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Human Rights

in Labor and Employment Relations: International and Domestic Perspectives

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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

Asian-values position combines the cultural-relativism and community-values arguments in support of the claim that social and economic rights and the right to economic development take precedence over political and civil rights. It objects to Western states emphasizing political and civil rights over economic, social, and cultural rights. In other words, Western-style civil liberties need to be sacrificed in order to meet more basic material needs in the short run. The Asian-values position argues, moreover, that an authoritarian governance is necessary for economic development and that democracy is an impediment to economic development because it leads to inefficiency (Bell 1996).

After the World Conference on Human Rights in 1993 (subsequent to the Bangkok Declaration), the UN General Assembly adopted the Vienna Declaration, which reasserted the universal nature of human rights and their indivisible and interrelated nature. Without mentioning the Bangkok Declaration specifically, the Vienna Declaration also states, "While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms" (paragraph 5).

To reject the relativist challenge to the idea of human rights, as the Vienna Declaration does, is not to deny that there can be and are differences in traditions, cultures, and conceptions of what ought not to be done to any human being or what ought to be done for any human being. It does not follow from that acknowledgment, however, that no act or failure to act is bad for or that nothing is good for every human being. There has been significant transcultural agreement since the end of World War II, for example, about many human rights, evidenced, in part, by the fact that 162 countries have ratified the ICCPR and 159 the ICESCR. Few in any culture believe that slavery, murder, genocide, torture, rape, or decapitating a child in front of that child's mother is good for anyone subjected to those acts (Perry 1998).

Cultural relativism, moreover, ignores the disparity of beliefs among cultures or even within a single culture. The concept "Asian values" suggests (or maybe exploits) a western view ignorant of an Asia of large geographic areas with immense diversity and with people of drastically different cultures, historical traditions, religions, and values as well as unevenly developed economic and political systems (Li 1996). Even the allegations that human rights are of Western origin is too simplistic and too ahistorical a claim. The origin of an idea, moreover, has nothing to do with its validity. The attempt to disparage human rights on the basis of their alleged Western origin, therefore, seems to be motivated more

by the history of West–East relations and the desire to resist Western hegemony than to the origins of human rights. For starters, the international human rights movement advocates some very non-Western conceptions of human rights, including the economic, social, and cultural rights set forth in the UDHR and ICESCR.

The lingering charge of Western ethnocentrism is also due in part to an ignorance of the UDHR drafting process (Morsink 1999). The key drafters understood the philosophical and cultural traditions of Asia, the Middle East, and Latin America as well as Europe. In addition to individual experts, agencies including the International Labour Organization (ILO), the UN Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), and the International Refugee Organization (IRO) contributed insights and assessments. UNESCO, for example, assembled a worldwide group of 50 experts on philosophy to submit written comments to the drafters on the issues raised by human rights (Lauren 2003). The UN delegates who approved the UDHR in 1948 "came from Asia, the Pacific, the Middle East, North Africa, Europe and Latin America and represented an incredibly wide range of religious, philosophical and cultural opinion" (Lauren 2003:226).

One can find ample evidence in the history of Western thought supporting slavery and inequality and intolerance of difference and freedom only for those who matter, as well as ample evidence in the history of Eastern and Asian thought supporting freedom, even the freedom to oppose a government, tolerance of diversity in social and religious behavior, and egalitarianism. Some of those Eastern pronouncements of religious tolerance, for example, were being made at the same time the Inquisition was in full force in Europe. Amartya Sen states it well:

> The point of discussing all this now is to demonstrate the presence of conscious theorizing about tolerance and freedom in substantial and important parts of the Asian traditions. . . . Again, the championing of democracy and political freedom in the modern sense cannot be found in pre-enlightenment tradition in any part of the world, West or East. What we have to investigate, instead, are the constituents, the components of this compound idea. It is the powerful presence of some of these elements—in non-Western as well as Western societies—that I have been emphasizing. It is hard to make sense of the view that the basic ideas underlying freedom and rights in a tolerant society are "Western" notions, and somehow alien to Asia, though that view has been championed by Asian authoritarians and Western chauvinists (Sen 1997:38–9).

