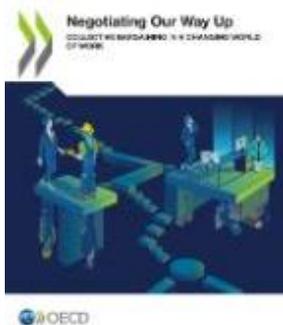


In this week's issue:

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- **EU:** Law doesn't require employees to be granted fixed working schedule
- **US:** Silicon Valley House Democrats introduce sweeping Data Privacy bill
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Global: OECD calls for a strengthening of collective bargaining



“Collective bargaining and worker’s voice are key labour rights but can also improve labour market performances”, according to new OECD findings. But the report says both these rights are “under pressure from the general weakening of labour relations in many countries and the rise of new and often precarious forms of employment.”

[Negotiating Our Way Up: Collective bargaining in a changing world of work](#)

says that the share of workers who are union members has fallen sharply across OECD countries, from almost 30% on average in 1985 to 16% in 2018.

Membership is even lower among workers in non-standard jobs, such as people on fixed-terms contracts, temporary workers, or own-account workers, who are 50% less likely than workers in open-ended contracts to be unionised. The share of workers covered by a collective agreement has also shrunk from 46% on average in the OECD in 1985 to 32% today.

However, in somewhat of a turnaround for the OECD which has always been regarded as hostile to “labour market distortions” such as trade unions, the new report says that “collective bargaining is essential to help workers and companies adapt to changes in the labour market and ensure an inclusive and prosperous world of work”. And new trends affecting the world of work, such as the fragmentation of production processes, and the gig economy “should give social partners a chance to revitalise collective representation and actions.”

“The world of work is in flux,” said Stefano Scarpetta, OECD Director of Employment, Labour and Social Affairs, at the launch of the report in Berlin. “More than ever collective bargaining, when based on mutual trust between social partners and designed so as to strike a balance between inclusiveness and flexibility, can help companies and workers respond to demographic and technological change and adapt to the new world of work.”

The report suggests that the best outcomes in terms of employment, productivity and wages seem to be reached when sectoral agreements set broad conditions but leave detailed provisions to firm-level negotiations. This is the case in countries such as Denmark, Germany, the Netherlands, Norway and Sweden.

However, the report concedes that to “make the most of collective bargaining in the future world of work” will require some governmental intervention, notably to provide access to collective bargaining rights beyond standard employment.

The report also seems to call for legislation to regulate the gig economy. It says that:

Enforcing the correct classification of workers and fighting the misclassification of workers as self-employed when they are actually in a situation comparable to that of employees is an essential first step. But even with proper classification, a potentially growing number of workers will be in the grey zone between dependent employment and self-employment, and labour and competition regulations also need to be adapted to ensure that these workers have access to collective bargaining rights.

The report is available at <http://www.oecd.org/employment/negotiating-our-way-up-1fd2da34-en.htm>. You can read a trade union comment on the report [here](#)

We will publish a more detailed comment on this report when we have had a chance to study it in depth.

UK Election: Labour and Tories promise higher wages for millions



Plans from the UK's two biggest political parties to raise the minimum wage would boost pay for millions of people, a leading economic research group says. The move would also double or treble the number of people whose wages are set by government, the Institute for Fiscal Studies (IFS) said in its report.

The minimum wage is currently set at £7.70 for 21-24-year-olds and £6.15 for those aged 18-20. The Conservatives plan to lower the age limit for the National Living Wage - aimed at those aged over 25 - to 21 and pay around £10.39 per hour by 2024 (or £9.59 in 2020 prices). That would increase the numbers on this higher rate to 4.4m - up from 1.9m today. Labour pledges to introduce a £10 minimum wage in 2020 for all employees aged 16 and over. This would benefit an additional 4.6m employees, taking the total on this rate to 6.5m.

Under both parties' plans, private sector employees and the youngest workers - who get the lowest salaries - would see the biggest impact, the research found. The IFS said Labour's proposals suggested 49% of workers aged 21-24, 82% of those aged 18-20, and 94% of those aged 16-17 would be covered by the minimum wage. Currently, workers aged 16 to 17 can only expect a minimum hourly wage of £4.35, or £3.91 if they are part of an apprenticeship scheme. Conservative plans suggest the share of 21 to 24-year-old employees affected by the minimum wage would rise from 9% today to 36% by 2024.

