector workers were union members.[73] Even unorganized employees benefited indirectly from the fact their employers maintained generous employment conditions in an effort to avoid unionization. During the hyper-inflation of the 1970s, caused in large part by increased oil prices, the union wage premium rose unusually fast due to cost-of-living clauses in bargaining agreements. The wages of organized personnel increased more rapidly than those of their unorganized counterparts. As a result, American firms began to work more diligently to avoid unions and to eliminate incumbent labor organizations.

By 1980, the union density rate had fallen to twenty-three percent.[74] Since then, the union membership rate declined more rapidly, falling to 7.9 percent today.[75] As union membership has shrunk and employers no longer fear unionization, the real wages of regular workers have stagnated while

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70. *Id.* at 283–285.

71. *See* Century Foundation, *The New American Economy: A Rising Tide that Lifts Only Yachts* (2004), at http://www.tcf.org/Publications/EconomicsInequality/wasow_yachtrc.pdf.

72. *See* FREEMAN & ROGERS, *supra* note 48, at 43–77.

73. *See* MICHAEL GOLDFIELD, THE DECLINE OF ORGANIZED LABOR IN THE UNITED STATES 10, tbl. 1 (1987).

74. CHARLES B. CRAVER, CAN UNIONS SURVIVE? 35 (1993).

75. *See* Daily Labor Report (B.N.A.) No. 18, at AA-1 (Jan. 28, 2005).

the wealth of managers and shareholders has grown.[76] For example, the CEOs of major corporations who earned about forty times the average earnings of regular workers forty-five years ago[77] now earn 475 times average employee salaries.[78] Shareholder wealth has similarly risen as the Dow Jones average has increased from below 1,000 in 1980[79] to over 10,000 today.[80]

As Professor Stone points out, the NLRA has not kept pace with the dramatic changes occurring within the U.S. economy. When the NLRA was enacted in 1935, it was designed for skilled craft workers who were already well organized and industrial facilities that were expeditiously organized by CIO unions as a result of their new-found legal rights. The NLRA was significantly amended in 1947 by the Taft-Hartley Act and in 1959 by the Landrum-Griffin Act, but it has remained unchanged for forty-six years.[81] As a result, it no longer reflects the contemporary economy, and the anemic remedial provisions in that statute make it easy for employers to deny their employees the basic associational rights guaranteed under international human rights conventions.[82]

Professor Stone is correct in assuming that the NLRA is unlikely to be amended in ways designed to make union organizing easier. She thus notes the need for unions to reinvent themselves. They need to work more closely with special interest groups like the NAACP and 9to5[83] to become even more politically and legally active. They must move into the twenty-first century and use Internet channels to generate worker solidarity.[84] In addition, unions should support the enactment of federal and state legislation that would benefit all workers. This would include increases in minimum wage laws, efforts to cover the forty-five million Americans with no health coverage, laws to better protect pension rights, more generous

76. *See* Charles B. Craver, *The American Worker: Junior Partner in Success and Senior Partner in Failure*, 37 U.S.F. L. REV. 587, 587–88 (2003).

77. ROBERT B. REICH, THE WORK OF NATIONS 7 (1991).

78. Jennifer Reingold, *Executive Pay*, BUS. WK., Apr. 17, 2000, at 110.

79. Dow Jones Indexes, *Dow Data 1980-1989*, *at* http://djindexes.com/mdsidx/downloads/1980-1989.pdf (last visited Apr. 19, 2005).

80. Andrew Caffrey, *Dow's March Upward Is a Low-Key Trip*, BOSTON GLOBE, Mar. 13, 2005, at E1.

81. Cynthia L. Estlund, *The Ossification of American Labor Law*, 102 COLUM. L. REV. 1527, 1532–33 (2002).

82. *See generally* LANCE COMPA, UNFAIR ADVANTAGE: WORKERS' FREEDOM OF ASSOCIATION IN THE UNITED STATES UNDER INTERNATIONAL HUMAN RIGHTS STANDARDS (2004); *see also* Charles B. Craver, *The National Labor Relations Act Must Be Revised to Preserve Industrial Democracy*, 34 ARIZ. L. REV. 397 (1992).

