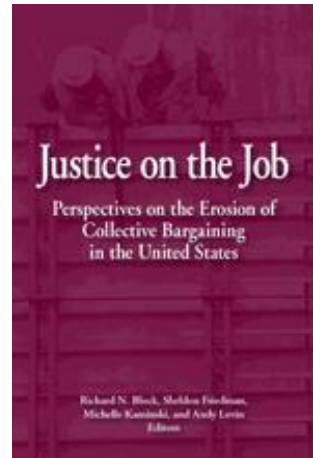

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The United States and ILO Conventions 87 and 98: The Freedom of Association and the Right to Bargain Collectively

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11

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Opposition to the international criminal court, the refusal to sign the Kyoto agreement on global warming, the unwillingness to join a global ban on land mines, and the war in Iraq are only a few examples of the United States' reluctance to heed world opinion or join multilateral humanitarian efforts. This chapter focuses on another example of American "exceptionalism": the U.S. record on ratification of International Labour Organization (ILO) conventions.

To date, the United States has ratified only 14 of the 184 conventions adopted by the ILO¹ and only 2 of the 8 core conventions² (ILO 2002). Only 23 of the 175 ILO member nations have ratified fewer conventions; none of these nations is western or industrialized (ILO 2002).³ Until 1988, the United States had ratified only one convention that did not concern a maritime issue, a purely administrative matter that switched the ILO's affiliation from the defunct League of Nations to the newly formed United Nations. There has been a spate of activity in the past 15 years, but of the 6 conventions ratified since 1988, half concern administrative or technical matters.⁴

We examine U.S. reluctance to ratify the ILO conventions concerning the freedom of association and right to bargain collectively: Convention 87 and Convention 98.⁵ Both conventions were adopted by the

ILO in the late 1940s, and while Convention 87 was recommended for ratification by the Secretary of Labor in 1949 and by the Solicitor of Labor in 1980 (U.S. Department of Labor 1980; U.S. Senate 1949), no legislative action has been taken on either.

The United States offers three principal reasons for not ratifying Conventions 87 or 98. First, national labor policy is well established, insures a delicate balance between the interests of business and labor, and should not be upset to accommodate the wishes of an international agency. Second, based on the recent ILO Declaration on Fundamental Principles and Rights at Work (ILO 1998), as well as long-standing ILO policy,⁶ the United States has a responsibility as a member of the ILO—and regardless of whether it has ratified the conventions or not—to uphold the spirit of Conventions 87 and 98. Since the United States largely fulfills that responsibility, actual ratification is superfluous (ILO 2000; U.S. Department of Labor 1997a,b; U.S. Senate 1985). Third, our federal system, which reserves certain rights to the states, impedes ratification since the conventions would affect the employees of state and local governments and others who fall outside the coverage of federal labor statutes.⁷ We dispute all three claims.

HISTORICAL BACKGROUND

The United States was instrumental in both establishing the ILO and assuring that its constitution took into account the concerns of federal states (Tayler 1935). After weeks of difficult negotiations with several European delegates, the United States was successful in including language in Article 19 of the ILO constitution that protects the interests of such states by allowing them to treat a draft convention “as a recommendation only” (Tayler 1935, p. 62). In fact, when the United States joined the ILO in 1934, the congressional resolution supporting admission cited the provision (Tayler 1935, p. 150). However, legal scholars immediately raised questions as to whether the federal state proviso would apply to the United States based on a 1920 Supreme Court decision.⁸ Further, business interests were wary of ILO goals: the adoption of Conventions 87 and 98 so soon after the passage of the Taft-Hartley

Amendments only increased their suspicion that the ILO might override U.S. labor law (Galenson 1980, p. 27; Lorenz 2001, p. 171).

With this concern over the power of the United Nations and its specialized agencies, Senator John Bricker proposed a constitutional amendment in 1951 that would have limited the executive branch's treaty-making power. During hearings on the Bricker Amendment, the ILO came in for particularly harsh treatment.⁹ No version of the Bricker Amendment passed, but its spirit continues to control U.S. policy concerning ILO conventions: no convention will be adopted that could interfere with existing state or federal law.