The IFS warned that sharply higher wages for young workers may see them struggle to find work, although it conceded that the point at which a minimum wage would affect employment is not known, and that timing was more of a problem than the wage level itself.

We hope to be able to examine what the manifestos of the main political parties have to say about employment relations in next week's issue.

CJEU: Law doesn't require employees to be granted fixed working schedule



The European Court of Justice (CJEU/ECJ) has held that there was no provision in the applicable EU laws that required a member state to grant a worker a fixed working schedule when his or her normal pattern of hours was variable shifts.

The court's ruling related to a Spanish law which did not require a worker on variable shift pattern to be granted a fixed working schedule to take care of his children. The Spanish worker, who was employed on a rotating shift pattern across mornings, afternoons and evenings, requested to work exclusively on the morning team for the same number of hours as previously and for the same pay in order to take care of his children. His request was refused by his employer.

The ECJ ruled that the Spanish law did not conflict with the Framework Agreement on Parental Leave and Articles 23 and 33(2) of the Charter of Fundamental Rights of the European Union. This only required member states and social partners to make adjustments to working schedules for workers returning from parental leave, which was not the case in this instance.

You can access the [Judgement here](#) on the CJEU website

US: Silicon Valley House Democrats introduce sweeping Data Privacy bill



Daniel Chasen of HR Policy Association writes: Representatives Anna Eshoo (D-CA) and Zoe Lofgren (D-CA) have introduced a data privacy measure that would exempt employee data in certain circumstances but impose stringent requirements on employers in a variety of other HR-related contexts, including when using artificial intelligence.

The [Online Privacy Act](#) has been marketed by its authors as stronger than the California Consumer Privacy Act (CCPA). It would give users the right to:

- Access, correct, delete, and transfer data about them;
- Request a human review of automated decisions, including in hiring and potentially other HR-related contexts;
- Give opt-in consent before a company can use their data for machine learning/A.I. algorithms;
- Be informed if a covered entity has collected personal information; and
- Choose for how long their data can be kept.

However, the bill exempts “[r]ecords about employees or employment status collected and used by that employee’s employer for employer-employee purposes (so long as it’s the kind of personal information one would expect to be collected while working and didn’t come from a third party).” HR Policy and several member companies have advocated for the exemption of HR data in consumer data-focused privacy measures.

The employee data exemption falls short of the CCPA’s AB 25, which exempts several categories of worker in addition to employees. The exemption further fails to recognize that businesses often contract out the processing of worker data for purposes solely within the HR context.

Security requirements: The measure would create a “Data Privacy Agency,” which would be empowered to issue data privacy regulations and enforce the legislation. The Agency would promulgate regulations requiring companies to implement security policies, including adopting a security policy, identifying an information security officer, a process to mitigate vulnerabilities, a process to discard unneeded personal information, employee training, and a data breach response plan.

Enforcement: The Agency would have the authority to levy fines among other enforcement mechanisms. In addition, the measure includes a robust private right of action, with penalties of up to \$42,530 per individual.

Outlook: The bill is significant in its recognition—albeit imperfect—of HR data as distinct from that of consumer data. However, House Republicans have already deemed this effort “dead on arrival” for various reasons, among which is the bill’s not providing pre-emption and including a private right of action. While the window for congressional action on data privacy is quickly closing this year, the Lofgren-Eshoo bill contains a wish-list of items that may re-emerge in later efforts. The bill further underlines increased attention by policymakers on artificial intelligence-driven technologies, and particularly concerns regarding privacy and bias, as has been additionally highlighted by [several](#) recent [developments](#).

India: HR Policy to hold inaugural meeting in Bangalore on Jan 21



Alan Wild of HR Policy Association writes: All HR Policy member companies considering joining our new global initiative, [HR Policy in India](#), are welcome to attend its inaugural meeting, which will be hosted by Accenture in its Bangalore learning centre on Jan 21, 2020.

