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Human Rights in Labor and Employment Relations: International and Domestic Perspectives

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Abstract

[Excerpt] This volume is intended to collect the best current scholarship in the new and growing field of labor rights and human rights. We hope it will serve as a resource for researchers and practitioners as well as for teachers and students in university-level labor and human rights courses.

The animating idea for the volume is the proposition that workers' rights are human rights. But we recognize that this must be more than a slogan. Promoting labor rights as human rights requires drawing on theoretical work in labor studies and in human rights scholarship and developing closely reasoned arguments based on what is happening in the real world. Citing labor clauses in the Universal Declaration of Human Rights is one thing; relating them to the real world where workers seek to exercise their rights is something else. The contributors to this volume provide a firm theoretical foundation grounded in the reality of labor activism and advocacy in a market-driven global economy.

Keywords

human rights, labor rights, labor movement, union, organization, public policy

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Cover photo: Children making firecrackers. Sivakasi, Tamil Nadu, India. Photographer: D.Brown. ©ILO

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CHAPTER 1

Introduction

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This volume is intended to collect the best current scholarship in the new and growing field of labor rights and human rights. We hope it will serve as a resource for researchers and practitioners as well as for teachers and students in university-level labor and human rights courses.

The animating idea for the volume is the proposition that workers' rights are human rights. But we recognize that this must be more than a slogan. Promoting labor rights as human rights requires drawing on theoretical work in labor studies and in human rights scholarship and developing closely reasoned arguments based on what is happening in the real world. Citing labor clauses in the Universal Declaration of Human Rights is one thing; relating them to the real world where workers seek to exercise their rights is something else. The contributors to this volume provide a firm theoretical foundation grounded in the reality of labor activism and advocacy in a market-driven global economy.

Separate Tracks

For most of the half-century after the Second World War, labor rights and labor standards were strictly a matter of national law and practice. Small groups of specialists in each country knew of the International Labour Organization and the dozens of "conventions" adopted since the ILO's founding in 1919. ILO conventions are meant to fashion common international labor standards around the world. ILO norms are nonbinding unless and until they are ratified and incorporated into national law, but they set out a marker of international consensus on workers' rights. In many countries, however—and especially in the United States—ILO standards traditionally have had little weight or relevance.

In similar fashion, labor advocates have rarely, if ever, looked to international human rights norms in their promotion of workers' rights. The "international bill of rights," consisting of the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and

Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), contains many labor-related clauses. They cover freedom of association, organizing, and bargaining; prohibitions on forced labor and child labor; nondiscrimination and health and safety in the workplace; decent wages and benefits; and other labor subjects. But trade unionists and their allies did not make the connection between international labor standards and their struggles in national settings. Human rights were disconnected from labor concerns and labor discourse.

During this same period, from the end of World War II to the 1990s, the human rights community hardly ever took workers' rights into its field of vision and activism. Human rights activists focused—with good reason—on outrages like genocide, torture, arbitrary arrest and imprisonment, and death squad killings, often perpetrated by U.S.-supported military dictatorships. Human rights supporters saw labor rights and labor standards lying more in the economic arena, not that of human rights. The long list of labor-related clauses in basic human rights instruments just did not translate into action by human rights promoters.

Two Paths Converge

In the 1990s the separate paths of labor rights and human rights advocacy began to converge. Each group came to see that its traditional boundaries were too narrow in a new context of political, social, and economic upheaval captured by the term "globalization." Trade unions looking to national labor law systems for organizing and bargaining gains found themselves undercut by a race-to-the-bottom global economy. Human rights advocates saw that their traditional agenda did not adequately address the consequences of economic globalization and the suffering it unleashed on victims of the "destruction" side of capitalism's creative destruction. Of course, globalization had winners as it rolled on, but millions of "losers" faced human rights abuses: child workers, trafficked workers, discriminated-against workers, workers forced into labor at the point of a gun, workers fired, jailed, and killed for trying to form unions, and many more.

One sign of a new connection between labor rights and human rights appeared with the introduction of labor clauses in trade agreements like the North American Free Trade Agreement (NAFTA) labor side accord and other U.S. pacts with trading partners. Although lacking strong enforcement mechanisms, these clauses and their reliance on ILO and international human rights standards created opportunities for labor and human rights advocates to work together filing complaints and backing them up with new forms of cross-border solidarity.

In one notable case filed under NAFTA's labor agreement in 1997, Human Rights Watch and allied labor and women's rights groups in Mexico challenged the widespread practice of pregnancy testing by U.S.-based multinational firms in the *maquiladora* region along the U.S.–Mexico border. Nothing in the NAFTA agreement empowered its trinational commission to order and enforce a halt to the practice, but a verdict in the court of public opinion, generated by the complaint and the joint advocacy campaign by American and Mexican labor–NGO alliances, put a stop to the practice in many of the factories supplying U.S. companies.

