**Employment-at-Will, Employee Rights, and Future Directions for Employment**

**Tara J. Radin and Patricia H. Werhane Abstract**

Private employment in the United States has traditionally been governed by “employ- ment-at-will” (EAW), which provides for minimal regulation of employment practices. It allows either the employer or the employee to terminate their employment relationship at any time for virtually any reason or for no reason at all. At least 55 percent of all employees and managers in the private sector of the workforce in the United States today are “at-will” employees.

During recent years, the principle and practice of employment-at-will have been under attack. While progress has been made in eroding the practice, the principle still governs the philosophical assumptions underlying employment practices in the United States, and, indeed, EAW has been promulgated as one of the ways to address economic ills in other countries. In what follows, we will brieﬂy review the major critiques of EAW. Given the failure of these arguments to erode the underpinnings of EAW, we shall suggest new avenues for approaching employment issues to achieve the desirable end of employee dignity and respect.

**Critiques of EAW**

Attacks have been levied against EAW on numerous fronts for generations. While it remains the default rule for the American workplace, a variety of arguments have been made that employees should not be treated “at will.” Most of these arguments fall within two broad categories: those that relate to rights and those that relate to fairness.

**Rights Talk**

 The ﬁrst set of arguments critiquing the principle of EAW is grounded on a commonly held theory of moral rights, that is, the claim that human beings have moral claims to a set of basic rights vis-à-vis their being human. This set of arguments makes three points. First, principles governing employment practices that interfere with commonly guaranteed political rights, such as free speech (including legitimate whistle blowing), privacy, due process, and democratic participation, would therefore appear to be questionable principles and practices from a rights perspective. Second, justiﬁable rights claims are generalizable. It thus follows that, if employers and managers have certain rights, say, to respect, free speech, and choice, employees should also have equal claims to those rights. Third, if property rights are constitutionally guaranteed, it would appear to follow that employees should have some rights to their work contributions, just as managers, as representatives of companies, have rights to exercise property claims. There are at least three countervailing arguments against these conclusions, however. In the United States, constitutional guarantees apply to interactions between persons or institutions and the state, but they do not extend to the private sector or to the home, except in cases of egregious acts. Claims to employee rights are not, therefore, guaranteed by the Constitution. Second, employment agreements are contractual agreements between consent- ing adults. Unless a person is forced to work or to perform a particular task, EAW thus protects liberty rights in allowing a person freely to enter into and leave contracts of his or her own choosing. Third, property rights protect companies and their owners, and companies and their managers should be free to hire and ﬁre as they see ﬁt. Indeed, Christopher McMahon, a defender of employee rights, argues that although, as property owners or agents for companies, employers and managers have rights to hire and ﬁre “at will,” this does not provide them with moral justiﬁcation for ignoring other employee rights claims, including, for example, rights to participate in corporate decision making.