Strong membership interest: So far, the group includes 37 companies from the manufacturing, IT services, and retail sectors. For those companies who are already members of our Asia-Pacific ally APERG, membership in the new group is automatic.

Why your company should attend: In addition to an excellent networking opportunity for your India team, topics to be covered in the January 21 meeting include:

- *Managing HR in India today,*
- *Modi 2.0 and the opportunities for international companies, and*
- *The impact of artificial intelligence and automation on India – challenge or opportunity?*

[Register for the January 21, 2020 inaugural meeting here](#) (Association members only). If you want to learn more, contact Alan Wild at awild@hrpolicy.org.

WWW: Sir Tim Berners-Lee announces new Contract for the Web



Derek Mooney writes: to mark the 30th anniversary of the world wide web, its creator and primary architect, Sir Tim Berners-Lee, has given the prestigious BBC Dibleby Lecture. In a compelling [45-minute talk](#), broadcast last Sunday night on BBC TV, Sir Tim looked back at the origins of the web, including [CERN](#)’s decision to make the web’s development royalty free.

Looking at the current state of the web and its possible future, Sir Tim called for a “mid-course correction” from Governments and tech giants to prevent the web from, as he put it: “*plunging*”

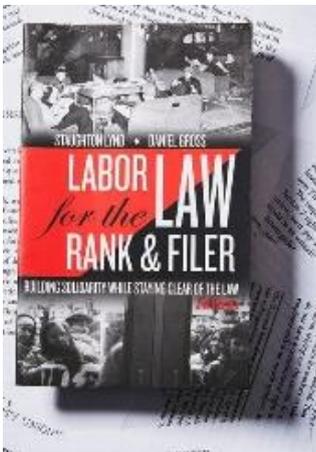
towards things which could be really bad” adding that “The web does not have to stay the way it is now. It can be changed, it should be changed, it needs to be changed.”

He used the occasion of the Dimpleby Lecture to talk about the latest initiative from his [Web Foundation: The Contract for the Web](#), which will be formally launched next week. The contract contains three sets of three principles for governments, companies and citizens around the world. which he hopes will help

Arguing that the web was designed to bring people together and make knowledge freely available, he believes says that everyone has a role to play to ensure the web serves humanity and - by committing to the principles - “...governments, companies and citizens can help protect the open web as a public good and a basic right for everyone”.

You can view the contract at <https://contractfortheweb.org/>

Social Media: “Apptivism” and “Existential Unionism” – Some Thoughts



Tom Hayes writes: About ten years ago, (though it may have been longer), a young barista, named Daniel Gross, was making waves in Manhattan. Gross was trying to get fellow Starbucks baristas to unionise through the IWW, the International Workers of the World, better known as they were known back in the early years of the 20th century, the *Wobblies*.

Gross never did get far with his organising efforts and was eventually terminated by Starbucks. After his time as a barista Gross studied and trained to become a lawyer. He now works as an organiser with the IWW, as well as running a non-profit advocacy group, Brandworkers International. I knew about Gross because of some discussions I had with Starbucks at the time.

A little while ago I was sent [this article](#) from the *New York Times* about a small booklet, *Labor Law for the Rank and Filer*. The reason the *NYT* was writing about a somewhat obscure booklet on US labor law was because of the impact it has had on activists at Google and other companies who have recently been involved in social media organised stoppages and walkouts. Gross turned out to be one of the authors. I ordered a copy.

Reading the booklet, the thought occurred to me that the sort of “pop-up protests” we have seen in Google and elsewhere are nothing new. They are simply the type of labor organising that Gross articulates given a social media age makeover.

Gross’s co-author is Stoughton Lynd, now ninety years old, and with a history in the labor and civil rights movement stretching back to the 1960s. I first came across Lynd in the late early 1970s when I bought a copy of his book, the *Intellectual Origins of American Radicalism*, which examines the contribution a group of 18th century thinkers, of whom the best known is Thomas Paine, has had on radical thought in the US down the years.

Lynd was dismissed from academia and effectively blackballed after he visited North Vietnam, at the height of the Vietnam war, with Tom Hayden. Hayden was one of the founders of Students for a Democratic Society, SDS, which was very influential on US campuses during the 1960s. However, he is better known for having been married to Jane Fonda for some seventeen years.

