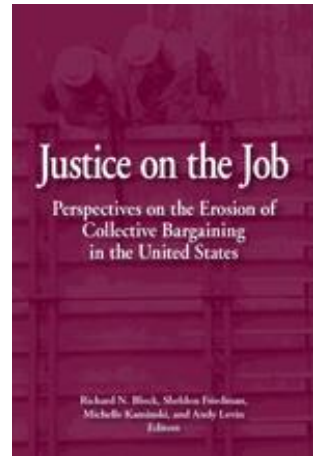

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A Logical Extreme: Proposing Human Rights as the Foundation for Workers' Rights in the United States

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A Logical Extreme

Proposing Human Rights as the Foundation for Workers' Rights in the United States

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A few years ago, Summers (1998) deplored how a labor law that made it the public policy of the United States to “encourage the practice and procedure of collective bargaining” and was intended to enable workers to participate in the decisions that affect their workplace lives had been turned into governmental protection of (even encouragement of) employers’ unilateral decision-making authority and hierarchical workplace control. Similarly, a recent Human Rights Watch report (2000) found that “workers’ freedom of association is under sustained attack in the United States.” Neither the Summers article nor the Human Rights Watch report revealed any previously unknown violations nor deficiencies.

The power of these two works lies elsewhere: in Summers’s call for a new vision in deciding what rule changes are necessary to reaffirm the values of collective representation, and in Human Rights Watch’s use of international human rights standards to judge U.S. employers’ respect for workers’ rights and the government’s exercise of its responsibility to promote and protect workers’ rights. Inherent in Summers’s position is the understanding that the basic foundation of law is moral choice, whether that choice is made by legislators, judges, members of administrative agencies, arbitrators, negotiators of collective bargaining contracts, or unilateral rule-makers in human resources departments. His position acknowledges, moreover, that there is an unavoidable and often powerful subjective component to decision makers’ choices among alternative rules. Consequently, it is simply not enough to know the rules of labor law and labor relations. Those rules must be probed care-

fully and thoroughly because they embody value judgments concerning every vital aspect of labor relations, including the sources of worker and employer rights, which rights get priority when they conflict, and the nature of the relationship between employer and employee.

An honest reexamination of U.S. labor law and policy, therefore, must discuss values and moral choices. Moreover, the use of international human rights principles as the standards for judging those choices constitutes a long overdue beginning toward the promotion of worker rights as human rights (Gross 2003). This combination of values analysis and human rights standards provides the new vision or new perspective that Summers believed was necessary.

This chapter addresses the implications of applying this new vision for, among other things, worker rights; labor law and policy; our understanding of the judicial, administrative and arbitral decision-making process; union-management strategies; and even the future character of industrial relations research. Recognizing worker rights as human rights, for example, means that property rights-based, “free” market values will have to give way to the values of human rights that have not historically influenced U.S. labor law and policy despite the fact that the human rights values are most consistent with the nation’s professed democratic ideals. Consequently, this chapter will be specific concerning the overall significance of this new vision and will discuss in more depth a few examples concerning the freedom of association, labor arbitration and contract administration, human resources values, and the nature and role of labor organizations.

Identifying and analyzing the values underlying labor relations rules and policy choices will also broaden the industrial relations research agenda and require new approaches to that research. This could make industrial relations research truly interdisciplinary because understanding underlying value premises means understanding and applying history, law, philosophy, ethics, economics, religion, and the international and comparative aspects of all these disciplines. This will also require broadening the methodology of industrial relations research beyond quantitative techniques and opening for examination subjects previously not considered because they were not quantifiable. It would reintroduce concepts such as justice and injustice to a field that has come to disparage the “normative” as unscientific and subjective; ill-befitting the objective, value-free social scientist.

This chapter does not aim to discuss the philosophical foundation of human rights or to justify worker rights as human rights. Suffice it to say, therefore, that the chapter accepts the propositions that human rights are a species of moral rights that all persons have simply because they are human, not because those rights are earned or acquired by special enactment or contractual agreements; that all human beings are sacred; and that the United Nations' Universal Declaration of Human Rights (UDHR) as well as the International Covenant on Cultural and Political Rights (ICCPR) assert the interdependence of political and economic rights (Steiner and Alston 1996).