 **Fairness**

A second set of arguments against EAW stems from fairness concerns regarding employment-at-will agreements and practices. EAW has, on numerous occasions, seemingly translated into a license for employers and employees to treat one another amorally , if not immorally . “‘Why are you ﬁring me, Mr. Ford?’ asked Lee Iacocca, president of Ford Motor Company. Henry, looking at Iacocca, said: ‘I just don’t like you!’ ” While EAW demands ostensibly equal treatment of both employers and employees, the result is often not inherently fair to either. A requirement of “equal” treatment, therefore, is not sufﬁcient. Good employment practices should aim for equality, while, at the same time, allowing for different, though comparable, treatment where relevant differences exist. For example, while it would not necessarily represent a good, or sound, employment practice to demand equal pay for all employees and managers, a good practice would be to demand equal pay for employees in similar positions doing similar tasks, and comparable pay for others, after taking into account relevant differences, such as in experience, position, tenure at the company, and special skills. Except under conditions of very low unemployment, employers ordinarily stand in a position of power relative to prospective employees, and most employees, at any level, are replaceable with others. At a minimum, though, employees deserve to be given reasons for employment decisions that involve them. Unjustiﬁed dismissals are not appropriate in light of employees’ considerable investment of time and effort. Employees are human beings, with dignity and emotional attachments, not feeling less robots. This is not to say that inadequate employees should not be replaced with better performers. But employees at least deserve to ﬁnd out the reasons underlying employment changes. And if employees are to take charge of their careers, they should receive good reasons for employment decisions and full information. From a management point of view as well, employees should be given good reasons for employment decisions, or it appears that management decisions are arbitrary, and this sort of behavior is not in keeping with good management practice. Even if it were possible to defend EAW on the basis of freedom of contracts, in practice, EAW supports inconsistent, even irrational, management behavior by permitting arbitrary, not work-related, treatment of employees—behavior that is not considered a best management practice. Since arbitrary accounting, marketing, and investment prac- tices are not tolerated, arbitrary human resource practices should be considered equally questionable. We have therefore concluded that due process procedures should be instituted as man- datory procedures in every workplace. On the other side, employers suffer when employ- ees simply walk off jobs without notice. In a much earlier work. Werhane therefore has argued that employees and employers have equal rights, rights that would entail reciprocal obligations to inform each other about ﬁring or quitting and to give justiﬁable reasons for these actions. Interestingly, due process procedures have become mandatory guarantees for employ- ees in the public sectors of the economy, on the federal, state, and local levels, but not in the private sector. Again, on the basis of the fairness of equal treatment for all workers, this appears to be unfair. The inapplicability of constitutional guarantees in the private sector of the economy nevertheless prevails in employment. This is not to suggest that there are no relevant differences between employment in the public and private sector. In fact, there are a number of signiﬁcant variations, including, but not limited to, salary differentials. Considering the degree of similarity between public and private work, though, it only makes sense that due process be afforded to employees in both sectors.

**Erosion of EAW: Law and Public Policy**

Despite these and other arguments, there is evidence that the principle, if not the practice, of EAW is alive and well: people are still losing jobs for seemingly arbitrary reasons. Rather than attacking the principle directly, legislatures and courts have created ways to reduce the impact of the practice through narrowly carved-out exceptions, and Congress has chosen to control the scope of EAW through limiting legislation. A wave of federal legislation has also had a signiﬁcant impact on private employment, beginning with the passage of Title VII of the Civil Rights Act of 1964, which prohibits the discrimination of employees on the basis of “race, color, religion, sex, or national origin.” It has been followed by the Age Dis- crimination in Employment Act, the Pregnancy Discrimination Act, and the employment provisions of the Americans with Disabilities Act. Together, such legislation demonstrates Congress’s recognition that there are limits to EAW, and that the default rule cannot, and should not, be used as a license to disregard fundamental rights. Even greater limiting power lies in the hands of state and local legislatures. Many have sidestepped EAW to recognize employee rights, such as in the area of privacy, by passing statutes on issues ranging from workplace discrimination to drug testing. A few states, such as Colorado, North Dakota, and Nevada, have enacted statutes barring employers from ﬁring employees for legal off-work activity. In 1987, Montana became the ﬁrst state to pass a comprehensive statute rejecting EAW in favor of “just cause” terminations. 1 Contrary to EAW, the “just cause” standard requires that the reasons offered in termination decisions be defensible. 2 Montana currently stands alone in demanding “just cause” dismissals. Although it is too early to know whether one state’s move in this direction signals a trend toward the increasing state challenges to EAW, there is currently no evidence that this is the case. Courts have also begun to step in and carve out exceptions to EAW as a default rule. Many employers and employees have opted to alter the employment relationship through contractual agreements. Since evidence of such agreements is not always lodged in an explicit arrangement, courts often ﬁnd it necessary to delve further in order to determine the reasonable assurances and expectations of employers and employees. For example, some courts have held that an employment contract exists, even where it exists only as a result of assumed behavior, through a so-called “implied-in-fact” contract. In Pugh v. See’s Candies, Inc. , an employee was ﬁred after 32 years of service without explanation. Although no contract existed that speciﬁed the duration of employment, the court determined that the implied corporate policy was not to discharge employees without good reasons. The court in Pugh determined:

[T]here were facts in evidence from which the jury could determine the existence of such an implied promise: the duration of appellant’s employment, the commendations and promotions he received, the apparent lack of any direct criticism of his work, the assurances he was given, and the employer’s acknowledged policies.

Where an employer’s behavior and/or policies encourage an employee’s reliance upon employment, the employer cannot dismiss that employee without a good reason.