In addition, all the major religions of the world have in one way or another expressed a vision of human rights in their teachings about the dignity of human beings, their obligations to humankind, and their concepts of duty.

Some find hypocrisy in the Asian-values contentions, seeing them as camouflage for authoritarian governments, where community means the state and the state means those in power, so that opposition to the regime becomes, conceptually at least, a crime against the state, the community and, therefore, the people. Repressive rulers, therefore, use cultural relativism as justification for their actions. As one critic put it, "Thus, rulers use cultural relativist arguments to justify limitations on speech, subjugation of women, female genital mutilation, amputation of limbs, and other cruel punishment, arbitrary use of power, and other violations of international human rights conventions. It is no wonder that the doctrine that human rights are contingent on cultural practice has been called the 'gift of cultural relativists to tyrants'" (Shestack 1998:231).

Other critics point out that leaders professing Asian values have no qualms about accepting and implementing Western capitalist market philosophies or consumerism cultures (Li 1996). Others with a more pragmatic bent maintain that there is no conclusive evidence that civil and political rights inhibit economic development. It needs to be said, however, that the hypocrisy of many nations purporting to adhere to human rights principles, particularly civil and political rights, does not help the human rights cause. In the U.S., for example, the commission of violent and destructive acts around the world supposedly to promote freedom; the subordination of human rights, including workers' rights, when they conflict with commercial considerations; and U.S. support of nations with abysmal human rights records opens this country to claims that these actions are the consequences of "excessive pursuit of individual rights at the cost of common social goods" (Bell 1996:654).

There is no good reason why human beings anywhere in this world should have to choose between starvation and oppression. It is a false dilemma: "to acknowledge that the prospects for effective implementation of human rights differ according to circumstances is not to legitimize violations under those unfavorable conditions, nor is it to deny the universal applicability or validity of human rights to all human beings no matter what circumstances they face" (Li 1996:5).

Human rights advocates do need to pay more attention to diversity within and among different cultures and, while pursuing the implementation of human rights through the development of an international legal system, to understand the limitations of the law in bringing about human rights changes within countries and cultures. Conversation needs to at least supplement confrontation to eliminate oversimplified and intellectually shallow generalizations about "Western civilization," "Asian values," and "African culture" that create unnecessary divisiveness; to understand the diversity within as well as among cultures; to develop approaches and attitudes based on mutual respect and sensitivity; and to develop as well as the local support needed to make human rights a reality where Eleanor Roosevelt said they began:

> Where, after all, do universal human rights begin? In small places, close to home—so close and so small they cannot be seen on any maps of the world. Yet they ARE the world of individual persons; the neighborhood . . . the school or college . . . , the factory, farm, or office. . . . Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity, without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them at home, we shall look in vain for progress in the larger world (Lauren 2003:288).

National Sovereignty

The human rights movement thus challenges and is challenged by traditional conceptions of the sources of rights, the philosophy and practice of the unregulated market, the long-standing opposition to even the idea of economic rights, the supposed unbridgeable conflict between individual and collective rights, and the wide-ranging consequences of cultural and moral relativism. Yet no doctrine has challenged the realization of international human rights more powerfully than the doctrine of national sovereignty. At the same time, however, human rights challenge national sovereignty because their realization often requires the international community to interfere with the allegedly internal affairs of sovereign states.

Emperors, kings, pharaohs, caesars, tsars, khans, sultans, and dictators of all sorts claimed sovereignty, meaning the right to do as they wished with those under their control, long before the emergence of nation-states and the codification of national sovereignty in international law. Human rights have yielded consistently to national sovereignty. Even in the midst of the abhorrence to the Holocaust, an overwhelming number of states were unwilling to accept any intervention into their "internal affairs," even for the sake of human rights. Many of those governments, including the U.S., were guilty of violating the human rights of many of their own people.