We study people at workplaces. If every person matters because every person has rights by virtue of being a human being, then it is time we begin in a serious and systematic way to include these human rights in our research.

THE CONCEPT OF HUMAN RIGHTS

Human rights are the rights that all persons have simply because they are human. This is not the place to discuss the philosophic foundations of human rights, which historically have their sources in many religious doctrines and theories of natural law that led to the Lockean natural rights theory—the theory most associated with modern human rights (Shestack 1998). More recently, the post–World War II revulsion against the horrors of the Holocaust, in which certain individual human beings counted as nothing, resulted in the 1948 adoption of the UDHR.¹ The UDHR, combined with the International Covenant on Cultural and Political Rights² and the International Covenant on Economic, Social, and Cultural Rights,³ constitute an International Bill of Rights (Donnelly 1989).

Those human rights, which include a wide range of personal, legal, civil, political, economic, social, and cultural rights, are necessary not merely for life, but for a life of dignity (Donnelly 1989, p. 24). Violations of those rights deny a person's humanity. It is generally understood that legal rights arise from the law, contractual rights arise from special agreements such as collective bargaining contracts, and moral rights arise from accepted principles of righteousness. In ordinary cir-

cumstances, however, human rights take priority over those “conventional rights.”

For example, in the United States, the right not to be discriminated against now can be claimed as a constitutional right, a federal and state statutory right, a court decision-based right, or a contractual right in a collective bargaining agreement. At various times in this country’s history, however, the Constitution treated African Americans as less than fully human and permitted slavery, the Supreme Court upheld segregation based on race, state legislatures in particular ratified Jim Crowism, and collective bargaining agreements commonly contained provisions that discriminated against African Americans. Regardless of this widespread legal, contractual, and “moral” approval of racial discrimination, the treatment of African Americans as if they were less than fully human was a violation of their most fundamental human rights. This underscores the fact that the existence of human rights does not depend upon the approval of legislatures, courts, other institutions, or the will of the majority. One has the human right in question, “whether the law is violated or not, whether the bargain is kept or not, whether others comply with the demands of morality or not” (Donnelly 1989, p. 12).

Persons are no less human beings with human rights when they become employees and, as employees, they are no less entitled to respect for their human rights. Consequently, the employer–employee relationship is more than economic in nature (see, for example, Werhane 1985). People can be rendered powerless and have their human rights violated not only by governments but also by employers who have more power to affect people’s lives on a daily basis than do governments. Yet, while assertions of individual rights and freedom are commonly made against the exercise of power by the state, persons are routinely required to leave their rights and freedom outside factory gates and office buildings with barely a murmur of protest. Consequently, too many workers stand before their employers not as adult persons with human rights but as powerless children or servants totally dependent on the will and interests of their employers (Gross 1998).

WORKER FREEDOM OF ASSOCIATION

A full human life requires the kind of participation in the political, economic, and social life of the human community that enables people to have an influence on the decisions that affect their lives. That means people must have sufficient power, individually and collectively, to make the claims of their human rights both known and effective so that respect for their rights is not dependent solely on the interests of the state, their employers or others. Servility, or what some call powerlessness, is incompatible with human rights. Consequently, the freedom of association, which includes the right to organize, to bargain collectively, and to strike, is so essential that it is commonly accepted as the “single human rights standard by which all regimes, all societies, all countries can be judged” (Kahn 1998).

Article 20 of the UDHR issued by the United Nations in 1948 asserts the right to freedom of association, including in Article 23 (4) the right to form and join trade unions. The International Covenant on Civil and Political Rights, which the United States ratified in 1992, incorporates in Article 22 the language of the Universal Declaration: “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.” Article 8 of the International Covenant on Economic, Social and Cultural Rights, which the United States has not signed, also affirms the “right of everyone to form trade unions and join the trade union of his choice.” The International Labour Organization’s (ILO’s) 1948 Convention Concerning Freedom of Association and Protection of the Right to Organise (Convention 87) and 1949 Convention Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (Convention 98) address in great part the exercise of the freedom of association rights set forth in the International Covenants. Another major international consensus document is the ILO’s 1998 Declaration on Fundamental Principles and Rights at Work, which obligates all ILO members (the United States is a member) to promote certain core labor rights, the first of which is the freedom of association.