In some states, it can be considered a breach of contract to ﬁre a long-term employee without sufﬁcient cause, under normal economic conditions, even when the implied con- tract is only a verbal one. In California, for example, the majority of recent implied con- tract cases have been decided in favor of the employee. Reliance upon employee manuals has also been determined to give rise to reasonable employment expectations. In Woolley v. Hoffmann-La Roche, Inc ., the court held that companies are contractually bound by the statements in their employment manuals. In Woolley, the employment manual implicitly provided that employees would not be terminated without good cause:

It is the policy of Hoffmann-La Roche to retain to the extent consistent with company re- quirements, the services of all employees who perform their duties efﬁciently and effectively.

The court thus held that an employee at Hoffmann-La Roche could not be dismissed with- out good cause and due process. Woolley is but one of many decisions that demonstrate that employers are accountable to employees for what is contained in employment manuals, as if the manual is part of an implicit employment contract. Courts also have been known to override EAW in order to respond to or deter tortuous behavior. Out of this has arisen the “public policy” exception to EAW. The court has carved out the “public policy” exception to handle situations where employers attempt to prevent their employees from exercising fundamental liberties, such as the rights to vote, to serve on a jury, and to receive state minimum wages. In Frampton v. Central Indiana Gas Com- pany , the court found in favor of an employee who was discharged for attempting to collect worker compensation:

If employers are permitted to penalize employees for ﬁling workmen’s compensation claims, a most important public policy will be undermined. The fear of discharge would have a deleterious effect on the exercise of a statutory right. Employees will not ﬁle claims for justly deserved compensation … [and] the employer is effectively relieved of his obligation … Since the Act embraces such a fundamental … policy, strict employer adherence is required.

Such decisions clearly demonstrate the court’s unwillingness to stand by without doing anything as employers attempt to interfere with fundamental liberties. The public policy exception is also used in order to discourage fraudulent or wrongful behavior on the part of employers, such as in situations where employees are asked to break a law or to violate state public policies. In Petermann v. International Brotherhood of Team sters , the court confronted a situation where an employee refused to perjure himself to keep his job. The court held that compelling an employee to commit perjury “would encourage criminal conduct … and … serve to contaminate the honest administration of public affairs.” Then, in Palmateer v. International Harvester Corporation , the court reinstated an employee who was ﬁred for reporting theft at his plant on the grounds that criminal conduct requires such reporting. Whistleblower protection is also provided as a result of tort theory. In Pierce v. Ortho Pharmaceutical Corporation , the court reinstated a physician who was ﬁred from a company for refusing to seek approval to test a certain drug on human subjects. The court held that safety clearly lies in the interest of public welfare, and that employees are not to be ﬁred for refusing to jeopardize public safety. Similarly, in Bowman v. State Bank of Keysville , a Virginia court asserted its refusal to condone retaliatory discharges. In Bowman , a couple of employee-shareholders of a bank voted for a merger at request of the bank’s ofﬁcers. After the vote was counted, the employee-shareholders subsequently retracted their votes and contended that their vote

had been coerced. They alleged that the bank ofﬁcers had warned them that they would lose their jobs if they did not vote in favor of the merger. They were then ﬁred. The court in Bowman found in favor of the employee-shareholders. According to the Bowman court, “Virginia has not deviated from the common law doctrine of employment-at-will . . . And we do not alter the traditional rule today. Nonetheless, the rule is not absolute.” In this way, the Bowman court demonstrated that EAW is subject to limitations and exceptions. Even where the EAW doctrine still appears to “thrive,” it does so within deﬁnite restrictive legal and policy constraints.