In 1978, due mainly to disputes centered on cold war and Middle East politics, the United States withdrew from the ILO only to rejoin less than three years later. With reentry, the United States appeared to have made a fresh start in its relations with an organization that it had, over the years, treated casually at best (Galenson 1980, pp. 23–26). A major move was the creation of the high-level President's Advisory Committee on the ILO, which is chaired by the Secretary of Labor and includes the Secretaries of State and Commerce as well as labor and business representatives. The Tri-Partite Advisory Panel on International Labor Standards (TAPILS) chaired by the Solicitor of Labor and providing legal analysis to the President's Committee was also established (U.S. General Accounting Office 1984, pp. 16–26).¹⁰ The job of both bodies is to make determinations about ILO conventions. At one time, both were quite busy; after ratifying no conventions for 35 years, the United States ratified seven between 1998 and 2001 (ILO 2002). However, Conventions 87 and 98 received no attention.

Momentum for new ratifications began with hearings by a Senate committee in 1985 (U.S. Senate 1985). Secretary of State George Schultz argued that ratifications would be helpful in pressing his (anti-Soviet) agenda: "It is my judgment that an improved ratification record would have served U.S. foreign policy interests better" (U.S. Senate 1985, p. 8). Although basic ILO principles are found in U.S. laws, Schultz believed that the United States was still vulnerable to criticism for not ratifying ILO conventions: "[O]ur behavior sends a message that ILO procedures do not apply to us. The message we send is—do as we say, not as we do" (U.S. Senate 1985, p. 9).

However, shortly before Schultz's testimony, a number of legal problems concerning ratification of Conventions 87 and 98 had been

laid out in an influential book by Edward E. Potter (1984).¹¹ Potter's findings formed the basis of the U.S. Council on International Business (USCIB) opposition to the ratification of these conventions.¹² The principal concerns expressed in Potter's book echo the Bricker-era rhetoric: if ILO conventions were ratified, existing laws would be superseded. In turn, committee chair Orrin Hatch stated his concern that domestic labor laws "have been delicately drawn and have a delicate balance and which, although both sides can point to difficulties with them from time to time, still have worked rather well in our country" (U.S. Senate 1985, p. 11). According to U.S. Department of Labor and ILO officials with whom we spoke, the present posture of the United States is to ratify only conventions that conform to current U.S. law. The job of TAPILS, therefore, is to make sure that conventions under consideration do not interfere with any current statute. Hence, Conventions 87 and 98 are "off-the-table" for many of the reasons cited in Potter's book.

A Critique of the U.S. Position

To reiterate, the current U.S. position against ratification of ILO Conventions 87 and 98 is based largely on three assertions: 1) that well-established national labor policy supports a delicate balance between business and labor and should not be meddled with; 2) that under the recent *Declaration on Fundamental Principles and Rights at Work*, as well as the ILO constitution, the United States has a responsibility, based on its membership in the ILO, to conform to the spirit of Conventions 87 and 98—which it already does (ILO 2000; U.S. Department of Labor 1997a,b; U.S. Senate 1985); and 3) that our federal system, which reserves certain rights to the states, makes ratification problematic since the conventions would affect employees who fall outside the coverage of federal labor statutes.

Federal Labor Policy and the Balance of Interests

First, we address the assertion that current labor policy is well-established and provides for a balance in labor-management relations. While current labor policy has its roots in statutes that are seven decades old, age should not be confused with acceptance.¹³ Organized labor, in particular, has long fought for changes in labor policy. In the late

1940s and early 1950s the labor movement pushed for Taft-Hartley repeal (Dulles and Dubofsky 1984, pp. 343–362); some years later, labor sought substantial changes to the National Labor Relations Act (NLRA) through the unsuccessful Labor Law Reform Act of 1978 (Dark 1999, pp. 99–124); and recently the labor movement spent considerable resources in trying to pass legislation to prevent the use of permanent striker replacements (Gould 1993, pp. 181–203).

Employers have also signaled their displeasure with certain aspects of labor policy, most notably the NLRA's restrictions on employer-dominated labor organizations, which might restrict the establishment of employee-involvement programs. The TEAM Act attempted to amend the NLRA to allow employers greater latitude in establishing such programs (U.S. Senate 1995). Narrower issues, such as the use of "salting" as an organizing tactic by building trades unions and the so-called "garment industry provisos," which provide exceptions to the NLRA's "hot cargo" proscription, have also been criticized by employers (Bodah 1999; U.S. House of Representatives 1999). In short, the reports of at least two government commissions—the Commission on the Future of Worker-Management Relations appointed by President Clinton (i.e., the Dunlop Commission) and the American Worker at a Crossroads Project, led by Republican Representative Peter Hoekstra—are filled with both labor and management complaints about U.S. labor policy (U.S. Department of Labor 1994; U.S. House of Representatives 1999).