> The United States could speak eloquently about civil rights around the world, for example, but not if they exacerbated what Dulles called "the Negro problem in the South." The

> British had no trouble supporting the principle of extending political rights for others, but not if it applied to their empire. The Soviets could support economic and social rights, but not if they threatened to impose any restrictions on Stalin's dictatorship. The Chinese could strongly advocate the right of self-determination in colonial possessions or racial equality, but not if they entailed drastic reforms at home. But this could not simply be laid at the doorstep of the Great Powers alone. The Australians and New Zealanders could endorse a broad extension of human rights for the globe, but not if this jeopardized control over their own immigration policies against Asians or their respective populations of Aborigines or Maori. Jan Smuts of South Africa could enthusiastically draft the language about rights for the preamble to the Charter, but not if it committed his country to giving equal treatment for blacks. The Indians could argue passionately for the rights of all people, but not if it required them to eliminate their caste system. The Iranians could declare their agreement with principles of equality and justice, but not if it forced them to modify their policies toward women. The Cubans had no trouble supporting an international declaration of the rights and duties of all individuals, but not if this in turn threatened the strong-armed rule of Fulgencio Batista (Lauren 2003:192).

How different was war criminal Hermann Goering's defense that it was for Germany alone to determine how to deal with its "Jewish Problem"—"But that was our right! We were a sovereign state and that was strictly our business" (Lauren 2003:203–4)—and the claim that it was for the U.S. alone to determine how to deal with its "Negro Problem"? Still, national sovereignty became part of the UN Charter in Article 2(7), with the statement that "[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require Members to submit such matters to settlement."

The human rights challenge to national sovereignty remains in the UN Charter, however. The first sentence of the preamble begins with references not to nation-state signatories but to "[w]e the peoples of the United Nations" who "reaffirm faith in fundamental human rights, in the dignity of the human person, [and] in the equal rights of men and women of nations large and small." Article 1 of the Charter, moreover, pledges signatories to new international responsibilities, including the promotion and encouragement of respect for human rights.

One consequence of the prevalence of national sovereignty is that there is no international body with the authority to compel compliance

with international human rights standards or to remedy their violation. Although a serious impediment to the realization of human rights, the current absence of international enforcement power does not render human rights meaningless. In the words of the International Commission on Intervention and State Sovereignty, the problem for human rights continues to be "delivering practical protection for ordinary people, at risk of their lives, because their states are unwilling or unable to protect them" (Lauren 2003:275).

There has been a growing privatization of enforcement covering a wide range of approaches and philosophies that include a "Washington Consensus" that claims democracy and workers' rights are the automatic consequences of economic development, which in turn is the consequence of freeing the market of regulation and shrinking the government. Other types of private enforcement include employer-administered and employer-controlled human relations techniques that purport to respect employees' rights; employer-initiated Codes of Corporate Responsibility, some with monitoring systems, that are advanced as voluntary observances of labor standards; and various regional and bilateral trade agreements between and among nations that include what are touted as potentially strong sanctions for labor rights violations (Compa and Vogt 2001).

In 1998, the ILO adopted a "soft law" instrument—the Declaration on Fundamental Principles and Rights at Work (1998), which privileges four core labor standards: freedom of association, freedom from forced labor and child labor, and nondiscrimination in employment. The ILO's previous focus was on rights set forth in ratified ILO conventions ultimately enforced through public shaming of violators, supervisory mechanisms, reporting requirements, commissions of inquiry, and personal visits to countries supplemented by technical assistance to facilitate the implementation of rights. The new ILO approach is promotional, avoiding negative condemnations or confrontations, with enforcement being voluntary and in the hands of private actors.

The new emphasis is controversial. Proponents contend that the role of the ILO is not to block member states through "legalisms" from pursuing their individual self-interest but rather "to help them see where their self-interest actually lies and to assist them in getting there" (Langille 2005:420). Opponents respond:

> If the self-interest of governments truly matched the interests of workers around the world, we would not need an international system to promote respect for standards. They would have no problem ratifying the relevant ILO conventions, since

> these would express their self interest. This they have not done, of course. And expressing optimism that the Declaration will bring about a reconceptualization of governmental self interest does nothing to address the reasons why labour rights violations are ubiquitous (Alston 2005:473).