Another signal of a labor–human rights convergence came with other initiatives by Human Rights Watch (HRW). Beginning in 2000, HRW produced book-length reports on violations of workers' rights in the United States as well as in other countries. The U.S. reports covered household domestic workers, child labor in agriculture, meatpacking industry abuses, Walmart's interference with workers' freedom of association, and workers victimized across the country in many industries when they tried to exercise organizing and bargaining rights. Abroad, HRW labor rights reports addressed child labor in Ecuador, women workers in Guatemala, freedom of association in El Salvador, forced labor in Burma, migrant construction workers in the Middle East, migrant domestic workers in Indonesia and Malaysia, and more.

Other human rights groups have similarly taken up labor's cause. Amnesty International USA created a business and human rights division with extensive focus on workers' rights. Its parent organization, London-based Amnesty International, created a workers' rights program and engaged an experienced British trade unionist to direct it. Oxfam International broadened its development agenda to include labor rights and standards, and its Oxfam America group created a workers' rights program to take up these causes inside the United States. In 2003, Oxfam launched a "national workers' rights campaign" on conditions in the U.S. agricultural sector. In 2004, the group published a major report titled *Like Machines in the Fields: Workers Without Rights in American Agriculture* (Oxfam America 2004).

Labor's Turn to Human Rights

On the labor side, the AFL-CIO has launched a broad-based "Voice@Work" project designed to help U.S. workers regain the basic human right to form unions to improve their lives. Voice@Work stresses international human rights in workers' organizing campaigns around the country. In 2005, for example, the labor federation held more than 100 demonstrations in cities throughout the United States

and enlisted signatures from 11 Nobel Peace Prize winners, including the Dalai Lama, Lech Walesa, Jimmy Carter, and Archbishop Desmond Tutu, supporting workers' human rights in full-page advertisements in national newspapers.

In 2004, trade unions and allied labor support groups created a new nongovernmental organization (NGO) called American Rights at Work (ARAW). ARAW launched an ambitious program to make human rights the centerpiece of a new civil society movement for U.S. workers' organizing and bargaining rights. ARAW's 20-member board of directors includes prominent civil rights leaders, former elected officials, environmentalists, religious leaders, business leaders, writers, scholars, an actor, and one labor leader (AFL-CIO president John Sweeney). The convergence of these movements is aptly illustrated in the figure of the group's international advisor, Mary Robinson, who is the former United Nations High Commissioner for Human Rights.

Many organizations are also turning to international human rights arguments in defense of immigrant workers in the United States. For example, the National Employment Law Project (NELP) includes an immigrant worker project under its rubric "workers' rights are human rights—advancing the human rights of immigrant workers in the United States." NELP has been a leader in filing complaints to the Inter-American Commission and Inter-American Court of Human Rights on rights violations among immigrant workers in the United States.

Working with Mexican colleagues, NELP sought an Inter-American Court Advisory Opinion on U.S. treatment of immigrant workers. The petition was prompted by the Supreme Court's 2002 *Hoffman Plastic* decision stripping undocumented workers illegally fired for union organizing from access to back-pay remedies (*Hoffman* 2002). The Inter-American Court issued the opinion that undocumented workers are entitled to the same labor rights, including wages owed, protection from discrimination, protection for health and safety on the job, and back pay, as are citizens and those working lawfully in a country.

Reaching out to the religious community, Interfaith Worker Justice (IWJ) is a national coalition of leaders of all faiths supporting workers' rights under religious principles. IWJ places divinity students, rabbinical students, seminarians, novices, and others studying for careers in religious service in union-organizing internships. Through a national network of local religious coalitions, IWJ also sponsors projects for immigrant workers, poultry workers, home-care workers, and other low-wage employees. IWJ gives special help when religious-based employers, such as hospitals and schools, violate workers' organizing and bargaining rights.

A new student movement that began against sweatshops in overseas factories has adopted a human rights and labor rights approach to problems of workers in their own campuses and communities, often citing human rights as a central theme. Students at many universities held rallies, hunger strikes, and occupations of administration offices to support union organizing and "living wage" and other campaigns among blue-collar workers, clerical and technical employees, and other sectors of the university workforce.

These initiatives suggest that the human rights and labor communities no longer run on separate tracks. They have joined in a common mission with enhanced traction to advance workers' rights.

Using International Mechanisms

The U.S. labor movement's new interest in international human rights law is reflected in its increasing use of ILO complaints and international human rights mechanisms. In 2002, the AFL-CIO filed a complaint with the ILO Committee on Freedom of Association (CFA) challenging the Supreme Court's *Hoffman Plastic* decision. In *Hoffman,* the Supreme Court had held, in a 5–4 decision, that an undocumented worker, because of his immigration status, was not entitled to back pay for lost wages after he was illegally fired for union organizing. The five-justice majority said that enforcing immigration law takes precedence over enforcing labor law.