The application of the underlying values—human rights standard approach to the old U.S. issue of employer speech in union representation election campaigns and organizer access to employer property provides

a good illustration of the implications of utilizing this new perspective. The current general rules are well established: An employer may express views about unionization as long as those views contain “no threat of reprisal or force or promise of benefit”; (Section 8(c) of the Taft-Hartley Act)⁴ an employer may require employees to attend, on company time, “captive audience” meetings during which antiunion speeches are made, whereas a union has no right to reply on company time;⁵ employees may orally solicit for a union in working and non-working areas but only on the employees’ own nonwork time⁶ and may distribute union literature only in nonwork areas on their own time;⁷ and nonemployee union organizers have no right of access to employers’ property for organizing purposes.⁸

These rules are much more than “the law”; they ought to be seen as value choices. In this country, historically rooted principles of employer property rights still override the basic right of freedom of association. The value choices in the current rules are the antithesis of what the Wagner Act and early NLRB decisions intended. Rights clash—here the right of freedom of speech, property rights, and the right of freedom of association—and, when rights conflict, choices must be made. The Wagner Act established the most democratic procedure in U.S. labor history for the participation of workers in the decisions that affect their workplace lives (Gross 1998). At its core was the promotion and protection of the freedom of association. The Wagner Act was not neutral; the law declared it to be U.S. policy to encourage collective bargaining and to protect workers in the exercise “of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment and other mutual aid and protection.”⁹ The Wagner Act was a moral choice against servility. Wagner also understood, however, that government encouragement and protection are essential to the exercise of participatory rights at the workplace.

The rulings of the first NLRB, for example, were most consistent with the protection and promotion of the freedom of association because they required employers to remain strictly neutral in regard to their employees’ organizational activities. It was convinced that any antiunion statement by an employer to employees who depended on that employer for their livelihoods was bound to carry an implied threat of economic reprisals for disregarding the employer’s wishes. For the

same reason, early NLRBs held that captive audience speeches were in themselves unfair labor practices regardless of the content of the speech delivered (Gross 1995, pp. 104–107).

Labor never came close to achieving the system of workplace democracy envisioned by Wagner. As many experts correctly predicted at the time, the Taft-Hartley amendments to the Wagner Act became law in 1947, the language asserting the right to refrain from collective bargaining (Section 7),¹⁰ the addition of several union unfair labor practices (Section 8(b)),¹¹ and the provision asserting employers' right of "free speech"¹² would be read as a statutory justification for employer resistance to unionization and collective bargaining. More than 50 years after Senator Wagner warned it would happen,¹³ Summers (1998, p. 1806) pointed out that "employer speech has become the primary instrument used by employers to discourage unionization and collective bargaining." The dominant hierarchy of rights established by these rule-makers and subsequent rule-interpreters has given employer speech and property rights priority over employees' rights of freedom of association.

Human rights are standards more fundamental than statutory or even constitutional standards. Consequently, the fundamental human right of freedom of association outweighs employer property and speech rights at the workplace. In 1992, the United Food and Commercial Workers and the AFL-CIO filed a complaint with the ILO's Committee on Freedom of Association against the U.S. government, charging that the Supreme Court's *Lechmere*¹⁴ decision gave private property "absolute priority over rights of freedom of association, whenever [nonemployee] union organizers are involved" (Gross 1999).

The Freedom of Association Committee, in its recommendations, requested the U.S. government "to guarantee access of trade union representatives to workplaces, with due respect for the rights of property and management, so that trade unions can communicate with workers in order to apprise them of the potential advantages of unionization" (Gross 1999). That recommendation has been ignored. This could be accomplished, however, without unfairly limiting or damaging legitimate employer interests simply by granting nonemployee union organizers access to employer property to meet with employees in nonwork areas on nonwork time. That is the recommendation of the Human Rights Watch report (2000, p. 20), which also advocates "more free speech for

workers not less speech for employers” rather than repeal of Section 8(c).