Lynd wrote a first version of *Labor Law for the Rank and Filer* back in 1978. The version co-authored with Gross was published in 2011.

The booklet comes in two parts. The first part sets out labour and trade union rights as found in US law such as the *National Labor Relations Act (1935)*, and the *Fair Labor Standards Act (1938)*, as the provisions of these acts have been interpreted by the courts down the years.

The heart of the book, however, is to be found in Chapter Five – *Practising Solidarity Unionism*. Lynd and Gross are largely dismissive of mainstream US labor unionism, which they describe as “ ‘business’ or ‘service-provider’ unionism: the idea that a worker joins a union to obtain material benefits in exchange for monthly dues payments, much as the work might buy an insurance policy.”

“Business unionism” is seen as being based on the premises that:

1. *The union is controlled from the top down by officers and staff (usually white males) who are not regularly employed at the workplace;*
2. *Direct action is avoided or used only when it can be choreographed and tightly controlled from above;*
3. *Membership is lost when the worker leaves a unionised bargaining unit*

Solidarity unionism, argue Lynd and Gross, offers an alternative in which workers themselves “carry out their own organising.” There are three fundamental principles underpinning solidarity unionism:

1. *Rank-and-file control;*
2. *Direct action;*
3. *Members carry their union membership with them, regardless of majority status, when they move on to other jobs (particularly important in high turnover sectors like retail or food service).*



Lynd and Gross believe that because solidarity unionism “rejects the accommodation with capital inherent in the business union model,” a solidarity union is well situated to take part in the worldwide movement against corporate “globalization” and “neo-liberalism”.

Solidarity unionism is not about incremental change. It is about changing the world. In this it inherits the tradition of radical US thought that Lynd wrote about back in the 1960s. In the *Intellectual Origins of American Radicalism*, he sets out what he believes to be the core tenets of 18th century American radicalism. In brief:

- *That the proper foundation for government is a universal law of right and wrong self-evident to the intuitive common sense of every man;*
- *That freedom is a power of personal self-direction which no man can delegate to another;*
- *That the purpose of society is not the protection of property but the fulfilment of the needs of living human beings:*
- *That good citizens have the right and duty not only to overthrow incurably oppressive governments, but before that point is reached to break particular oppressive laws, and*
- *That we owe our ultimate allegiance not to this or that nation, but to the whole family of man.*

Lynd describes this package of ideas as “existential radicalism” which he contrasts with more prosaic “deterministic radicalism”. While Lynd does not summarise “deterministic radicalism” in the same way as he does “existential radicalism” I take it to mean the 18th century American constitutional radicalism which resulted in the abolition of monarchy and the founding of the Republic. The sort of radicalism that delivers material benefits rather than frees the soul.

For our purposes it is possible to see how “existential radicalism” becomes “solidarity unionism”, while concern with structures, administration and due process, “deterministic radicalism”, is mirrored in “business unionism”. “Existential radicalism/solidarity unionism” is concerned with the creation of “authentically

free”, spontaneous, pro-active workers/citizens. It is the “act of acting” that is important, probably more so than the result. “Deterministic radicalism/business unionism” is about results; extra dollars in the pay cheque, an hour off the working week, a better health plan. Prosaic, day-to-day slogging.

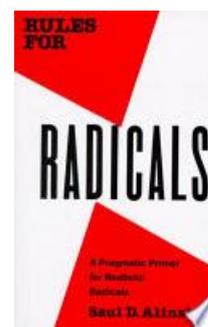
Not that there is no overlap between the two. There is. But the political and intellectual drivers are different. Solidarity unionism, acting collectively with fellow workers, can be enormously emotionally satisfying. It may not bump up your pay cheque, but it can make you feel good.

Which is why, it seems to me, that as a model for collective action, it appeals to Googlers and others in Silicon Valley. For the most part, Googlers and other full-time Silicone Valley workers are not, to the best of my knowledge, on the bottom rungs of Maslow’s motivational ladder. Money is not the name of the game. The issues that move them can best be described as, in Lynd’s word, “existential”.