One has only to look at successful social protest movements, such as the civil rights and women's movements in the U.S., the Solidarity movement in Poland, and the anti-apartheid movement in South Africa, to understand the crucial importance of bottom-up movements to secure social justice and human rights. People whose rights are at stake are the ultimate source of power for enforcement. Currently in the U.S., for example, there are social movements of women, consumers, students, religious communities, and environmentalists as well as human rights nongovernmental organizations including Human Rights Watch, Amnesty International, Oxfam International, American Rights at Work, Interfaith Worker Justice, the National Employment Law Project, and many others working to promote and protect the human rights of workers and others. Although not widely reported, organized labor, in this and other countries, engages in transnational labor actions as a powerful form of self-help enforcement (Atleson 2003).

The fight for workers' rights around the world "is a struggle that never ends, and advocates take victories—and they hope defeats—in small measures" (Compa & Vogt 2001). As an ILO official put it, "If you have a short attention span don't get into the human rights business" (Lee Swepston, then chief of the ILO's Equality and Employment Branch, to my Workers' Rights as Human Rights class in 2004).

U.S. Labor Law and Standards

The persistence of national sovereignty means that national governments remain principal actors in the promotion and protection as well as the violations of human rights. Despite the globalization that has occurred, domestic labor laws continue to be major sources of rights protection. It is commonly asserted that labor laws and standards in the United States, for example, are equal or superior to international human right standards. They are not, either in their substance or in their interpretation and application.

The objective should be to bring our labor laws into compliance with international human rights standards, including those already discussed but also others, such as ILO Conventions No. 87 (Freedom of Association and Protection of the Right to Organise 1948), No. 98 (Right to Organise and Collective Bargaining 1949), No. 155 (Occupational Safety and Health 1981), and No. 111 (Discrimination [Employment and Occupation] Convention 1958). The United States has a legal obligation

under international laws as well as a moral obligation as a member of the UN and the ILO to commit itself to the realization of human rights principles espoused by these organizations. For example, the UDHR, for which the U.S. voted, calls on all nations to promote human rights and to take "progressive measures, national and international to secure their universal and effective recognition and observance." Among these human rights are the right to freedom of association (Article 20), the right to form and join unions (Article 23[4]), and the right "to just and favorable conditions of work" (Article 23[1]).

The ICCPR, which the U.S. has signed and ratified, commits each state party to ensure the rights set forth in the covenant to all persons (Article 2), including the freedom of association and the right to form and join trade unions for the protection of their interests. The ICESCR, which the U.S. has signed but not ratified, obliges each state party to "take steps" to achieve the "full realization" of rights recognized in the covenant, including "just and favorable conditions of work" in particular to "safe and healthy working conditions" (Article 7) and the right of everyone to join trade unions "for the promotion and protection of his economic and social interests" (Article 8). Although the U.S. has not ratified the ICESCR, as a signatory the U.S. is obliged by established international law to refrain from acts that would defeat the object and purpose of the covenant (Vienna Convention on the Law of Treaties 1969).

The Declaration of Philadelphia (Declaration Concerning the Aims and Purposes of the Interntional Labour Organization 1944), annexed to the ILO's constitution, recognizes the solemn obligation of the ILO (of which the U.S. is a member) "to further among the nations of the world programmes which would achieve," among other things, the "effective recognition of the right to collective bargaining," "adequate protection for the life and health of workers in all occupations," and human beings' right to material well-being and spiritual development. The ILO's Declaration on Fundamental Principles and Rights at Work (1998), which the U.S. has adopted, states that "in freely joining the ILO, all members have endorsed the principles and rights set out in the Constitution and in the Declaration of Philadelphia, and have undertaken to work towards attaining the overall objectives of the Organization and to the best of their resources and fully in line with their specific circumstances." That declaration also states that even those members that have not ratified the ILO conventions dealing with the freedom of association and the right to collective bargaining (among other rights) "have an obligation, arising from the very fact of membership in the [ILO] to respect, to promote and to realize, in good faith and in accordance with the [ILO] Constitution, the principles concerning the fundamental rights set forth in these conventions."

The U.S. government and too many U.S. employers are not in compliance with the human rights standards set forth in these internationally accepted documents. The violations of workers' human rights in this country are pervasive. These violations are the result of deliberate choices by legislators, judges, government agencies, employers, unions, and labor arbitrators, not choices dictated by some unalterable economic laws.