The Human Rights Watch recommendation is less persuasive when applied to employer election campaign speech in general and captive audience speech in particular. Employer speech is a powerful weapon that promotes the coercion of employees in their human rights to unionize, and has resulted in an increase in union losses in representation elections and a decline in union strength and union membership as a percentage of the labor force (Block and Wolkinson 1986). Even allowing more employee speech and union access would not offset the inherently coercive effect of employer speech. What justification can there be for permitting employers to continue to resist, discourage, and coerce those workers who exercise their human right of freedom of association?

The application of this perspective—the combination of values analysis and human rights standards—to the old issue of employer speech and union representation election campaigns makes it clear that the rules currently in place are the result of deliberate moral choices that violate a fundamental human right: workers’ right of freedom of association. Understood in that context, this becomes a more powerful indictment more likely to be effective in bringing about change.

It is a fact that Section 7 of the Taft-Hartley Act set forth employees’ right to refrain from representation and collective bargaining. It is also a fact that the UDHR says that no one may be compelled to belong to an association. It is also a fact that in the United States workers have routinely been denied a free and uncoerced choice concerning representation and collective bargaining.

Even if workers had a free and uncoerced choice concerning the exercise of their freedom of association right, however, there are, as Adams (2003) argues, “some choices that result in conditions so morally repugnant that they cannot be allowed.” Using the ILO’s core Principles and Rights at Work as a model, Adams points out that we do not permit people to sell themselves into slavery or states to choose apartheid, or children to prostitute themselves. From a human rights perspective, because freedom of association is a fundamental human right, the issue to be decided is not whether there ought to be democratic participation by employees at their workplaces but “rather what form democratic participation ought to take” (p. 153).

LABOR ARBITRATION

When the exercise of the right of freedom of association is successful, however, and collective bargaining produces a written labor-management contract, the protection and promotion of workers' rights depend in great part on the values of those decision makers, particularly labor arbitrators, who interpret and apply those agreements. This has led to the acceptance and repeated application of rules—what arbitrators often call the common law of arbitration—without questioning, or knowing, or caring about a rule's origin or what the rule assumes about the “oughtness” of the power and rights relationship of employees and employers or whether a rule needs to be reexamined, reevaluated, modified, or rejected.

Substantive rules are ways of looking at the workplace—in other words, whether we see the workplace through the eyes of employees on the shop floor, in offices or classrooms, or from the perspective of those who manage the enterprise. It is a question of who is benefited and who is burdened by a particular rule or standard. Arbitrators, as well as courts and administrative agencies, have been the creators, choosers, appropriators, and implementers of these substantive rules. These rules or doctrines go far beyond the rules unions and employers negotiate into their collective bargaining agreements.

Related research demonstrates that labor arbitrators have embraced the generally conservative values of common law but have resisted applying the principle of external law, have rarely utilized constitutional principles, and have ignored human rights concepts. Arbitral common law shows a commitment to extracontractual doctrines of private property rights; employer hierarchical authority and control; management freedom to operate the enterprise most efficiently; and the need to discipline employees whose actions were considered challenges to management's order and control (Gross 1988a,b; Gross and Greenfield 1985). These embody value judgments that, as Rabin (1985) has put it, “reflect the interests of the dominant power in the work relationship.”

The value choices arbitrators make in deciding cases involving employee refusals to work for reasons of health and safety provide good examples. The controlling rule in these cases is the long-established arbitrator-created principle: work first, grieve later. As a consequence of

labor arbitrators' almost universal value judgment that management's freedom to operate the enterprise and direct the workforce is superior to all other rights, including workers' right to a safe and healthful workplace, they treat these cases as insubordination cases and do not except unusual health hazards from the obey first, grieve later rule.¹⁵

The insubordination orientation to these cases, moreover, relegates workers' safety and health claims to that of an affirmative defense to the insubordination charge. Arbitrators, consistent with their value choices in these cases, also place upon these workers the heaviest possible burden of proof, namely, to submit objective evidence of an unhealthful and unsafe workplace. Although employers carry the burden of proof in discipline cases, the practical effect of these value choices is to shift this burden on the decisive issue (health and safety) to the discharged or otherwise disciplined employee. This maximizes an employer's control of employee discipline and thereby minimizes employee interference. The management rights framework used in these cases results in decisions that place property rights and other factors such as profits, efficiency, cost-benefit considerations, management authority, and economic progress over human rights.