First, are those issues touching on behavioural concerns, such as the #MeToo movement with its focus on sexual harassment and assault in the workplace by hierarchically powerful men. Abuses that were hidden away for far too long. Building inclusive, safe and secure workplaces is an issue that should be of concern to us all. Workplaces full of hidden fears are not good places to work.

Second, is corporate involvement in what activists consider to be ethically unacceptable and questionable work, such as projects for the intrusive Chinese “social credit” system, or for ICE, the US government agency with responsibility for immigration oversight.

Here, they are taking a leaf out of Alinsky’s *Rules for Radicals: A Pragmatic Primer for Realistic Radicals*, a 1971 book by community activist and writer, Saul D. Alinsky, about how to successfully run a movement for change. Alinsky’s Rule 4 says: Make the enemy live up to its own book of rules." "You can kill them with this", he writes, "for they can no more obey their own rules than the Christian church can live up to Christianity."



“Do no Evil” gives a lot of hostages to fortune.

Interestingly, in the 1970s Lynd went to work with Alinsky when he could no longer find university employment. Lynd’s solidarity unionism echoes Alinsky’s community activism.

Alan Wild and I have previously drawn attention to the concept of “emocracy”, as described by the UK historian, Niall Ferguson. In an [article](#) in the *Sunday Times*, Ferguson writes:

“... we no longer live in a democracy. We live in an “emocracy”, where emotions rather than majorities rule and feelings matter more than reason. The stronger your feelings — the better you are at working yourself into a fit of indignation — the more influence you have. And never use words where emojis will do.”

As [Malcolm Harris](#), author of *Kids These Days* says, the decision to “do something” is the defining mark of millennial employees who prioritize their personal values over the business interests of their employer.

“Do something” is increasingly social media driven.

Some of this “do something” activity has been criticised for being either clicktivism or slacktivism, often derided as nothing more than “virtue signalling” by keyboard warriors. Underlying such criticism is the conceit that unless you have spent countless hours in cold, wet halls on winter nights listening to never-ending speeches by sour Stalinists or rethreaded Trots you haven’t paid your dues. You simply haven’t suffered enough to be listened to.

It is probably more appropriate to see these social media-triggered protests as “Apptivism”, groups of concerned employees organising through WhatsApp or some other, closed online discussion forum. Out of such discussion come calls for action, such as globally coordinated walkouts on specified days for a couple of hours.

Apptivism, then, is a mix of discreet, on-line discussions blended with attention-grabbing “media stoppages”. “Media-stoppages”, as the name suggests, are crafted to “frame the narrative” rather than to apply economic pressure as old-line strikes sought to do. Those who manage to frame the narrative generally also get to set the terms of the debate.

And yet, for all of that, Apptivism, coupled as it is with the emotional appeal of “existential solidarity unionism,” appears to lack staying power. It is action “for the moment”, not for the long-term. Writing on social media organised demonstrations and protests, Zeynep Tufekci, the author of *Twitter and Tear Gas: The Power and Fragility of Networked Protest*, says:

In a networked era, a large, organized march or protest should not be seen as the chief outcome of previous capacity building by a movement; rather it should be looked at as the initial moment of the movement’s bursting onto the scene, but only the first stage.

Except there is no evidence that such emotionally driven movements can be sustained. Tufekci identifies a number of reasons for this lack of “stayability”:

- *Unity can emerge around hashtags, but networked movements have **few means of dealing with the inevitable internal political conflicts**, as well as the natural jockeying for status and attention. Social media does not change human nature. Someone always wants to be in charge.*
- *“Adhocracy” – allows for the organization of big protests or major online campaigns with minimal effort and advance work but can come with a seemingly paradoxical weakness. If the target of the campaign is government or an employer who are they to talk to? How do you negotiate with Twitter? How does a “leaderless” movement move forward?*
- *“The **Tyranny of Structurelessness**” – “an informal and seemingly **horizontal style of organization** can lead to the tyranny of a few who jockey informally to exercise power without accountability.” Power vacuums are soon filled. If they are not filled in a transparent manner, then they will be filled by those who can seize the moment.*

As Wilma B. Liebman, former Chairman and Member, National Labor Relations Board (1997-2011) and now an adjunct professor, New York University School of Law, recently noted at a BEERG meeting:

...some horizontal and anti-authoritarian movements have evolved – now engaging in the electoral-institutional sphere (previously avoided) -- using digital tools to leverage influence in that sphere. E.g., Black Lives Matter.