**Rethinking Employment Relationships**

Without attacking or circumventing EAW, it is possible to discern signs of a changing mind- set about employment, a mindset that values the competitive advantage of the contributions of good employees and managers. The extensive work of scholars, such as Jeffrey Pfeffer, illustrates this change. Pfeffer, a management professor at Stanford, has argued in a series of books and articles that a “people ﬁrst” strategy can serve as an economic advantage for companies. In other words, it is not just for the beneﬁt of employees , but also for the ben- eﬁt of ﬁrm employers , to treat employees with respect. To provide evidence for his point, Pfeffer has studied a number of North American and international companies and amassed a great deal of data that demonstrates that economic success is linked to fair labor practices when employees and managers are considered critical stakeholders for the long-term viability of their companies. According to Pfeffer, the most successful companies—those that have sustained long-term economic proﬁtability and growth—work carefully to engage in employment practices that include selective hiring, employment security, high compensation, decentralization, empowerment and self-managed teams, training, open information, and fair treatment of all of their employees. From an organizational perspective, contrary to some points of view, it is a mistake to sort out employees, customers, products, services, shareholders, and so on, as if each rep- resented an autonomous set of concerns. For example, a ﬁrm cannot do business without people, products, ﬁnance and accounting, markets, and a strategy. In times of economic exigency, a merger, or corporate change, it is, therefore, generally not to the advantage of a company merely to lop off employees (even if they are the “low hanging [most easily disposable] fruit”), without thinking carefully about their employees as people , and recognizing those people’s contributions to the long-term survival and success of the company. In uncertain times, no company would simply quit doing accounting, and it would be to its peril to quit marketing its products and services. Similarly, to get rid of too many employ- ees would not serve a company’s long-term viability very well. Similarly, Rosebeth Moss Kanter argues that it is in the ﬁrm’s interest to take care of employees. Kanter contends that it is both desirable and obligatory for companies to give their employees what she calls “employability security”: abilities and skills that are transferable to other jobs and other situations in that company or elsewhere so that employees are adaptable in a world of technological and economic change. Today, while some compa- nies engage in layoffs to change employee skills, many managers and companies are train- ing and retraining old workers, giving them new skills. Kanter would argue, with Pfeffer, that it is valuable, in terms of both economics and respect for workers, to have a workforce that is comprised of a collection of highly skilled and employable people who would be desirable assets in a number of employment settings, both within a particular company and among industries.

Linking Pfeffer’s and Kanter’s ﬁndings with a notion of employee rights makes it pos- sible to re-envision the mindset of employment to consider each job applicant, employee, manager, or CEO as a unique individual. In addition, it prompts us to begin to rethink employment, not in terms of employees as merely economic value added, but in terms of employees as individuals—unique and particularized individuals.

**A “Citizen” Metaphor**

One way of developing an individualized analysis of employment is through a citizen meta- phor. “Citizenship” is a designation that links people to rights and duties relative to their membership in a larger community, such as a political community. There is a growing body of literature addressing this notion of “corporate citizenship.” According to Waddock,

Good corporate citizens live up to clear constructive visions and core values. They treat well the entire range of stakeholders who risk capital in, have an interest in, or are linked to the ﬁrm through primary and secondary impacts through developing respectful, mutu- ally beneﬁcial operating practices and by working to maximize sustainability of the natural environment.

Replacing the view that corporations are, or should be, socially responsible, the corporate citizenship model argues that a ﬁrm’s membership in complex cultural, national, and global communities accords them, like individuals, rights and responsibilities comparable to those accorded to individuals through national citizenship. The belief is that, if corporations are to enjoy operational privileges, they must then honor as well their responsibilities to the communities to which they belong. The model of corporate citizenship is used both to describe corporate relationships with external stakeholders, such as customers, communi- ties, governmental entities, and the environment, and to address corporate responsibilities to internal stakeholders, such as managers and employees. The citizen metaphor can be applied to managerial-employee relationships as well. This process of portraying employees as citizens is not complicated; it requires, simply, “treating workers like adults.” Treating people as adults translates into acknowledging their dignity and respecting their relevant legal and moral rights and duties. Rights and duties connected to “citizenship” reﬂect the coexistence of people in a common space and help delineate how people can best interact with the fewest conﬂicts. This space does not have to be a global or semi-global community but could also refer to the context of a ﬁrm. Within the ﬁrm context, the citizen metaphor links people to one another in such a way that they inevi- tably take responsibility for working together for the beneﬁt of the ﬁrm. At the same time, the metaphor of citizenship requires that each “citizen” has equal rights, and requires that all citizens be treated with respect and dignity. According to such a model, employees thus serve as participants in, and members of, a ﬁrm community. As applied to employment, a citizenship model would take into account productiv- ity and performance, and it would also require rethinking hiring in terms of long-time employment. This would not entail keeping every employee hired, or even guarantee- ing lifetime employment. It would, however, at a minimum, require due process for all employment changes, employability training, protection of fundamental rights such as free speech and privacy, and the provision of adequate information to employees about their future and the future of the company. The employability requirement would require employees to serve as good corporate citizens in the broad sense of being able to contrib- ute in a number of areas in the economy, and, if Pfeffer’s data is correct, such measures add economic value to shareholders as well. At the same time productivity, loyalty, and good performance would be expected from all employees just as they are expected from citizens in a community.