The "obey first, grieve later" rule itself is value laden. It favors management control and the need for efficiency, maintenance of discipline and order at the workplace, and private property ownership and prerogatives over union and worker protests about working conditions. The notion that management acts and the union reacts gives employers the right of initiation as well as broad discretion in deciding how to assert its own interpretation of the contract. Employees and a union, however, may not use self-help when they seek to assert their interpretation of the contract. In addition, the employee who may not exercise self-help at the workplace has recourse only to the grievance-arbitration process where an arbitrator will apply the same management rights and authority value judgments that underlie the obey first, grieve later rule.

Some are favored by this rule and some are disfavored. The rule favors management authority and objectives but often confronts employees with an unfair dilemma—in safety and health cases, for example, to obey and risk their health and safety or to refuse to work and risk their jobs. Recognizing workers' rights to refuse hazardous work without retaliation would enable them to take control over and protect their own lives when confronted with threats to their safety and health.

But the current value scheme treats workers as children, or as prisoners, or students, or members of the armed forces, who, if not controlled, will act irresponsibly (Atleson 1985).

Many international declarations, covenants, and treaties, such as the ILO constitution, the Declaration of Philadelphia, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the ILO's Occupational Safety and Health Convention, and various regional treaties and trade agreements recognize workplace safety and health to be a human right.¹⁶ In commenting on the "inexplicable" exclusion of worker safety and health from the ILO's *Fundamental Principles of Rights at Work*, Spieler (2003, p. 94) writes the following:

It can be argued that postponing the improvement of health and safety until market forces can effect change is analogous to postponing the release of political prisoners who may die in prison until a despotic government is replaced through democratic elections. It is in fact the right to life that we are talking about when we talk about workplace safety . . . The right to life is deeply imbedded in every human rights declaration and it is presumed in these declarations that individuals' lives must be protected from those who wield unequal power. This is precisely the issue in occupational safety and health.

As Spieler says, workplace safety and health are essential components of the right to life. A value judgment that would make workers' right to a safe and healthful workplace paramount would place the highest value on a life, or a limb, or an eye and give absolute priority to individual rights over institutional and economic interests. It comes down to the fact that the dignity and human rights of workers must lie at the center of any industrial relations system (Javillier 1996). As former Secretary of Labor Willard Wirtz (1971) told the National Academy of Arbitrators over 30 years ago, "The individual as the owner of rights and interests—job rights, personal rights, human rights—[is] at least as much entitled to protection as a piece of real estate or machinery." He added that the individual is "somebody the system is designed for instead of the other way around."

Application of the human rights standard to refusal to work for reasons of health and safety cases would require a reordering of values so that workers' human right to workplace safety and health would be

given priority over employers' freedom to operate the enterprise and direct the workforce. The major change in the arbitral approach to these cases would be in the recognition that worker self-help is essential. That would release them from the unfair work and risk their safety and health or refuse to work and risk their job dilemma.

HUMAN RESOURCE MANAGEMENT: VALUES, OBJECTIVES, AND HUMAN RIGHTS

Personnel management, as it was known in a less sophisticated time, consisted of management activities that were employee oriented, such as recruitment, training, and staffing. Personnel managers were seen as "people persons," employee advocates, management's conscience, described by one as the "in-house Socialist[s] focused on feel-good events" (Ellig 1997, p. 273).

Regardless of the accuracy of those perceptions, even the old-style personnel administrators managed employees with the ultimate objective of increasing their productivity. Still, many academics, particularly in industrial sociology, human relations, and personnel administration, vigorously defended their research against critics who charged that it was intended to help management achieve its objectives. In the last decade, however, human resources academics and practitioners openly advocate that human resources professionals become strategic partners in executing business strategy (moving "planning from the conference room table to the marketplace"); working to increase employee commitment to the organization; and becoming change agents, enabling the business to shift, move and adapt while constantly decreasing costs and improving efficiency (Ulrich 1998). The overwhelming number of employees have no advocates at the workplace. Human resources departments cannot be advocates for employees when their primary responsibility is defined as "deliver[ing] the behaviors needed to realize business strategy" (Beatty and Schneier 1997). As respected academic Thomas Kochan put it, "Tilting too far in the direction of becoming an advocate for employee concerns would do little other than re-marginalize the function within the management structure" (Kochan 1997).