White superiority in this country, for example, has not made life simply more difficult for African Americans; it has denied them even those minimal things without which it is impossible to develop one's capacities and to live life as a human being. It was and is a denial of humanity. What better evidence is there that this suppression of the human spirit is ongoing than the separate and unequal education given to children in the most poverty-stricken and ghettoized "inner cities" 50 years after the Supreme Court rejected separate educational facilities for white and black children. Who would disagree "that the most deadly of all sins is the mutilation of a child's spirit"? (Kozol 1967:vii). Both the UDHR and the Convention on the Rights of the Child (1990) confirm that everyone has the right to an education, which for children is to be for "the development of the child's personality, talents and mental and physical abilities to their fullest potential."

What black workers are experiencing today across the United States has deep roots. This was no economic misfortune; it was the inevitable consequence of human choices to violate the human rights of black people or to accommodate those violations or not to resist them in any way. It was one piece from slavery to Jim Crow separation doctrines; to state-sanctioned segregation in every aspect of human life; to separation enforced by public lynchings and other means of physical and psychological intimidation; to the denial of adequate health care and even a basic education; to consignment to "Negro jobs" and the denial of workplace rights, dignity, and economic opportunity by corporations, other businesses, and even unions that professed to promote and protect workers' rights; to the ghettoization of housing often enforced by violence, unsavory real estate practices, and neighborhood associations of ethnic working-class and middle-class whites who used "homeowners' rights" as a rallying cry to keep blacks out of their neighborhoods. The sanitation workers striking in Memphis at the time of Martin Luther King, Jr.'s assassination carried on their picket signs the powerful human rights message "I AM A MAN." No human rights document has said it better.

Servility is incompatible with human rights. The Wagner Act of 1935 was intended to enable workers, through the exercise of their freedom of association, to obtain sufficient power to make the claims of their human rights both known and effective. Respect for their rights, therefore, would not be dependent on the interests of the state, their employers, or others. Neither the Wagner Act nor its successor, the Taft-Hartley Act, is neutral. Both statutes declare it to be the policy of the U.S 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 employment or other mutual aid or protection" (Labor Management Relations Act 1947).

In its 2000 report on the state of workers' freedom of association in the U.S., Human Rights Watch found that freedom of association was "a right under severe, often buckling pressure when workers in the United States try to exercise it" and that the "government is often failing its responsibility under international human rights standards to deter such attacks and protect workers' rights" (Human Rights Watch 2000:7–8). This is not the place to detail judicial and administrative agency decisions, such as those protecting employer anti-union speech, including captive audience speech, or denying non-employee union organizers access to employer property and excluding from employers' obligation to bargain subjects at the so-called core of entrepreneurial control. The fact is that we in the U.S. have declared a national policy that encourages worker participation in the decisions that affect their workplace lives, but in practice we reject it.

My own study of Wagner-Taft-Hartley from 1947 to 1994, published in *Broken Promise* (Gross 1995), shows how a policy that encouraged the replacement of industrial autocracy with a democratic system of power sharing was turned into governmental protection of employers' unilateral decision-making authority over decisions that greatly affected wages, hours, and working conditions. More specifically it demonstrates how the statute and NLRB case law have come to legitimize employer opposition to the organization of employees, collective bargaining, and workplace democracy—in other words, to legitimize opposition to the exercise by employees of their human right of freedom of association. As one scholar noted, "Few advanced democratic societies condone open opposition by employers to unionization" (Adams 1992:94). The fact that the government simply permits private power to be exercised does not absolve the government of its responsibility to intervene when that private power is used to interfere with a human right, such as the right to the freedom of association.

Over 40 years before the UDHR, the ILO had incorporated into its constitution the right of freedom of association. Social justice for all countries and individuals has always been the stated prime objective of

the ILO, and freedom of association holds a special place in the organization's standards as a basic fundamental human right necessary for social justice. The ILO's 1948 Convention Concerning Freedom of Association and Protection of the Right to Organize (No. 87) establishes and defines the right of workers (and employers) to set up and join organizations of their choosing. It calls upon states to take all necessary measures to ensure that workers (and employers) can exercise freely their right to organize. The ILO's 1949 Convention No. 98, Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, asserts the right of workers to be free of anti-union discrimination, to organize, and to engage in collective bargaining.