This lack of consensus is also reflected in the decisions of the National Labor Relations Board (NLRB), which has been criticized by both scholars (Cooke and Gautschi 1982; Cooke et al. 1995; Estreicher 1985) and the federal courts (*Mosey Manufacturing v. NLRB* 701 F2d 610, 1983) for its decisional oscillations. Indeed, over the years, Congress has held a number of hearings concerning abrupt changes by the board in the application of legal standards (see Bodah [2001] for a list of such hearings). Clearly, the "balance" mentioned by defenders of the status quo has not resulted in any sense of equilibrium in national labor policy. Instead, we have seen wide swings in the application of labor statutes, accompanied by a general erosion of the legal status of collective bargaining (Gross 1995). Gross (1994, p. 53), in an article entitled "The Demise of National Labor Policy: A Question of Social Justice," writes:

This country needs a definite, coherent, and consistent national labor policy. That requires more than changing NLRB case doctrines or amending Taft Hartley to tighten or loosen government regulation of the labor-management relationship. The recrafting of a national labor policy must begin with a precise and certain statement of its purposes and objectives. Fundamental questions must be confronted and answered.

The Gap between U.S. Law and the Requirements of Conventions 87 and 98

A second assertion is that current U.S. standards generally conform to at least the spirit of Conventions 87 and 98. This is easily challenged. The U.S. government itself admitted to a lack of conformance in the *Review of Annual Reports under the Follow-up to the ILO Declaration on the Fundamental Principles and Rights at Work*. After beginning on a positive note in stating that “[t]he United States recognizes, and is committed to, the fundamental principle of freedom of association and the effective recognition of the right to collective bargaining” (ILO 2000, p. 144), the report later states: “Nonetheless, the United States acknowledges that there are aspects of this system that fail to fully protect the rights to organize and bargain collectively of all employees in all circumstances” (ILO 2000, p. 153). It went on to cite evidence from the Dunlop Commission’s *Fact-Finding Report*, including the frequent firing of union activists, the failure of many newly organized units to achieve a first contract, union organizers’ lack of access to employees, and generally insufficient remedies available to the NLRB. The report also cited the United States’s lack of protection for economic strikers.

In the same report, the observations submitted by the International Confederation of Free Trade Unions (ICFTU) were even more critical. Too lengthy to summarize adequately, the ICFTU’s indictment contained at least two dozen specific shortcomings of U.S. labor law at each stage of the collective bargaining process (ILO 2000, pp. 160–163). The ICFTU noted the harsh treatment and insufficient remedies available to union activists; employers’ union avoidance strategies, such as the frequent use of antiunion consultants, the failure of new units to get first contracts, and the restrictions on certain types of concerted activities. The ICFTU was also critical of U.S. labor policy in the public sector,

noting the severe limits on bargaining subjects in certain jurisdictions and broad restrictions on striking.

Yet another source of evidence of the gap between ILO standards and U.S. labor policy is the findings of the ILO Committee on Freedom of Association (CFA). All members of the ILO have a responsibility to respect the freedom of association and right to bargain collectively (Gernigon, Otero, and Guido 2000; Hodges-Aeberhard 1989; International Labour Review [ILR] 1949). In 1950, the ILO set up a special tripartite committee to monitor compliance. Unlike other ILO committees, complaints can be lodged with the CFA even if a country has not ratified the corresponding conventions (Freeman 1999). Since its establishment, the CFA has issued 32 decisions involving the United States.

Focusing only on cases since reaffiliation, the CFA has found U.S. labor policy at variance with ILO standards in number of cases.¹⁴ In Case 1557 (1993), the CFA requested the U.S. government to “. . . draw the attention of the authorities concerned, and in particular in those jurisdictions where public servants are totally or substantially deprived of collective bargaining rights, to the principle that all public services workers other than those engaged in the administration of the State should enjoy such rights . . .” In Case 1543 (1991), the CFA stated that “. . . recourse to the use of labour drawn from outside the undertaking to replace strikers for an indeterminate period entails a risk of derogation from the right to strike, which may affect the free exercise of trade union rights.” In Case 1523 (1992), the CFA “requests the Government to guarantee access of trade union representatives to the workplace, with due respect to 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.” In Case 1467 (1989), the CFA indicated its “regret” over the “excessive length of appeals procedures” for unfair labor practices. Case 1467 also includes: “the CFA points out with concern that this is the fourth recent complaint lodged—by different complainants—against the United States on the grounds of antiunion tactics and unfair labor practices . . .” In Case 1437 (1988), the CFA wrote that “subcontracting accompanied by the dismissal of union leaders can constitute a violation of principle that no one should be prejudiced in his employment on the grounds of union membership and activities.” In Case 1074 (1982), the CFA stated that it was “of the view that the application of excessively severe sanctions (i.e., the ter-

mination of air traffic controllers) against public servants on account of their participation in a strike cannot be conducive to the development of harmonious industrial relations.”¹⁵