The union federations' ILO complaint argued that eliminating the back-pay remedy for undocumented workers annuls protection of workers' right to organize, contrary to the requirement in Convention 87 to provide adequate protection against acts of anti-union discrimination.

The AFL-CIO's complaint was successful: in November 2003, the CFA announced that the *Hoffman* doctrine violates international legal obligations to protect workers' organizing rights. The committee concluded that remedial measures left to the National Labor Relations Board (NLRB) in cases of illegal dismissals of undocumented workers are inadequate to ensure effective protection against acts of anti-union discrimination. The CFA recommended congressional action to bring U.S. law into conformity with freedom of association principles, with the aim of ensuring effective protection for all workers against acts of anti-union discrimination in the wake of the *Hoffman* decision.

Supervisory Exclusion

In October 2006, the AFL-CIO filed another CFA complaint, this time against the NLRB's decision in the so-called Oakwood Trilogy (*Croft Metal, Inc.* 2006; *Golden Crest Healthcare Center* 2006; *Oakwood*

Healthcare, Inc. 2006). In *Oakwood*, the NLRB announced an expanded interpretation of the definition of "supervisor" under the National Labor Relations Act. Under the new ruling, employers can classify as "supervisors" employees with incidental oversight over co-workers even when such oversight is far short of genuine managerial or supervisory authority.

In its complaint to the ILO, the AFL-CIO relied on the ILO conventions, arguing that the NLRB's decision contravened No. 87's affirmation that "workers and employers, without distinction whatsoever, shall have the right to establish and . . . to join organizations of their own choosing without previous authorization." The AFL-CIO further argued that the NLRB's Oakwood Trilogy strips employees in the new "supervisor" status of protection of collective bargaining rights in violation of Convention No. 98.

In its March 2008 decision, the CFA found that the criteria for supervisory status laid out in the Oakwood Trilogy give rise to an overly wide definition of supervisory staff that would go beyond freedom of association principles, and it urged the U.S. government to take all necessary steps to ensure that exclusions are limited to workers genuinely representing the interests of employers.

TSA Airport Screeners

In November 2006, the CFA issued a decision in a complaint filed by the AFL-CIO and the American Federation of Government Employees (AFGE) against the Bush administration's denial of collective bargaining rights to Transportation Security Administration (TSA) airport screeners (International Labour Organization 2006). The administration argued that events of September 11, 2001, and concomitant security concerns made it necessary to strip TSA employees of trade union rights accorded to other federal employees.

Again, the CFA found the United States failing to meet freedom of association standards. The CFA said that persons who are clearly not making national policy that may affect security, but only exercising specific tasks within clearly defined parameters, should be able to exercise organizing and bargaining rights.

North Carolina Public Employees

In 2006, the United Electrical, Radio and Machine Workers of America (UE) filed a complaint with the CFA. The complaint charged that North Carolina's ban on public worker bargaining, and the failure of the United States to take steps to protect workers' bargaining rights, violated ILO's principles that "all workers, without distinction should enjoy organizing and bargaining rights, and that only public employees

who are high-level policymakers, not rank-and-file workers, should be excluded from the right to bargain."

In April 2007, the CFA ruled in the union's favor and urged the U.S. government to promote the establishment of a collective bargaining framework in the public sector in North Carolina to bring the state legislation into conformity with the freedom of association principles (International Labour Organization 2007).

Employers Engaging the Human Rights Argument

The employer community recognizes the force (and, for some, the menace) of the labor rights as human rights argument. The National Right-to-Work Committee (NRTWC) sees the potential for ILO rulings to advance U.S. labor's cause: in February 2008, the NRTWC issued a briefing paper titled *Organized Labor's International Law Project? Transforming Workplace Rights into Human Rights* (Muggeridge 2008). The paper noted that trade union advocates have effectively argued that labor rights ought to be considered not as mere elements of economic policy, but as international human rights proclaimed and monitored by international bodies. It went on to warn that domestic courts may allow themselves to be influenced by the rulings of international tribunals and concluded that the United States should consider withdrawing from ILO membership because of the unions' use of ILO complaints.

In March 2009, the U.S. Chamber of Commerce and the U.S. Council for International Business issued public statements that Congress should reject the proposed Employee Free Choice Act because it violates ILO Conventions 87 and 98. This signaled a reversal of their long-standing position that these ILO standards do not apply to the United States and that the United States cannot ratify them.

Some Critical Voices

We are mindful of the fact that some analysts sympathetic to workers and trade unions have expressed skepticism about promoting labor rights as human rights as a strategy for advancing labor's cause. Some suggest that a focus on "rights" plays into the hands of anti-labor forces who assert, for example, the right to refrain from union membership, or the right to secret ballot elections, or employers' right to manage the business. Instead of arguing that labor rights are human rights, these friendly critics call for a focus on labor solidarity and industrial democracy.