What being an “employee champion” really means is developing employee assets in order to achieve competitive advantage and win in the marketplace. That requires making the employer’s goals the personal goals of each employee. That objective is best achieved by attracting and retaining people who share an employer’s core values and purposes and letting those who do not share those values go elsewhere (Collins and Porras 1998).

Loyalty and commitment, however, run in only one direction. The human resources literature is full of references to the new “psychological contract,” which makes employees responsible for their own employability and gives them no job security. A leading textbook, granting that many see “employee separations” negatively, points out several benefits, including the possibility that “a persistently low turnover rate may have a negative effect on performance if the workforce becomes complacent and fails to generate innovative ideas” (Gomez-Mejía, Balkin, and Cardy 1995). One prominent authority refers to downsizing as “clearing debris” and “yard work” (Ulrich 1998). To ensure that employers avoid any commitment to their workers, they are advised to include at the end of employee handbooks a declaration that employees can be discharged for any reason or no reason and that the handbook is not an employment contract. The objective, the textbook explains, is to avoid any restriction on an “employer’s freedom to discharge employees without cause” (Gomez-Mejía, Balkin, and Cardy 1995, p. 435).

Clearly, it is not only the state that has the power to violate people’s rights; employers in many ways have even more direct power over individuals’ lives. Judged against a human rights standard, it is an injustice that human beings are treated as things or resources for others to use. A human being has the right to be free from domination regardless of the source. Judged by a human rights standard, moreover, human resources personnel and other managers in a business organization would be held accountable for manipulating human beings and subordinating their rights to the interests of the organization. As Shue (1980, p. 78) writes, “to enjoy something only at the discretion of someone else, especially someone powerful enough to deprive you of it at will[,] is precisely not to enjoy a right to it.” If the boss giveth, then the boss can taketh away, and victims will have no defense without established forms of participation available to them. Inducing workers to see the world through their employer’s frame of reference to legitimize and maintain employ-

er control of the workplace without changing the power relationship of superior employer and subordinate employee constitutes manipulation that is an affront to human beings and human rights.

This critique of human resources values, methods, and objectives using a human rights standard for judgment echoes the critics of the so-called Mayo School of Human Relations of a half-century ago. They rejected the belief that workers needed to submerge self in a business organization and to accept their employer's goals "in order to find freedom" (Landsberger 1958). They also objected to the perception of workers as means to be manipulated to bring about acceptance of management's purposes. They charged that the basic conflict of interest between management and labor had been ignored, as had the associated issues of conflict resolution, which they said had been reduced to ways for employees to blow off steam without changing the hierarchical authority structure or permitting employees to share that power. Finally, these critics accused the Mayo School of an active antiunionism, demonstrated in part by excluding unions as sources of worker power and participation and considering them only as external intrusions on management authority and flexibility or as symptoms of deficiencies in internal management.

It is still human resource doctrine, for example, that unionization is caused by bad management; that unionization is the misfortune that befalls an employer with flawed human resources policies and practices (Adams 2006). That completely ignores the fact that people's right to participate in the decisions that affect their lives is one of the most fundamental human rights principles as well as one of the most fundamental principles of democracy. Regardless of the quality of management or a firm's "good" or "bad" employee relations, exercise of the freedom of association at the workplace is necessary to give workers the opportunity to secure their own rights and interests through participation in workplace decision making and to eliminate the vulnerabilities that leave them at the mercy of others.

CONCLUDING OBSERVATIONS

The U.S. labor relations system is dominated by employer power premised on the inequality and helplessness of most workers and rooted in values that justify the possession and exercise of that power. In this chapter, the application of a new vision—the combination of values analysis and human rights standards—to the freedom of association, labor arbitration, and human resources of U.S. workplaces demonstrates that employer power has been used to violate the fundamental human rights of workers in this country. A just society would not permit this or tolerate anything less than the end of these violations.