Wilma added that it takes sustained, hard work, often unrewarding, to turn what were initially social media protests into organised campaigns that can deliver results. She instanced the “#RedforEd: Raising our Voices, Protecting Public Schools” campaign which saw hundreds of thousands of striking teachers in Southern US states marry Facebook activism with old-fashion union structures to win pay increases and increased school funding.

The teachers involved “created Facebook group ‘to work across different unions to try to make some changes and fix things...’” But ...”, she quotes one activist as saying:

“...Facebook pages are great for mobilizing people but they’re not great for long-term organizing.” For that “unions are vital. We need to make the union what it can be... we need to grow it, and make sure it reflects what the people want... The Facebook page was important to put up photos and show people you’re not alone. That was the key to overcoming the fear factor.”

Facebook only gets you so far. You need structures to take you further. The #RedforEd campaign saw activists use Facebook to reenergize already existing structures. To good effect.

Existential “emocracy” may offer moments of “authenticity”. Nothing wrong with that. And it fits within a long American tradition of existential radicalism. Old wine in a new, social media bottle.

But can it build those sustaining structures that result in workplace change in any real sense of the meaning? I have my doubts.

After a hundred years, there is little evidence that the solidarity unionism of the IWW works. But I have been in labour relations for too many years not to know the wisdom of the old adage: *“Never say Never”*.

THE BEERG AGENDA:

CMS/BEERG Global Labor Relations Seminar on Tuesday, CMS Offices, Frankfurt. Jan 14, 2020.

The next CMS/BEERG Global Labor Relations Seminar on Tuesday, January 14, 2020. The seminar will take place again at our CMS office, Neue Mainzer Str. 2-4, 60311 Frankfurt. It will run from 10 am to 4 pm. There is no cost involved in joining the meeting.

CMS plans to have an eve of event reception/dinner (pay as you go) at the Hotel Scandic Frankfurt Museumsufer, Wilhelm-Leuschner-Straße 44, 60329 Frankfurt am Mai at 7pm on January 13, 2020. Accommodation is available at the Scandic at the special rate of €137 (Standard) or €157. (Superior Best View), both incl breakfast.

We would be interested in hearing what topics you would like to discuss at the meeting. We will have a detailed agenda, along with joining instructions, closer to the event. If you, or a colleague, are interested in attending, email: tom.hayes@beerg.com.

BEERG MEMBERS' NETWORK MEETING - Hotel Pullman Centre Gare du Midi, Brussels: Feb 5/6

The next BEERG members networking takes place at the [Hotel Pullman Centre Midi](#), just beside the Gare du Midi train station in Brussels, Wed/Thur, February 5th and 6th

The meeting follows the usual BEERG format, starting at lunchtime on Wednesday and concluding just before midday on Thursday. There will be a banquet for all attendees, and we have already lined up an excellent guest speaker for the Wednesday night banquet. For more information contact: tom.hayes@beerg.com

BEERG Dates for your Diary:

Date	Event	Venue
Jan 14, 2020	CMS/BEERG Global Labor Relations Seminar	<i>CMS office, Neue Mainzer Str. 2-4, 60311 Frankfurt</i>
5/6 Feb, 2020	BEERG Members' Network Meeting	<i>Hotel Pullman Centre, Gare du Midi, Place Victor Horta 1, 1060 Brussels</i>
22 - 24 April 2020	BEERG April Training Programme	<i>Hotel Estela, Port d'Aiguadolc, Sitges, Barcelona, Spain</i>
10 - 12 June 2020	BEERG Members' Network Summit	<i>Hotel Estela, Port d'Aiguadolc, Sitges, Barcelona, Spain</i>
30 Sept & Oct 1	BEERG Members' Network Meeting	<i>Hotel Pullman Centre, Gare du Midi, Place Victor Horta 1, 1060 Brussels</i>
14 - 16 Oct	BEERG October Training Programme	<i>Hotel Estela, Port d'Aiguadolc, Sitges, Barcelona, Spain</i>