These are healthy cautions from serious, committed scholars and defenders of trade unions and workers' rights. They contribute to a needed debate about the role and effectiveness of human rights activism and human rights arguments in support of workers' rights. But they do

not convince the editors of this volume that a human rights argument should be jettisoned. The fact that anti-labor forces appropriate "rights talk" does not mean we should leave the field. This is contested terrain, and we should not yield it to anti-labor forces. We should not have to choose between human rights and solidarity as the touchstone of effective advocacy on behalf of workers. We can call for both, insisting that they go hand in hand.

Workers are empowered in campaigns when they are themselves convinced—and are convincing the public—that they are vindicating their fundamental human rights, not just seeking a wage increase or more job benefits. The larger society is more responsive to the notion of trade union organizing as an exercise of human rights rather than economic strength. The human rights argument pries open more space for workers' organizing and bargaining by framing them as a human rights mission, not just as a test of economic power between institutional adversaries.

The fact that international human rights arguments strain for a place in American political discourse is not a reason to shy away from their use. It's a reason to bring human rights into the discourse to connect with a natural sense of "rights" that all people have. In this spirit, we conceived and bring to press this volume.

The authors of the essays here constitute a diverse and accomplished group of human rights activists, practitioners, and scholars, all of whom have published extensively. James Gross sets the tone for the volume by emphasizing that the growing movement for promoting and protecting human rights at workplaces here and around the world posits a new set of values and approaches that challenge every orthodoxy in the employment relations field, every practice and rule rooted in that orthodoxy, and even the underlying premises and intellectual foundations of contemporary labor and employment systems. More specifically, his chapter discusses how the human rights movement challenges and is challenged by traditional conceptions of the sources of worker and employer rights, the philosophy and practice of the unregulated market, the long-standing opposition to the idea of economic rights, the wide-ranging consequences of cultural and moral relativism, and doctrines of national sovereignty—and even the still dominant industrial pluralism theory attributed to "Wisconsin School" pioneer John R. Commons. Finally, Gross describes the gap between U.S. labor laws and international human rights law and standards and explores the implications of these human rights challenges for labor and employment research.

Jeff Hilgert challenges industrial relations and labor economics to articulate a framework of workers' health and safety as a human rights

concern. His chapter aims to establish a new foundation for industrial relations scholarship and to build a human rights foundation for labor policy. He uses workers' health and safety to illustrate the contrasts between institutional labor economics and human rights and shows that the human rights worldview offers a fundamentally different perspective than institutional economics particularly in regard to policy evaluation, the role of government and the analysis of government policy, and understanding human rights in a social context. Hilgert concludes that the human rights worldview poses a more significant challenge to the orthodoxy of neoclassical economics than does any other market-based economic philosophy, including the institutional labor economics school. He also finds that the history of how institutional economics has viewed worker health and safety disqualifies institutional labor economists from claiming the banner of universal human rights advocacy. That fact further illustrates, according to Hilgert, the need for a distinct human rights analysis in industrial relations scholarship that, in his words, would catch up with the reality of the suffering of many millions of workers.

Burns Weston sees child labor as not only a human rights problem but as a human rights problem that is multidisciplinary, multifaceted, and multisectoral. His chapter is premised on five interrelated propositions: that child labor is exploitive, hazardous, or otherwise contrary to children's best interest and constitutes a "blight on human civility"; that child labor begs to be abolished; that child labor manifests itself in complex ways demanding multidimensional approaches to its eradication; that no form or level of social organization can claim "business as usual"; and that change requires an ongoing commitment to the application of human rights law and policy, which includes the right of children to influence their own lives. Consequently, Weston advocates a rights-based approach that responds to skeptics' arguments, contests the claimed absence of a theory of human rights, and sets forth a nuts-and-bolts strategy that includes legal and "extra-legal" means to abolish child labor. Weston contends that "reorienting one's worldview," while essential, is not sufficient to bring about broad-based change without the practical measures he proposes.

Tonia Novitz addresses workers' freedom of association, particularly the conflict between collective action and individual choice. She focuses on two issues: whether the freedom of association encompasses not only the positive entitlement to associate with others but also the negative entitlement to refuse to do so and whether freedom of association extends beyond the ability of an individual to form and join an organization without state interference to the ability to have an organization engage in collective action with state support and protection. Novitz discusses these

issues in the context of international law (including U.N. covenants, ILO conventions, and the decisions of the ILO's Committee on Freedom of Association) and the legal systems of Canada, the United Kingdom, and the United States. She finds that the laws of those countries do not comply wholly with ILO standards and that in the U.S. and Canada, this noncompliance has prevented ratification of key instruments relative to the freedom of association. Her essay has important implications for determining the most effective ways to gain protection for participation by workers' organizations in collective bargaining.