The adoption and application of human rights standards to U.S. labor relations would require more than marginal adjustments or fine-tuning; it would require an explicit restatement of property rights as subordinate to human rights, including the human rights of workers. It would also require a major change in the priority given to the rights and interests of the parties in conflict; a major redistribution and sharing of power at the workplace; a major reevaluation of the values currently influencing dispute resolution in judicial, administrative agency and arbitral hearing rooms, and at bargaining tables; as well as major changes in many other areas, such as exclusive representation, the permanent replacement of economic strikers, and the exclusion of workers from laws intended to protect the right to organize and bargain collectively, including the exclusion from the National Labor Relations Act of agricultural and domestic workers. There will be no lack of labor-management conflict here mainly because power will be at stake as well as basic and irreconcilable values. No pretension of unitary goals could keep a lid on that conflict.

It has been argued, correctly in my opinion, that only the people whose rights are at stake can force a government or a private enterprise to respect human rights. Both union leaders and members need to become educated in human rights. Unions must do more than organize workers; they will need to understand that they are human rights organizations because human rights such as freedom of association, collective bargaining, safe and healthful workplaces, and discrimination-free workplaces are at the core of what unions seek to secure. The labor movement will need to be more than just another interest group

protecting its members regardless of the cost to others if it is to appeal to the poor and vulnerable people most in need of organization. Instead, unions will need to develop alliances with other social movements such as civil rights groups, women's rights organizations, environmental groups, immigrant worker support groups, and religious organizations. Until now, human rights principles have been disseminated from the top-down by a privileged elite in governmental and nongovernmental organizations. Organized labor could be a powerful mass human rights movement spreading those principles from the bottom-up. This, of course, will require union leaders and members to determine the extent to which they have accepted the values underlying the current labor relations system. Human rights values also impinge upon the power and authority of unions and their leaders. For many reasons, it is easier to evade moral imperatives, especially when, in this country, the right of freedom of association has been respected only for brief periods of time.

It is not unrealistic to believe in and work for change. The civil rights and women's rights movements in this country are among the precedents that justify some optimism and hope. No matter how discouraging the prospects for fundamental change in our labor relations system, it would be even more irresponsible to fail to act. Change can begin with the ability of challengers to redefine a policy issue. New perspectives on the employer–employee relationship, such as the new vision advocated in this chapter, can bring about major changes in the way people respond to that relationship.

What is certain, however, is that human rights talk without action is hypocrisy in the form of self-righteous posturing pretending that human rights violations occur only somewhere else. An honest reexamination and reassessment of U.S. labor relations values using human rights standards would be a long overdue beginning toward the promotion and protection of worker rights as human rights.

Notes

1. G.A. Res. 217 (III) of Dec. 10, 1948, UNGAOR, 3d. SESS., Resolutions, U.N. Doc. A/810 at 71.
2. International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, 999 UNTS 171 (entered into force March 23, 1976).

3. International Covenant on Economic, Social and Cultural Rights, adopted Dec. 16, 1966, 993 UNTS (entered into force Jan. 3, 1976).
4. 29 U.S.C. § 158(c) (1947).
5. *Livingston Shirt Corp.*, 107 NLRB 400 (1953).
6. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945).
7. *Stoddard-Quirk Mfg. Co.*, 138 NLRB 615 (1962).
8. *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992).
9. Pub. L. No. 74–198, 49 Stat. 449–50 (1935) [codified as amended at 29 U.S.C. §§ 141–44, 167, 171–87 (1947)].
10. 29 U.S.C. § 157 (1947).
11. 29 U.S.C. § 158(b) (1947).
12. 29 U.S.C. § 158(c) (1947).
13. Robert Wagner, “The Wagner Act—A Reappraisal,” 93 Cong. Rec. A895, A896 (1947), reprinted in 2 LMRA Legis. Hist. 935, 938.
14. *Lechmere Inc. v. NLRB*, 502 U.S. 527 (1992).
15. For an expanded discussion of the value judgments inherent in arbitral doctrine on employee refusals to work for reasons of health and safety, see Gross (2004), which provides the basis for the discussion of arbitration of health and safety disputes in this chapter.
16. ILO Conventions are available on the ILO Web site: <http://www.ilo.org/>.

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