Because of the importance of the freedom of association, the ILO has established special machinery to deal with complaints of its violation. The Committee on Freedom of Association (CFA), which examines such complaints and makes recommendations to the governing body of the ILO, is a key component of that machinery. Over the years, the CFA has issued a series of decisions and established principles intended to promote and protect workers' right of association. The CFA does not distinguish between charges leveled against governments and those leveled against persons but in both cases seeks to determine if a government has ensured the free exercise of rights to freedom of association within its borders.

The CFA has found that, in many important respects, U.S. labor law and practice do not conform to international human rights principles. The committee, for example, has called on the U.S. to guarantee the access of union representatives to workplaces, has expressed concerns about the long-standing problem of delay in our labor law system, found that the National Labor Relations Act (NLRA) did not treat workers and employers "on a fully equal basis" (because it mandates that the National Labor Relations Board [NLRB] seek an injunction against certain union unfair labor practices but not any employer unfair labor practices), and ruled that the permanent replacement of economic strikers meant that the essential right to strike "was not fully guaranteed." In addition, the committee has pointed out that, in some states, public sector workers have no statutorily protected right to collective bargaining, while, in other states, collective bargaining is banned (Gross 1999:81–5).

Most recently, the CFA concluded that the Supreme Court's denial to undocumented workers of the NLRB's back-pay remedy for violations of the NLRA left the board with remedial measures that provide little protection to undocumented workers "who can be indiscriminately dismissed for exercising freedom of association rights without any direct penalty aimed at dissuading such action" (International Labour Organization

2003:paragraphs 609, 610). The CFA also found that states in the U.S. that ban public sector collective bargaining are in violation of ILO Conventions Nos. 87 and 98 and, in regard to one of those states, North Carolina, requested that it establish collective bargaining in the public sector (International Labour Organization 2007). In 2006, the CFA requested that the U.S. government engage in collective bargaining with workers' organizations over the terms and conditions of employment for the approximately 56,000 federal airport screeners in the Transportation Security Administration—except for matters "directly" related to national security issues (International Labour Organization 2006). In 2008, the CFA responded to the charge that the expansion of the definition of "supervisor" was depriving workers who are not supervisors of their collective bargaining rights. The CFA found that certain NLRB interpretations gave rise "to an overly wide definition of supervisory staff that would go beyond freedom of association principles" (International Labour Organization 2008a). Finally, in response to a complaint that a decision of the NLRB denying graduate teaching and research assistants at private universities the right to engage in collective bargaining, the CFA concluded that insofar as they were workers, these teaching and research assistants were entitled to the full protection of their right to bargain collectively over the terms and conditions of their employment—excluding academic requirements and policies (International Labour Organization 2008b).

Among workers' human rights, no aspect of work is more directly related to the sacredness of life than the safety and health of men, women, and children who labor. It is the right to live that demands workplace health and safety (Spieler 2003). The right to life is embedded in every human rights declaration; it places the highest value on a human life, an eye, an arm, a leg, or a hand; and it proclaims the absolute priority of human rights over economic and institutional interests. Yet workers' right to life has been sacrificed to economic development, the government has failed to enforce its workplace safety and health laws, and courts and arbitrators give preference to management interests and deny workers the right to protect their own lives by engaging in self-help actions.

An employee's right to refuse hazardous work without retaliation, for example, is indispensable if workers are to take control over their own lives in regard to workplace health and safety. In the U.S., however, in contrast to other countries, such as Canada and Sweden, the judicial standard that maximizes employer control of employee discipline minimizes employee interference with that control. There is no need to rehash here the particulars of how that is done. The major point is that

this pro-employer authority, pro-employer property rights standard confronts workers with an inherently unfair dilemma: to follow orders and work, thereby risking life and limb, or to refuse to follow orders, thereby risking discharge or other serious discipline. No decent society would permit human beings to be put in that position, particularly when economic necessity pressures so many to choose jobs over their own health and safety, more often than not with no or insufficient information about the health and safety hazards involved in what they are ordered to do. Workers' humanity and human rights to a safe and healthful workplace are disrespected whichever choice they make.