83. *See* Marion Crain & Ken Matheny, *"Labor's Divided Ranks": Privilege and the United Front Ideology*, 84 CORNELL L. REV. 1542, 1617–18 (1999) (discussing how 9to5, the National Association for Working Women, supports the labor movement).

84. *See generally* ARTHUR B. SHOSTAK, CYBERUNION: EMPOWERING LABOR THROUGH COMPUTER TECHNOLOGY (1999).

family and medical leave provisions, government-sponsored child care, and similar laws. These efforts would demonstrate the unions' commitment to the advancement of the rights of all workers and induce employees to appreciate the benefits that can be obtained through collective action.

Although some people think that labor organizations are antiquated institutions no longer needed in our advanced society, it is clear from Professor Stone's book that this assumption is erroneous.[85] Nonetheless, she understates the degree to which unions influenced the development of the former psychological contract that provided employees with continued job security by failing to emphasize that this commitment was not entirely voluntary. The unions that by the late 1950s represented thirty five percent of private sector workers[86] negotiated just cause provisions that precluded unjust discipline, seniority plans guaranteeing job security to long-term employees, and grievance-arbitration procedures that could be used to enforce those contractual guarantees. Even nonunion firms tended to adopt similar schemes if only to discourage their own workers from unionizing. Employees enjoyed more expansive rights and a higher standard of living than any time in U.S. history, because of the successful efforts of representative labor organizations.

Regular workers intuitively appreciate the need for continued collective activities if they are to advance their employment interests in the coming years. Professor Stone cites the work of Professors Richard Freeman and Joel Rogers indicating that most employees would still prefer some form of representation.[87] They recognize that the master-servant doctrine is still operative and appreciate the fact that individual employees have no bargaining power vis-a-vis their corporate employers. On the other hand, they would prefer less adversarial labor-management relationships.[88] If only Congress could amend the NLRA to make that act less adversarial and encourage more cooperative bargaining relationships. It could also require members-only bargaining which would authorize unions that do not have majority support to negotiate on behalf of their actual members.[89]

The NLRA should be modified to expand the definition of "employee" set forth in section 2(3).[90] The "economic realities" test

85. *See* Charles B. Craver, *Why Labor Unions Must [and Can] Survive*, 1 U. PA. J. LAB. & EMP. L. 15 (1998). *See generally* HOYT N. WHEELER, THE FUTURE OF THE AMERICAN LABOR MOVEMENT (2002); CHARLES B. CRAVER, CAN UNIONS SURVIVE? (1993).

86. *See supra* text accompanying note 73.

87. *See* FREEMAN & ROGERS, *supra* note 48, at 146–148.

88. *See id.* at 56–60.

89. *See generally* CHARLES J. MORRIS, THE BLUE EAGLE AT WORK (2005) (discussing the historical use of members-only bargaining and arguing that the existing NLRA actually requires employers to negotiate with minority labor organizations on a members-only basis).

90. 29 U.S.C. § 152(3) (2000).

articulated by the Supreme Court in *NLRB v. Hearst Publications, Inc.*[91] should be incorporated to extend statutory coverage to such atypical workers as independent contractors with close relationships with particular employers, and permatemps obtained from external employment agencies.[92] Bargaining units should be redefined to allow the inclusion of such diverse groups of workers within single units, in recognition of the fact that they really do share communities of interest vis-a-vis the firms using their services.[93]

Congress could alternatively pass a mandatory worker participation law that would require larger firms to establish shop-level committees consisting of employee and manager representatives that would have to be consulted before decisions are made that would significantly affect the employment terms of workers.[94] Employees should also be allowed to elect some members of corporate boards, and all board members should owe a fiduciary duty to the individuals who produce the goods or provide the services that enable business firms to be successful. As labor organizations have declined and managers and shareholders have prospered, business leaders have forgotten the crucial contributions provided by regular workers.