Rebecca Smith's chapter emphasizes the urgent and compelling need to protect the rights of migrant workers and forced laborers, so many of whom are the victims of wage exploitation, discrimination, and retaliation. She points out that models exist—in treaties, in judicial decisions, in the approaches of some governments, and in migrant communities themselves—that policy makers in the U.S. and around the world could find useful in dealing with these human rights violations. Smith describes a protection scheme that would redress the imbalance between migrant workers (documented and undocumented) and nationals of a country, including labor rights differences, and recommends aggressive measures to identify and protect victims of trafficking. Her conclusions are based on a thorough analysis of the decisions of the Inter-American Court of Human Rights, the ILO Committee on Freedom of Association, the European Court of Human Rights, and various national courts.

Edward Potter and Marika McCauley Sine reject the traditional business view that upholding internationally recognized human rights based on documents and treaties is not part of business activity. They maintain that business cannot thrive adhering to that position in a global economy. According to Potter and McCauley Sine, business cannot ignore its unique role concerning human rights despite the fact that primary accountability remains with government to protect its citizens and to enforce the law. The authors provide a historical perspective on the evolution of how human rights began to find its way into business through self-regulation in the form of codes of conduct that reflect ILO standards. Despite this progress, the authors lament, there is no clear path or pragmatic set of standards articulating the human rights obligations of employers. They also note that human rights topics are still absent from most boardrooms.

Although most discussions of employment discrimination law and policy treat the issue as one of civil rights or work law, Maria Ontiveros takes a different approach, using a human rights perspective to assess the strengths and weaknesses of discrimination law and policy. Her chapter begins with the reasons why employment discrimination is correctly

understood as a violation of human rights and then discusses the ILO's principles regarding employment discrimination and its implementation of those principles. Ontiveros also discusses specific topics, namely, racial discrimination and affirmative action; discrimination based on sex, gender, and sexuality; religious discrimination; and discrimination based on national origin, citizenship, and migrant status. Her chapter concludes with a comparative and critical evaluation of U.S. employment discrimination law under human rights principles. Using human rights as the standard of judgment, Ontiveros finds that U.S. law "falls short of providing full protection of the human rights of American workers."

Susanne Bruyère and Barbara Murray explain the transition in focus when considering workers with disabilities from impairment and rehabilitation to the long-overlooked rights of those workers to participate at the workplace and in the world economy. It is a shift from a predominantly medical or welfare approach to a social rights–based model of disability. They emphasize that although the rights of workers with disabilities were ignored even in the International Bill of Rights (the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights), change has come with the adoption of the U.N. Convention on the Rights of Persons with Disabilities (CRPD). In light of this recent human rights development, the authors review and discuss the status of disability laws in the U.S. and the European Union. They underscore the need for change in overarching philosophy to understand that employment is a key aspect of disability rights policy and empowerment. In addition to a discussion of specific changes that need to be made, the authors provide a valuable discussion of the implications of their work for labor and employment relations professionals and for further research.

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CHAPTER 2

Takin' It to the Man: Human Rights at the American Workplace

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A New Perspective

Until recently, the international human rights movement and organizations, human rights scholars, and even labor organizations and advocates have given little attention to workers' rights as human rights. As I have written elsewhere:

> Historically human rights organizations have concentrated on the most egregious kinds of human rights abuses such as torture, death squads, and detention without trial. This lack of attention has contributed to workers being seen as expendable in worldwide economic development and their needs and concerns not being represented at conferences on the world economy dominated by bankers, finance ministers, and multinational corporations. As one United Nations document put it, "Despite the rhetoric, violations of civil and political rights continue to be treated as though they were far more serious, and more patently intolerable, than massive and direct denials of economic, social, and cultural rights" (Gross 2003:3).

This is particularly true in the United States, where labor and employment law practitioners and jurists rarely even refer to human rights instruments and standards, let alone utilize them. Those instruments and standards exist on nearly all aspects of work, including nondiscrimination; freedom of association; collective bargaining; safety and health; wages, hours, and working conditions; migrant labor; forced labor; child labor; employment security; social security; and training and technical assistance.

The current growing concern for the promotion and protection of human rights in labor and employment systems in the United States and around the world promises a new vision, exciting in its potential for

challenging not only every orthodoxy in the labor–employment relations field and every practice and rule rooted in that orthodoxy but even the underlying premises and intellectual foundations of contemporary systems. This does not mean that the traditional concerns of labor–employment systems would become unimportant, but that those concerns—collective bargaining, conflict resolution, personnel policies, labor market institutions and their operation, and government regulation—would be redefined by reconsidering those old labor problems from a new human rights perspective.

That new perspective, moreover, would constitute a standard of judgment and a set of values different from and, in many crucial ways, contrary to the commonly accepted standards and values that give dominance to efficiency, competitiveness, profitability, stability, economic development, management rights, property rights, and cost–benefit analysis. Conformity to the human rights standard would require fundamental changes in labor employment systems far different than the changes proposed and anticipated on the basis of long-dominant standards and values (Kochan 1998).