In sum, if a company’s core values were to drive the assumption that each employee is a corporate citizen analogous to a national citizen with similar rights and duties, then the way we would think about employment would change.

 **Employees and Systems**

 Systems thinking, a way of looking at business that is becoming increasingly popular, operates similarly to the citizenship model in challenging traditional views of employment. According to systems thinking, employment is a phenomenon embedded in a complex set of interrelationships, between employees and managers or employers, between work- ers and labor organizations such as unions, and between employment and public policy. It involves customer relationships, human resource policies, and, given pensions plans, often employee/owner relationships with management. Employees are just one of many stakeholders who affect, and are affected by, the companies in which they work. Moreover, companies, and, indeed, industries and the system of commerce, are embedded within a complex structure of laws, regulations, regulatory agencies, public policy, media interac- tion, and public opinion. And this system—employment—is part of a global economy of exchange, ownership, and trade. Employees, as “players” in these overlapping sets of systems, are at the same time individuals, members of a company, and factors embroiled in a system of commerce. Their interests are important, but they are not the only interests that must be taken into account. Like the phenomenon of employment, employee rights and responsibilities are embedded in a complex social system of rights and responsibilities. Employee rights claims, thus, are not merely individual manifesto claims to certain privileges, but also entail reciprocal respect for others’ rights and responsibilities. If employment relationships are embedded in a set of systems or subsystems, then it is important—strategically important—for managers and employees to attack employment issues systemically from a fact-ﬁnding perspective, from an organizational or social perspective, and from the perspective of the individuals involved, in this case, employees and managers. Conceptualizing employment systemically may help both employees and man- agers to reconsider their importance in the underlying system of which they are a contribut- ing part. This sort of analysis will neither eliminate nor replace the principle of EAW, but it does represent another step in the process of reconceptualizing employment. Pfeffer’s conclusion, that employees are critical to corporate success, is grounded in a systems approach, which views employees, as well as products, services, and customers, as part of the strategic advantage of the company. By analyzing corporate results, he demonstrates that, without good employees, a company will fail, just as it will fail without customers, and fail if it does not think strategically about its products and services. In thinking about employment and employees, it is tempting to become preoccupied with managerial/employer responsibilities to employees, as if employees were merely pawns in the system. It is, though, important to note that a systems approach does not preclude individual autonomy. No individual in a free commercial society is deﬁned completely by the set of systems in which he or she participates. Interestingly, a systematic approach actually looks beyond protection of employee rights and emphasizes employee responsibilities as well—to themselves as well as to the ﬁrm. As part of the workforce, each of us has claims to certain rights, such as free choice, free speech, rights to strike, rights to work contributions or compensation for those contributions, rights to information, and rights to a safe workplace. As a consequence of claiming such rights, every worker, employee, or manager, in every sector of the economy, has responsibilities as well—responsibilities not merely to employers, but to him- or herself and his or her future, and to manage that future as he or she is able and sees ﬁt.

In other words, systems thinking indicates that employees are, or should be, responsible for their own lives and careers, and they need to take the steps necessary to research and explore mobility options. Thinking about employment systemically and thinking about personal responsibilities as well as responsibilities to others within that system can help employees take charge of their own working lives, professions, and careers. The view of employment as a system is consistent with the notion of corporate citizenship. The systemic conceptualization of employment gives rise to employee rights and duties that animate the employment system. In other words, the rights employees enjoy, and the duties they must bear, are those that ensure the continued existence of the system. Similarly, through the lens of corporate citizenship, employee rights and duties include those that contribute to the ﬁrm. Employees have rights to engage in behavior that allows for their development within the system, or ﬁrm, and have duties to enable others to develop as well.