In many ways, moreover, human resources is simply another approach to denying workers their freedom of association rights. The economic profitability standard or cost–benefit standard cannot be the ultimate determinant of whether human rights will be respected, promoted, and exercised at the workplace. Judged by a human rights standard, human resources personnel would be held accountable for manipulating human beings and subordinating them to the interests of the organization. It is a manipulation that induces workers to see the world through their employers' frame of reference in order to maintain and legitimize employer control at the workplace without changing the power relationships of superior employer and subordinate employee. Combined with employment at will, human resources techniques leave workers powerless.

It is also a manipulation that uses people as resources for economic ends. Human resources has always expressed an active anti-unionism. This anti-unionism, euphemistically termed union avoidance or staying union-free, violates one of the most fundamental human rights: the right of workers to participate in the decisions that affect their workplace lives. Regardless of the quality of management or an employer's good or bad employee relations, exercise of the freedom of association is necessary so that workers can eliminate the vulnerabilities that leave them at the mercy of others. Human resources cannot fill a freedom of association gap. Those who manipulate the behavior of others to ensure their servility, powerlessness, and subordination are complicit in using workers as disposable commodities or resources for others' gain.

The Challenges: Labor Law, Labor Policy and Research

The promotion and protection of human rights at U.S. workplaces pose challenges to some of the most fundamental principles on which the U.S. labor relations system is based. U.S. labor law provides good examples. Over the years, there have been many legislative proposals designed to correct deficiencies in our current labor laws. They include proposals

to increase the effectiveness of NLRB remedies, to crack down on the anti-union consulting industry, to lift prohibitions on secondary activity to permit unions to exercise solidarity around the world, to minimize employer coercive involvement in representation campaigns by the use of union authorization card certifications, and to guarantee employees who vote for a union (at least when their chosen representative fails to negotiate a first contract) a grievance procedure with binding arbitration. None of these efforts have been successful. It will be a momentous task to bring U.S. labor law into conformity with established workers' rights as human rights principles. A few examples should suffice.

Although the UDHR, the ICCPR, the ICESCR, and the ILO Convention No. 87 all affirm that everyone has the right to freedom of association, the Taft-Hartley Act expressly excludes millions of workers from the laws' coverage. Exclusions include resident and immigrant agricultural workers, domestic service workers, and independent contractors and even low-level supervisors and managers. These workers can organize if they wish, but their employers have no legal obligation to recognize or deal with their organizations and may intimidate or discharge them if they do attempt to exercise their freedom of association because those excluded workers are not protected by law. These legislative exclusions openly conflict with international human rights law.

In a closely related interpretation of the NLRA, unless there is a union that has the support of a majority of the relevant employees, workers' human right to freedom of association is lost in what Clyde Summers has called the "black hole" of no union rights (Summers 1990). Bargaining collectively with a nonmajority union that bargains for its own members is protected widely in other countries with systems of collective bargaining. Charles Morris has asserted that without nonmajority unions, the right of association advanced by ILO Convention No. 87 would be meaningless for workers who want to exercise that right but are unable to persuade a majority of their co-workers to join them (Morris 1994). There is also a serious question whether the U.S. conception of exclusive representation also denies workers their association rights by denying them the choice of alternative representation.

It is also worth noting that the value of the NLRA's freedom of association depends in great part on the effectiveness of collective bargaining, which in turn depends in great part on where the line, if any, is drawn between exclusive management functions on one side and the subjects of joint management–union determination on the other. The Supreme Court and certain Republican-appointed NLRBs have taken the lead in freeing management from the constraints of the NLRA by promoting management rights and limiting worker participation. The

Kennedy–Johnson NLRB's understanding of the subjects of collective bargaining—"the scope of collective bargaining is confined to the range of employees' vital interests" (Gross 1995:174)—was most consistent with the human rights conception of freedom of association and collective bargaining. It was also most consistent with the stated purpose of the NLRA, which is supposed to be the encouragement of collective bargaining even when management decision making might be "encumbered" (Atleson 1983).