Subjecting every rule and premise to a human rights test will also demonstrate, more clearly than before, the central roles and influence of values and moral choices and conceptions of rights and justice in the determination of the worth of human life, workers' rights to participate in the decisions that affect their lives at the workplaces and beyond, the sources of worker and employer rights, and the basis for distributing workplace benefits and burdens. These are deliberate and conscious choices by legislators, government agencies, judges, labor arbitrators, negotiators of collective bargaining contracts, human resources departments, employers (unionized or not), and other decision makers in these labor–employment systems—they are not choices dictated by some unalterable economic laws. Labor–employment systems are not deterministic.

The Universal Declaration of Human Rights

The Universal Declaration of Human Rights, or UDHR (Universal Declaration of Human Rights 1948), although not a binding treaty, has been the foundation of much of the post–World War II codification of human rights in covenants, conventions, protocols, and regional treaties. The UDHR is considered the "moral anchor" of the worldwide human rights movement and currently "there is not a single nation, culture, or people that is not in one way or another enmeshed in human rights regimes" (Morsink 1999:x). The language of the declaration was intended to proclaim, not merely to recommend or suggest.

The UDHR was the first statement of moral values issued by an assembly of the human community. The authors of the declaration considered themselves to be representatives of all humankind more than representatives of the 56 member nations of the United Nations (UN) in 1948. The changes in the tentative titles of the document from the "United Nations Declaration of Human Rights" to the "International Declaration of Human Rights" to the "Universal Declaration of Human Rights" reflect the international shift of attention away from states and their delegations to all men, women, and children in all walks of life in every culture around the world. In the document's operative paragraph, for example, the U.N. General Assembly proclaimed that the UDHR

> [a]s a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of the Member States themselves and among the peoples of territories under their jurisdiction (Morsink 1999:330).

There had been enormous pressure on the delegates to the founding conference of the United Nations in 1945 to include an international bill of rights in the UN Charter. Under the authority of the General Assembly, the Economic and Social Council established a Commission on Human Rights and directed the commission to write an international bill of rights. Two years later, the Third General Assembly adopted the UDHR. In that entire period, through proposals, revisions, debates, deletions, additions, and votes, the drafters never attempted to agree to a formal definition of what a human right is.

There was philosophical consensus, however, that human rights are inherent in people. The UDHR states in its preamble that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." It asserts in Article 1 that "all human beings are *born* free and equal in dignity and rights" (emphasis added). Human rights are literally the rights one has simply because one is a human being. The drafters of the UDHR intended to assert moral rights of the highest order that all human beings had and were entitled to enjoy without permission or assent and that were beyond the power of any person, group, government or otherwise to grant or deny (Donnelly 1996). This concept poses a direct challenge to existing institutions, practices, and

values generally and to labor–employment systems, in particular—as will be discussed.

Economic Rights

Although the UDHR offers no specific definition of the individual and collective rights of human beings, it posits a set of values, a new ethic of human rights, in sharp contradiction to the values that powerfully influence the United States' labor–employment system. The UDHR sought to transform the moral awareness of all peoples by positing the dignity and worth of all persons and their inherent and inalienable entitlement not only to civil and political rights (Articles 1–21) but also to economic and social rights (Articles 22–28). At its core, the UDHR rejects the purest expression of evil in the modern world: "the ability to erase the humanity of other beings and to turn them into usable and dispensable things" (Delbanco 1995:192).

At one point in Arthur Miller's play *Death of a Salesman,* Willie Loman, the salesman about to be fired after 34 years with the firm, cries out, partly in anger and partly in desperation, "You can't eat the orange and throw the peel away—a man is not a piece of fruit" (Miller 1976:82). Loman had no claims against his employer based on legal rights, or contractual rights, or court precedent, or constitutional rights. He asserted a moral right, however, based on the value of human life. He claimed it was unjust for others to be indifferent to his suffering and to treat him as if he were expendable and counted for nothing unless he had something to sell. But the dominant free market value scheme considers workers to be commodities to be priced in the market no differently than any resource for production.

Classical economics' basic assumption defines human behavior as rational only when a person acts to maximize his or her own satisfaction. Each human being is an amoral, hedonistic, pleasure-maximizing acquisitive animal—or, as preferred by the philosophy of economics, "homo economicus." The each-versus-all individualism that drives the free market approach to life induces people to be preoccupied with their own private self-interests. This one-for-one-and-none-for-all value scheme is articulated by novelist Ayn Rand in *The Fountainhead,* a hymn to individualism, in which her heroes struggle against any restraint on their own self-interest. Architect Howard Roark, Rand's protagonist, explains to a court that he dynamited housing that he had designed for the poor because, as its creator, he owed it to no one:

> It is believed that the poverty of the future tenants gave them a right to my work. That their need constituted a claim on my

> life. That it was my duty to contribute to anything demanded of me. . . . I came to say that I do not recognize anyone's right to one minute of my life. Nor to any part of my energy. Nor to any achievement of mine. No matter who makes the claim, no matter how large their number or how great their need. I came here to say that I am a man who does not exist for others (Rand 1961:100).