 **A Professional Model for Employees**

Despite developments in eroding EAW through law and public policy, changing mind- sets regarding the value of employment and employment practices, the work of Pfeffer, Kanter, and others demonstrating the worth of good employment practices for long-term proﬁtability and success, and the systemic citizen model we propose, the principle of EAW continues to underlie North American management practice, and the language of rights, or employee rights, still evades popular management thinking about employment, at least in the private sectors of the economy. This is most clearly demonstrated by three sets of phe- nomena. First, there has been a consistent demise of unions and unionism in this country. Since the 1950s, union membership has dropped from about 33 percent of all workers to barely 10 percent today. This demise not only reﬂects the philosophy of corporations, but it is also the result of a series of public policy initiatives. In addition, it reﬂects interests of workers, even low-wage workers who toil under strenuous or dangerous conditions, who are nevertheless reluctant to unionize. 3 Second, despite the enlightened focus on employability and despite an almost full employment economy, layoffs still dominate the ways in which corporations think about employees and employment when making changes in their strategic direction. In 1999 alone, more than a million workers were laid off. 4 Admittedly, given low unemployment, most of these people found new jobs, but this often required relocation and, sometimes, even in this economy, taking less desirable jobs for lower wages. This is particularly true for unskilled workers. Third, one of the criticisms of Northern Europe’s high unemployment and Japan’s recent economic difﬁculties is that these countries have massive legal restrictions on the ability of their companies to engage in ﬂexible employment practices. We are thus exporting our EAW mindset, sometimes as a panacea for economic difﬁculties that are not always trace- able to overemployment. It is important for us to think carefully about the practices we export, particularly considering their questionable success here. A systems approach, while serving as an obvious description of the complex nature of employment in advanced political economies such as our own, is not internalized in employment thinking today—at least not in the United States. The citizen metaphor requires an expansion of notions of trust and solidarity within ﬁrms, and, considering the mobility of the workforce, the ease with which companies can lay off employees and hire new ones, and the preoccupation with short-term bottom lines, it is unlikely that this metaphor will be universally adapted. Given these seemingly contradictory conclusions, then, namely, the persistence of the principle of EAW, the argument that employees have rights

and that employees and managers have moral responsibilities to each other, the economic value added of employees to ﬁrms, and the questionable adaptability of the citizen meta- phor, we are challenged to try to reformulate the notion of employment proactively from an employee perspective—that of the employee as a professional. The popular literature is replete with laments that the “good old days” of alleged employee–employer lifetime employment contracts, company paternalism, and lifetime beneﬁts are under threat of extinction. So, too, are the expectations of loyalty, total commitment, company-ﬁrst sacriﬁces, and perhaps, even, obedience and trust. Whether or not there ever were “good old days,” such laments could be used to change thinking in a positive way, in that they indicate we have alternatives—the way that we view work is not necessarily the only way. This realization should prompt employees and managers to rethink who they are—to manage their own careers within the free enterprise system and to rejoice in the demise of paternalism such that they no longer can even imagine that a person is dependent upon, or co-dependent upon, a particular employer, training program, or author- ity. It demands changes in what we have called elsewhere the “boss” mental model, so aptly exploited by Dilbert, and to alter our vision of ourselves from that of “just an employee” to that of an independent worker or manager with commitments to self-development. While all of this might seem farfetched, particularly for unskilled and uneducated workers, this sort of thinking dates back at least two centuries. As Adam Smith, and later Karl Marx argued, the Industrial Revolution provided the opportunity for workers to become independent of landholder serfdom and free from those to whom they had been previ ously apprenticed. This occurred because, by providing workers opportunities to choose and change jobs and to be paid for their productivity, people were able to trade their labor without chatteling themselves. This sense of economic independence was never fully real- ized because, in fact, circumstances often prevent most of us from achieving Smith’s ideal “where every man was perfectly free both to chuse what occupation he thought proper, and to change it as often as he thought proper.” During and after the Industrial Revolution, one of the great debates about labor was the status of “free labor” versus “wage labor.” Free labor was “labor carried out under condi- tions likely to cultivate the qualities of character that suits citizens to self-government.” These conditions included being economically independent, and indeed Thomas Jefferson associated free labor with property ownership and farming. Wage earning was thought by some to be equivalent to slavery since it “denied [workers] economic and political inde- pendence essential to republican citizenship.” Even the authors of Rerum Novarum (1892), the ﬁrst Papal social encyclical, argue that wage labor should be paid enough to enable each worker to become a property owner and thus gain some degree of independence. A question remains: How, in the 21st century, is a person to develop this sort of inde- pendence and independent thinking about work, when the vast majority of us work for oth- ers? A new model of employment is required, and this model requires developing different mindsets about work and working that draw from Smith’s and Jefferson’s ideas, and, at the same time, take into account the fact that most of us are, and will be, employees. The model is that of employees as professionals . “Profession” refers to “any group of individuals with particular skills who work from a shared knowledge base.” A professional is a person who has trained skills in certain areas that position that person as employable in his or her area of expertise. A professional is identiﬁed with, and has a commitment to, his or her professional work, and to the ability to be versatile. It is the work and its achieve- ments that are important, even more important, for some professionals, than its monetary reward. Additionally, most professionals belong to independent associations that have their own codes of professional ethics and standards for expertise and certiﬁcation or licensure.