Finally, we offer the 2000 Human Rights Watch (HRW) report *Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards* as evidence of the shortcomings in U.S. labor policy (HRW 2000). The HRW report contains 15 general findings of variance between U.S. and international labor standards, and several more concerning the rights of immigrant and agricultural workers. Most of the charges against U.S. labor policy concern limits on the freedom of association resulting from inadequate protections for union activists during the organizing process—specifically, HRW notes, discrimination against union supporters, a lack of access to employees by union organizers, and imbalances in communication power between employers and unions.

The Federal–State Issue

Finally, we take issue with the assertion that the United States's federal structure is a bar to ratification of Conventions 87 and 98. First, we note that there are two (somewhat contradictory) streams to this argument. Some argue that the ratification of Conventions 87 and/or 98 would (or could) override certain aspects of current federal labor law and the prerogatives of the states; others argue that ratification would not be self-executing and, therefore, the United States would be out of compliance with conventions unless the federal government and many states changed their current statutes (Bradley 1998; Potter 1984; U.S. Senate 1985).

Starting with the latter, we recognize that the United States could be criticized for not being in compliance with ratified conventions based on the actions (or inactions) of the states—in fact, this situation has arisen elsewhere. For example, there have been a number of cases brought against Canada for the actions of its provinces (see, for example, CFA Case 327 [2002] and CFA Case 324 [2001]). However, typically, the Canadian government has forwarded the CFA's charges to the provinces for their response. We would expect that the U.S. Department of Labor could do the same for the states.

If the ratification of either Conventions 87 or 98 were self-executing, the United States could still be found out of compliance if the federal government or the states did not take effective action to see that the provisions of the conventions were, in fact, put into practice. Potter (1984, p. 81, note 258) notes that Mexico continued to be criticized by the ILO for not truly carrying out the requirements of Conventions 87 and 98 after ratification. But a larger fear seems to be that Conventions 87 and 98 would effectively override or void contrary federal or state statutes in the eyes of the courts. We respond by citing the comments of the Secretary of Labor in recommending to President Truman in 1949 that he seek ratification of Convention 87 by the Senate, and to the comments of the Solicitor of Labor in a briefing paper written in 1980.¹⁶

In 1949 (U.S. Senate 1949, p. 9) the Secretary of Labor wrote:

It is our view that the subject matter of this convention [No. 87] is appropriate under our system for federal action . . .

It is our view that this convention should be ratified by the United States, and we recommend that the President of United States transmit this convention to the Senate of the United States with a request for the advice and consent of the Senate to its ratification. It is also our view that no new Federal legislation or revision of existing Federal law is necessary to effect compliance by the United States with the terms of this convention.

In 1980, the Solicitor of Labor (U.S. Department of Labor 1980, p. 1) wrote:

Although it is our conclusion that Convention 87 may unequivocally be ratified by the United States without entailing any undertaking to enact legislation or to modify existing law, we recognize that some parties may still anticipate that ratification would unwillingly nullify domestic legislation through creative judicial construction.

The solicitor went on to suggest two strategies that “would absolutely preclude such a result”:

First, the Convention could be ratified with a declaration that it is non-self-executing. Second, the Convention could be ratified with an understanding that ‘all necessary and appropriate measures’ as provided by Article 11 means, in the context of the United States, that the obligations contained in the Convention have been acceded to only to the extent of the Commerce Power.

Although Convention 98 was never subjected to such analysis by the federal government, we believe that such provisos could also be used to avoid upsetting existing statutes.

It has been noted (Potter 1984, pp. 78–82) that it is the ILO and not a member state that ultimately determines whether a nation has met its obligation. The Committee of Experts, Committee on the Application of Conventions and Recommendations, and the CFA could all continue to find fault with the United States's implementation of Conventions 87 and 98. However, as mentioned earlier, Conventions 87 and 98 are unusual in that member states are subject to criticism by the CFA whether they have ratified the conventions or not. Hence, the United States cannot (and has not) escaped international rebuke by simply refusing to ratify the conventions.