This self-interest-focused value scheme also leads people to accept even the harsh economic and social consequences of the market as the inevitable results of impersonal forces beyond anyone's control. If the market is impersonal, moreover, it can be neither just nor unjust. It is absurd, the argument goes, to demand justice of such a process because there is no answer to the question of who has been unjust. When bad things happen to people, they are misfortunes not injustices. As one distinguished economist put it, "'social justice' is simply quasi-religious superstition" (Hayek 1976:66).

The economic and social philosophy of *laissez faire* is, therefore, an elaborate and interconnected set of values in which freedom is the economic freedom of the entrepreneur; democracy is a government system that gives maximum protection to property rights; progress is economic growth; individualism means the right to use one's property as he or she desires and to compete with others; and society is a market society that promotes and does little to interfere with competition in which the fittest win out. None of the drafters of the UDHR believed that the unregulated market system would promote or protect human rights. Their core concept that every life is sacred is incompatible with notions that one is worth only what one has to sell or that, if one has nothing to sell, one is nothing (Goulet 2005). The drafters, therefore, included in the document not only civil rights, such as the right to liberty, freedom from discrimination, equality before the law, and due process, but also economic and social rights, including the right to social security, the right to work, protection against unemployment, just pay, the right to form trade unions, the right to rest and leisure, the right to a standard of living "adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care," and the right to an education "directed to the full development of the human personality." Some refer to these as "positive rights" because they require a government to provide and promote them—as if so-called "negative rights" (civil and political rights) do not require government action.

The case for including economic rights was rooted in the preamble to the UN Charter (Charter of the United Nations 1945), which states, among other things, that "we the peoples of the United Nations" are

determined "to promote social progress and better standards of life in larger freedom," and in Article 55 of the charter, which commits the UN to promoting "higher standards of living, full employment, and conditions of economic and social progress and development." Until the UDHR, the conception of human rights in the Western tradition had been limited to those individual rights that need to be protected against abuse by the state, particularly the freedom from being coerced into doing things. The corresponding duty of the state and other individuals, therefore, is simply a duty of self-restraint. From that perspective the essential rights of humanity were "negative." There was a historically important affinity between this 18th-century negative rights theory and the emergent free market *laissez faire* economics of the time that led to the doctrine advocating the minimalist state. This tradition helps explain why civil and political rights have dominated human rights discussions.

The United States' position on the idea of economic human rights has fluctuated from the time of Franklin Roosevelt's Economic Bill of Rights in 1944 to the Reagan administration's rejection of claimed economic rights as rights of any sort. When the UDHR drafters included in the preamble that not only freedom of speech and belief but also freedom from fear and want had been proclaimed as people's highest aspiration, they were paying tribute to Roosevelt and his ideals (Morsink 1999). Roosevelt had asserted that true freedom could not exist without economic security and independence. He went on to specify in his Economic Bill of Rights what he affirmed had become self-evident truths: the right to a useful and remunerative job, the right "to earn enough to provide adequate food and clothing and recreation," the right of every farmer and his family to a decent living, the right of every businessman to trade free from unfair competition, the right "of every family to a decent home," the right "to adequate medical care, and the opportunity to achieve and enjoy good health," the right "to adequate protection from the economic fears of old age, sickness, accident and unemployment," and the right to a "good education." (See *Congressional Record* 1944, pp. 55–57.) Those rights became essential parts of the UDHR.

The drafters, as well as Roosevelt, recognized that as economic development had generated and been generated by powerful private economic organizations that it was not only the state that had the power to violate people's rights. As stated in Articles 22 and 26, these economic, social, and cultural rights are considered indispensable for the free and full development of the human personality mainly because a unity of civil, political, and economic, social, and cultural rights is necessary for a fully human life.

The drafters also believed in the fundamental unity of all the human rights set forth in the UDHR. Each article was to be interpreted in light of the others in the sense that all were implicated in each other. They had no sense of any ranking of rights in terms of their importance. There were no second-class citizens or second-class rights, but rather the declaration had an organic unity.

The drafters, under the direction of the Commission on Human Rights established by the UN's Economic and Social Council, had set out to create an international bill of rights that would have the treaty status of a convention or covenant. When the Third General Assembly adopted the declaration, it called for the completion of the covenant that the commission had been unable to finish. It was subsequently decided to have two covenants instead of one, and in 1966 the International Covenant on Civil and Political Rights (ICCPR; International Covenant on Civil and Political Rights 1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR; International Covenant on Economic, Social and Cultural Rights 1966) were opened for signature. The U.S. signed and ratified the ICCPR, but with so many reservations that the U.S. domestic law has never been changed to ensure compliance with this covenant's obligations. The U.S. has not ratified the ICESCR. Ironically, however, the preamble of the ICCPR, as well as the preamble of the ICESCR, states unequivocally that "in accordance with the Universal Declaration of Human Rights, the ideal of human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights as well as his economic, social and cultural rights."