The responsibilities of a professional are ﬁrst to his or her expertise, second to his or her profession and the code of that profession, and only third to his or her employer. This is not a model of the “loyal servant,” but, rather, of a person who manages him- or herself with employable and retrainable skills that he or she markets, even as he or she may simul- taneously be in the employment of others. This is a person who commits to excellence in whatever employment situations he or she encounters, but is not wedded to one employer or one particular job. Further, in some professions, such as law and health care, professionals are encouraged—if not required—to participate in work solely for community beneﬁt. The professional model is one that has developed primarily in the high tech and dot. com industries, as people with specialized skills have built ﬁrms around those skills. While the model has developed within a particular context, it is one that easily could, and should, be emulated elsewhere. The growth of dot.com ﬁrms offers an excellent example because through these ventures people have been able to focus on their talents, even as employees have moved from company to company, because employees are valued for their skills rather than their loyalty. Dot.com ﬁrms are not models for all employment since they are often narrowly tailored to offering particularized products and services, but they do stand as potential models for a number of companies or divisions within companies. There are other opportunities for professionalism as well, particularly with regard to contingent workers. For the past 20 years we have witnessed what some label as an alarm- ing trend—the increase in contingent workers—workers who work part-time, or full-time on a contract basis without insurance, pensions, or other beneﬁts. Contingent workers include self-employed, voluntary part-time workers, contract workers and consultants, and home-bound workers. These workers range from dishwashers to professionals and managers. Many have chosen this sort of employment arrangement. Some of these people have beneﬁts independently or through spouses, and they thus appreciate the enhanced ﬂexibility and higher salaries as compared to their full-time counterparts. The problem is that many others resent their “contingency.” There are many, who, according to Brockner and Wiesenfeld, see themselves as “peripheral” to the organization, particularly those who are part-time, contract, short-term, or “disposable” workers. These workers are independent contractors—“free labor”—even though many of them do not revel in that. They are disposable, and some are involuntarily contingent workers, subject to a number of injustices: (1) the involuntary nature of the employment position; (2) the two-tier wage system (a) with unequal compensation, and (b) where many of these workers are psychologically, economically, and socially treated as, and feel themselves to be, second class workers; (3) the fact that women and minorities account for a greater percentage of contingent workers than white males, even taking into account skills, those who opt for part-time and mommy-track employment, and those who cannot speak English or are otherwise disadvantaged. The further decline in union membership and the shift in the composition of the workforce indicate that, by the year 2005, nearly 20 percent of new hires will be white males. This appears to suggest that we will see increased exploitation of new labor and greater utilization of contingent workers. There is yet another dimension to what might already be considered a gloomy picture. Given the psychological pressures and perception of second class citizenry, involuntary contingent workers in companies tend to be less loyal, less productive, and exhibit lower morale—all of which hurts the long-term productivity and well-being of the company for which they work. At the same time, contingent workers are not as vulnerable to some of the problems that hinder full-time workers. Contingent workers are less likely to be absent, drink or use drugs on the job, complain, snooze, schmooze, or engage in time-consuming ofﬁce or work ﬂoor politics. Moreover, without the shadow of union protection they are unencumbered by work rules or traditions. They are, therefore, more ﬂexible. As the number of contingent workers increases, those who choose this path, as well as those who are involuntarily forced into it, should be able to develop a sense of independ- ence, engendered by redeﬁning themselves in relation to their work. This could translate into a rise of professionalism. Because contingent workers are no longer linked to particular companies, it could lead to a shift of loyalty from the company to work and to the profession. In addition, it could lead to the formation of new professional associations— associations, not necessarily industry- or position-speciﬁc, which develop guidelines for skills, licensing, and conduct, form employment contracts, develop codes of conduct, and protect members, just as the legal, medical, academic, and, to some extent, the engineering professions do today. These professions, then, could gain leverage with employers, just as unions have done in the past, with leverage translated into equal pay for equal work and professionally provided beneﬁts and pensions. But what about unskilled low-wage workers? As Barbara Ehrenreich points out in her provocative book, Nickel and Dimed , one of the indignities suffered by allegedly “unskilled” work is that their skills are not treated as such. Virtually all work entails some sort of skills—it is just that the “skills” required by this sort of work are not respected by many of us. Another indignity associated with much of low-wage work is that the workers tend not to be respected or treated with dignity, even by their employers. Professionalism of these workers might alleviate this treatment and also help to raise their wages. 5 Ehrenreich herself recognizes that offering incentives to low-wage workers to take control of their lives and their careers is not easy. Unskilled workers, like many manag- ers today, would have to rethink of themselves as independent contractors with trained or trainable skills that are transferable to a number of job settings, rather than as mere wage earners. By taking their work and productivity contributions seriously, workers with such mindsets would create economic value added for ﬁrms and a sense of self-worth. There is little in our backgrounds that assists us in thinking of ourselves as free laborers rather than wage earners. But if George Washington could take scruffy groups of farmers and laborers from thirteen independent colonies each with its own culture and customs, and transform that motley crew into the Revolutionary Army that eventually defeated the British, and if union organizers in the late nineteenth and early twentieth centuries could organize wage laborers to strike, then a revolution of the mental model of employment, from wage earners to free professionals, is not impossible.