The current powers of the CFA do not, however, mean that ratification is superfluous. Article 19 (5) of the ILO Constitution requires member states to seek ratification of approved conventions.¹⁷ Conformance is not a substitute for ratification. This remains true even after adoption of the *Declaration on Fundamental Principles and Rights at Work*.

CONCLUSION

In this chapter we have presented and critiqued U.S. policy toward the ratification of ILO Conventions 87 and 98. We believe that the principal reasons for not ratifying these conventions are contradicted by a careful analysis of the documentary evidence and historical record.

The current political climate would seem to preclude adoption of the ILO conventions on freedom of association and collective bargaining. However, were the balance of power to shift in the White House or the Senate, we believe that these conventions should be considered by the President's Committee on the ILO and TAPILS, and that hearings might be held by the U.S. Senate Committee on Health, Education, Labor, and Pensions. Public consideration of Conventions 87 and 98 would be both a way into clarifying labor policy in the United States and might also lend support to key U.S. foreign policy goals.

As Gross (1994) writes, "The recrafting of a national labor policy must begin with a precise and certain statement of its purposes and

objectives. Fundamental questions must be confronted and answered.” While clearly stated in the preamble of the Wagner Act, U.S. labor policy was obfuscated by the Taft-Hartley Amendments and subsequent NLRB and court decisions. Is it U.S. policy to encourage collective bargaining or merely to provide a means for employees to vote for or against union representation (Gross 1985)?

As well, we accept George Schultz’s conclusion that the lack of ratification by the United States erodes its moral authority abroad. This is particularly important if the United States wishes—for humanitarian or purely pragmatic economic reasons—to urge the enforcement of labor standards in the developing world.

In its second report to the Secretary and the President, in December 2002, the State department’s Advisory Commission on Labor Diplomacy argued strongly that the promotion of internationally recognized core labor rights supports current U.S. foreign policy goals:

Trade unions exist in varying degrees in Muslim countries and have a role to play in the struggle against terrorism and for democracy. However, there is often little protection in law or practice for trade unionists. The Middle East stands out as the region where the right to organize trade unions is least likely to be protected by law. Where unions do exist, their independence is often threatened by authoritarian governments on the one hand and Islamist political factions on the other. A policy that aims to cultivate union leadership at the enterprise and industry levels represents a promising approach to inculcate modern economic incentives and democratic political values among workers in Muslim countries. (U.S. Department of State 2001)

Among its suggestions, the committee includes revisiting the ratification of ILO core labor standards:

The United States has one of the worst records of ratification of ILO conventions of any member state of the ILO, especially of the core labor conventions. This failure to ratify the core conventions undermines U.S. efforts to lead the international campaign to eliminate child labor, forced labor, and discrimination. (U.S. Department of State 2001)

As was the case during the cold war, the United States could find the ratification of ILO conventions expedient in advancing its foreign policy objectives. The ratification of either Convention 87 or 98 would

promote the type of moral suasion envisioned by the advisory commission.

Notes

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1. In comparison, the number of conventions ratified by the other “Group of Eight” large industrialized nations is: Canada, 30; France, 116; Germany, 77; Italy, 109; Japan, 46; Russia, 58; and the United Kingdom, 85.
2. The eight core conventions concern fundamental principles of human rights at work: the elimination of forced and compulsory labor, the elimination of employment discrimination, the abolition of child labor, and the freedom of association and right to bargain collectively (ILO 1998). Two conventions correspond to each of these areas. The United States has ratified only Conventions 105 and 182 concerning the abolition of forced labor and the abolition of the worst forms of child labor, respectively—with the former ratified 34 years after its adoption (ILOLEX 2002).
3. They are Armenia, Bahrain, Burma, Cambodia, Cape Verde, Eritrea, Gambia, Georgia, Iran, Kiribati, Laos, Mongolia, Namibia, Nepal, Oman, Qatar, St. Kitts, Sao Tome, Sudan, Thailand, Turkmenistan, United Arab Emirates, and Uzbekistan.
4. Convention 144 reaffirms the ILO’s tripartite structure by assuring that labor and employer associations, along with governments, may respond to ILO requests for information; Convention 160 pledges support for the ILO’s statistics gathering activities; and Convention 150 requires nations to support labor bureaus for the purpose of enforcing national labor standards.
5. The full texts of conventions are available on-line at <http://www.ilo.org/ilolex/english/convdisp1.htm>. The critical section of Convention 87 (Article 2) states: “Workers and employers, without distinction whatsoever, shall have the right to establish, and, subject only to the rules of the organization concerned, to join organizations of their own choosing without authorization.” The critical section of Convention 98 (Article 4) states: “Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers’ organizations and workers’ organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.”