Article 22 of the ICCPR also recognizes that "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." Closely following the UDHR, the ICESCR recognizes, among others, these rights: to work (Article 6); to fair wages, a decent living, safe and healthful working conditions, and rest and leisure (Article 7); to form trade unions for the promotion and protection of economic and social interests and to strike (Article 8); to social security (Article 9); to protection and assistance to the family and protection of children from economic and social exploitation (Article 10); to adequate food, clothing, and housing and to be free from hunger (Article 11); to the highest attainable standard of physical and mental health (Article 12); and to education for the full development of the human personality (Article 13).

Although the impact of employer decisions on human life is much more direct than the impact of most political decisions, there has been a

preoccupation, even among human rights organizations and advocates, with issues of state power and political democracy—while most people are subjected to economic forces and economic power over which they have little or no control. In addition, skepticism and in some quarters outright rejection persist in regard to whether there are economic and social human rights and whether corporations have any obligations to respect human rights.

Individual and Collective Rights

Ironically, whereas some see workers' human rights, particularly economic rights, threatening, if not destroying, the free enterprise system, others see the same rights as masking a selfish egoism (Henkin et al. 1999). Because of the traditional human rights focus on the rights of the individual and an alleged emphasis on rights and not responsibilities, some fear the possibility of human rights devolving "into something approximating libertarian individualism" or "atomistic individuals functioning according to the dictates of the market" with "little organizational payoff" for U.S. labor or even a subversion of union solidarity and collective action (Lichtenstein 2003:70–72).

Human rights are not left-wing or right-wing devices designed to advance some organizational or political interest. If human rights have only a pragmatic justification, their defenders will abandon them whenever they are no longer useful or when some other approach is more useful (Tushnet 1984). One should never underestimate, moreover, the ability of some people to twist even the most noble principle into a defense of the most ignoble action—for example, using the concept of the natural rights of man and Christian religious doctrines to justify slavery.

Workers' human rights, however, are inextricably connected to workers' coming together to exercise their right of freedom of association through organizational and collective bargaining. Only then can they exercise control over their workplace lives. Too many workers stand before their employers not as adult persons with rights but as powerless children or servants totally dependent on the will and interests of their employers (Gross 1998). The drafters of the UDHR recognized this, asserting in Article 23(4) that "everyone has the right to form and join trade unions for the protection of his interests."

Contrary to the claim that human rights are all about individual rights and not about duties, the drafters of the UDHR understood that the exercise of rights requires a responsibility to others and to the larger society. Article 29 of the UDHR affirms that everyone has duties to the community and the obligation to respect the rights of others and to meet the "just requirements of morality, public order, and the general welfare

in a democratic society." The UDHR was addressed not to individuals as isolated and separate persons but to individual persons as members of the human family. The full development of the human personality that is a theme of the UDHR can occur only in collaboration with others in a community of persons interacting with each other in a society characterized by cooperation and co-responsibility that respects the personal dignity and equality of its members (Baum 1996).

Inspired by the atrocities of World War II, the UDHR was addressed to the vulnerable and exploited with the purpose of affirming human rights that were intended to eliminate or minimize the vulnerability that leaves people at the mercy of others who have the power to hurt them. It expressed a unity of rights to a unity of humankind. It was never intended to leave people alone and isolated or for the document to become another manifesto justifying the pursuit of selfishness. The vision and values expressed in the UDHR clash with the vision and values of the dominant free market doctrines. The realization of a new human rights vision will require a revolution of values—but more about that later.

Cultural Relativism: "Asian Values"

The idea of human rights forces not only critical reexamination of what it means to be fully human and how individuals relate to one another in a society but also challenges the purposes and authority of governments and private employers and institutions. Because the struggle for human rights has been a struggle against traditional public and private authority and privilege, it has inspired powerful resistance (as well as ridicule) throughout history (Lauren 2003). That resistance still comes in many forms (some already discussed), but chief among them are claims of national sovereignty, cultural relativism, national exceptionalism, and ethnocentrism, or "moral imperialism." The recent "Asian values" controversy raises many of those challenges.

In 1993, a group of Asian nations, in what has become known as the Bangkok Declaration, challenged the very basis of the UDHR. They asserted a form of cultural relativism in arguing that human rights must be considered in the context of national and regional "particularities" and different cultural and religious backgrounds. Underlying the delicate phraseology was the assertion that human rights are rooted in "Western values" different from "Asian values."

One key difference, this argument goes, is that the importance of community in Asian culture is incompatible with the primacy of the individual on which the Western notion of human rights is based—an individualistic value that is allegedly destructive of Asian social values. The