Just as Professor Stone has overly romanticized the prior psychological contract by assuming that most employers provided workers with continued job security due to altruistic considerations, she overly romanticizes the degree to which contemporary employers are committed to the new psychological contract. Neither widget producers nor digital firms have taken care of their employees out of a sense of firm loyalty. They have continued to treat their workers no better than widgets and digits. Employers take care of employees to the minimal extent necessary to guarantee a continued supply of qualified labor. They do not provide employees with training opportunities to enhance their future portability, but only to ensure their capacity to perform their present job functions. Whenever possible, modern companies provide firm-specific training that is not easily taken elsewhere. When they do provide more generic training, they endeavor to restrict the ability of workers to use that training in other

91. 322 U.S. 111, 127–128 (1944).

92. *See* Craver, *supra* note 82, at 417–418.

93. The Labor Board accomplished this objective in *M.B. Sturgis, Inc.*, 331 N.L.R.B. 1298 (2000), in which it held that bargaining units could include both permanent employees and employees supplied through employment agencies. However, in *Oakwood Care Center*, 343 N.L.R.B. No. 76, 176 L.R.R.M. 1033 (2004), it overruled *M.B. Sturgis* and held that such mixed units would only be allowed where both the regular employers and the temporary agencies consented.

94. *See* Charles B. Craver, *Mandatory Worker Participation is Required in a Declining Union Environment to Provide Employees with Meaningful Industrial Democracy*, 66 GEO. WASH. L. REV. 135 (1997).

settings after they leave their current employers. They do this, as Professor Stone indicates, through trade secret disclosure restrictions and non-compete covenants. These limitations contravene the implicit contract Professor Stone suggests is indigenous to digital workplace employment arrangements in which employees give up firm-specific job security in exchange for greater mobility.

If digital corporations are to honor the new psychological contract described by Professor Stone, they should limit their trade secret disclosure restrictions to critical company secrets they have the right to protect. In addition, non-competition covenants should be restricted, as Professor Stone suggests, in terms of both their scope and duration. It is interesting to note that the State of California prohibits the enforcement of non-compete covenants,[95] yet this fact has not dampened the innovative work carried out in Silicon Valley and in other California communities.

Near the end of her book, Professor Stone suggests that it will be more difficult for federal and state civil rights agencies to enforce employment discrimination statutes in digital workplaces due to the diffused managerial authority involved. Who should be liable for discriminatory decisions made by individuals within autonomous work groups? Which firms should be held responsible for discrimination by borrowing firms against permatemp workers originally hired by temporary employment agencies? Which companies should be required to rectify sexual harassment by permanent workers against temporary personnel? Although these questions raise interesting issues, agencies should be able to resolve them under existing legal doctrines by focusing on the persons managing the employees at the time of the alleged discrimination or acts of harassment. Companies that establish autonomous work groups to perform business functions should be expected to monitor the decisions being made by such teams and be held accountable for any discriminatory practices carried out by such entities. If the borrowing firm discriminates against temporary workers, it should be held liable. If the loaning firm tolerated this discriminatory action, it should also be held responsible. When unlawful harassment occurs, enforcing agencies should ask which company was responsible for management of the work environment at the time the harassing conduct took place. In some cases a single company may be held liable, while in other situations two or even three businesses may be held jointly responsible.

95. Cal. Bus. & Prof. Code § 16600, which has been interpreted to invalidate agreements that limit the right of former employees to work for competing firms. *See, e.g.*, John F. Matull & Assoc., Inc. v. Cloutier, 240 Cal. Rptr. 211 (1987) (dealing with a non-compete covenant).

VII. CONCLUSION

From Widgets to Digits is a book that will stimulate the thinking of all persons concerned with the rights of twenty-first century workers. Professor Stone has cogently described the difficulties employees and labor organizations are encountering in our post-industrial society. She has also delineated some of the policy changes that will have to be made if working people are to benefit from the fruits of their labors in the coming decades. Only time will tell whether business and political leaders will continue to erode fundamental worker rights or adopt new policies that will enable employees to share in the wealth they help generate.