6. See ILO Constitution, Annex, Article III at <http://www.ilo.org/public/english/about/iloconst.htm#annex>.
7. Principally, the National Labor Relations Act, Railway Labor Act, and Civil Service Reform Act.
8. In 1920, the Court overturned a lower court's ruling that a federal statute protecting migratory birds (which had been passed to fulfill treaty obligations with the United Kingdom) violated the Tenth Amendment (which addresses powers reserved to the states). In *Missouri v. Holland* (252 U.S. 416, 1920), the Supreme Court held that the federal government has the authority to pass all laws "necessary and proper" for carrying out its treaty-making prerogatives. Therefore, some argued that, based on *Missouri v. Holland*, the federal government's ability to ratify ILO conventions is not "subject to limitations," the necessary trigger for the federal-state proviso to take effect (Chamberlain 1920; Tayler 1935). Adding to the fears of those who thought that the UN would put the country on the road to world government were the Supreme Court's decision in *Oyama v. California* (332 U.S. 633, 1948) and the subsequent adoption of the UN Declaration of Human Rights. In *Oyama*, the Supreme Court overturned a California law (arising out of anti-Japanese hysteria) that prohibited land ownership by aliens. While the Court relied primarily on the Fourteenth Amendment for its decision, four justices also cited Articles 55 and 56 of the UN charter in voiding the law. Soon after *Oyama*, the UN Declaration on Human Rights was adopted causing fear among conservatives that social and economic policies of the UN would, among other things, overturn segregation laws and interfere with the property rights of business (Tananbaum 1988, p. 6).
9. Bricker portrayed the ILO as a tool of socialism largely at odds with the values of the American people. Such attitudes are still heard in Congress, although other elected representatives have sometimes seen the ILO as a bulwark of "free enterprise" (Hatch in U.S. Senate 1985, p. 12). McIntyre and Ramstad (2003) present an analysis of the ILO as embodying the commitments of Institutional Labor Economics. Official U.S. policy has generally been supportive of the work of the ILO, at least since reentry at the beginning of the 1980s. This support has not extended to U.S. ratification of conventions, our focus here.
10. Unfortunately, the business of the President's Committee is difficult to examine, since it typically meets behind closed doors in the interest of national security and to protect the confidentiality of U.S. treaty negotiating positions.
11. Potter argued that Convention 87 would subordinate employee rights to those of the union; would broaden the classes of workers covered by labor law; would revoke portions of the Landrum-Griffin Act, particularly those prohibiting persons with criminal records from holding union office; would repeal employer free speech provisions of the NLRA; would limit restrictions on the right to strike and secondary boycotts; would prohibit restrictions on union participation by members of subversive organizations; would repeal prohibitions on hot cargo agreements; would restrict the withdrawal of exclusive representation; would revoke limitations on the use of union monies for political purposes; and would remove limitations on the disaffiliation of local unions from national bodies and the dis-

- solution of multiemployer units. According to Potter, Convention 98 would have many of the same effects, but also would limit discretion in instituting wage/price controls; would prohibit legislation restricting the scope of bargaining and distinctions between mandatory and permissive subjects; would provide union officials with special job protections; would modify the burden of proof and remedies under NLRA Section 10(c) [which concerns NLRB remedies]; and would put the United States at the mercy of evolving ILO standards.
12. The USCIB is the official U.S. employer representative to the ILO. It took over this role from the U.S. Chamber of Commerce in 1980.
 13. The Railway Labor Act was passed in 1926 and the National Labor Relations Act in 1935. Elements of both acts can be found in the Erdman Act, which was passed in 1898 but subsequently found unconstitutional by the U.S. Supreme Court (Millis and Montgomery 1945, pp. 731–732).
 14. CFA cases can be found on-line at <http://www.ilo.org/ilolex/english/caseframeE.htm>.
 15. According to interviews with ILO officials in Geneva, CFA filings from the United States tailed off in the nineties because the AFL-CIO was willing to give the Clinton administration the benefit of the doubt.
 16. The secretary was speaking on behalf of the departments of labor, state, justice, interior, navy, and the Federal Security Agency, all of which reviewed Convention 87.
 17. The ILO Constitution is available on-line at <http://www.ilo.org/public/english/about/iloconst.htm#a19p2>.

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Part 5

Where Do We Go From Here? Strategies for Advancing Workers' Rights

Justice on the Job
Perspectives on the Erosion
of Collective Bargaining
in the United States

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