Human rights principles, particularly workers' rights as human rights, pose even more fundamental challenges to U.S. labor law and policy. One is whether employers should be permitted to resist workers' exercise of their right of freedom of association. That question goes beyond the obvious contradiction (hypocrisy) of legislating a commitment to collective bargaining and then, in the same statute, allowing and even facilitating employers' use of their power over workers' jobs to discourage workers from exercising their statutory right to organization and collective bargaining. This involves much more than a matter of conflicting interests between labor and management. This is a fundamental human rights issue.

Implementation of human rights at the workplace also challenges the still-dominant theory of industrial and labor relations commonly known as industrial pluralism, attributed to "Wisconsin School" pioneer John R. Commons. The institutional economists that helped develop industrial pluralism rooted their work in a philosophy of pragmatism without any grand design such as that propounded by classical market economics. Industrial pluralism posits collective bargaining as its main labor relations problem-solving device, which through compromise establishes systems of work rules set forth in contracts that become the constitutions at workplaces. These contract-constitutions provide governance regarding wages, hours, and working conditions as well as a grievance-arbitration procedure constituting employers' and unions' own private judicial system.

The negotiation process is presumed to be between parties of roughly equal bargaining power. Commons was concerned that the exercise of bargaining power be "reasonable." Work rules were reasonable if the conflicting economic interests mutually and voluntarily negotiated and accepted them. For Commons, "the essential thing was that the line between reasonable and unreasonable exercises of power was not drawn by any broad social philosophy or public principle but was hammered out on a case-by-case basis, in the resolution of particular disputes." (Chamberlain 1963:84). Limits can be set on unequal bargaining power by "judicial-like" decisions by arbitrators and ultimately by courts of law that will move these groups "into reasonable relations with each other"

(p. 84) so that agreements do not become merely "the surrender of the weak to the strong and unscrupulous" (p. 6).

The Wagner and Taft-Hartley acts were in the industrial pluralist mode. They set forth procedures for workers to organize and bargain collectively, but they do not confer substantive rights on workers. Neither act was a radical break with the well-rooted freedom-of-contract concept. The private process of negotiation and contracting backed up by bargaining power was the way to determine workplace rights and duties (Klare 1982).

Congress added Section 9(d) in Taft-Hartley, moreover, to affirm that the mutual obligation of employers and unions to bargaining in good faith did not compel either party to agree to a proposal or require the making of a concession. The Supreme Court has concluded that "allowing the [NLRB] to compel agreement when the parties themselves are unable to agree would violate the fundamental premise on which the Act is based—private bargaining under government supervision of the procedure alone, without any official compulsion over the actual terms of the contract. (*H. K. Porter Company, Inc.* v. *NLRB* 1970).

The basic conflict between freedom-of-contract industrial pluralists and those favoring workers' rights as human rights is that pluralists make human rights negotiable. Industrial pluralism makes the very existence of workers' human rights dependent on the relative power of employers and unions. Human rights are nonnegotiable. They are possessed by every person by virtue of being a human being and not by virtue of being a member of a union powerful enough to negotiate human rights into an enforceable collective bargaining contract. Human rights are rights that no government or employer or union or any other body has the moral authority to grant or deny. The only use of power that is legitimate is that which promotes and protects human rights.

The contractual provisions resulting from collective bargaining are not necessarily just simply because they are in accord with the objectives of the negotiators, in the same way that laws are not necessarily just simply because a majority approve of such laws. Given the imbalance of bargaining power, moreover, there is also the possibility that no contract will be reached. Does that mean workers have no human rights, or any rights at all, at such workplaces?

Concerning those courts, administrative agencies, and arbitrators who supposedly would redress the negative consequences of severe imbalances of power, none of them, including the Supreme Court, have utilized human rights standards in their decision making. This "legal isolationism" is yet another challenge (Ignatieff 2005:8). It is essential that human rights at the workplace be enforceable.

Finally, pursuing the challenges posed by the new workers' rights as human rights movement will broaden the industrial relations research agenda and require new approaches to that research. This could make industrial relations research truly interdisciplinary because it requires 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 (Gross 2006).

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