Conclusion

We are a country that has thrived on individualism in our political democracy. Although we have made progress in dispelling the public/private division, it will undoubtedly continue to inﬂuence the protection of Constitutional rights. We have failed, and probably will continue to fail, to adapt new metaphors that challenge that individualism, such as a systems approach or a citizen metaphor for employment. This is not where the story ends, though. While EAW remains the default rule for employment in most of the United States, new models are emerging that encourage and motivate both employers and employees to rise above the default rule in order to create a more satisfying workplace, which, at the same time, can boast higher performance. Hope for a workplace that respects both employers and employees lies in variations of models such as the professional model. Interestingly, the professional model serves as a link between the individualism that cripples other models and the fair employment

principles espoused by all of these models. The professional model is a form of, and rein- forcement for, individualism. It will be interesting to see how that individualism plays out in the workplace. The model of the worker, the employee, the manager, and the executive as professionals, offers a paradigm for thinking about oneself as both independent and part of a political economy. With the pending end of implied job security in every sector of the economy, with global demands on management skills, and with the loss of union representation, this is a model for the future—a model that would circumvent EAW and take us ﬁttingly into a new millennium of global capitalism. Ironically, recent events surrounding the horriﬁc destruction of the twin towers of the World Trade Center on September 11, 2001, underscore the values that underlie the American workplace, which are about professionals, not robots engaged in routine tasks. Although terrorists attempted to attack capitalism, they were only able to break apart the buildings that housed the tremendous values. As Howard Lutnick, CEO of Cantor Fitzger- ald, explained, even in the wake of disaster, his people were anxious to get back to work. They felt a need to be part of something, and that something was work. And Lutnick, like many of the surviving business executives was, and is, struggling to ﬁnd ways to help sup- port the survivors and the families of those lost—not because they have to, but because they want to do something to assist those who were part of their workplaces. The time has thus come to look past what our default rule says, in order to pay attention to what the reality is. It no longer makes sense to waste words arguing against EAW. The reality is that, regardless of what the default rule says, there are values embedded in the American workplace that elevate it above that default and point to inherent respect for both employers and employees. It is important for us now to accept EAW for what it is—a mere default—and to move forward by emphasizing models, such as that of professionalism, that help show where the desirable values already exist, and to motivate more employers and employees to adopt similar practices. The ﬁrms that not only survive , but succeed, in the decades to come are going to be those that adopt such models.