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Should Labor Defend Worker Rights as Human Rights? A Debate

Abstract

The authors debate the relative merits and drawbacks of defining the labor movement under the umbrella of human rights, and the virtues of the rights of the individual versus the solidarity of the community.

Keywords

: labor rights, labor standards, International Labor Organization, ILO, human rights, wages

Disciplines

Human Rights Law | International and Comparative Labor Relations

Comments

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The Declaration of the Rights of Man and of the Citizen (adopted by France's National Assembly in 1789) underpins much of contemporary human rights law.

By Jay Youngdahl

SOLIDARITY FIRST

Labor Rights Are Not the Same as Human Rights

SINCE THE PUBLICATION OF *UNFAIR ADVANTAGE: WORKERS' FREEDOM OF ASSOCIATION* in the United States under International Human Rights Standards¹ by Human Rights Watch, the idea of framing labor struggles as human rights issues has come to occupy center stage within the conversation among serious advocates of the revitalization of the labor movement. The AFL-CIO has underwritten a human rights non-governmental organization (NGO), American Rights at Work, and now seems to give as much attention to "International Human Rights Day" as it does to May Day or Labor Day.²

A human rights approach, it is urged, facilitates partnerships with human rights allies, works well with the inexorable internationalization of labor struggles, allows the "naming, blaming, and shaming" of labor abusers, and is more responsive to the current political and cultural zeitgeist than traditional labor arguments. Lance Compa, the principle author of the *Unfair Advantage* report, argues that a human rights reframing will "bring authoritativeness to labor discourse that trade unionists can never achieve."³

While the motives of those advocating a human rights approach are laudable, the reliance on reframing labor struggles as first and foremost human rights struggles is misplaced. It is not hyperbole to say that the replacement of solidarity and unity as the anchor for labor justice with "individual human rights" will mean the end of the union movement as we know it.⁴ This is true tactically, strategically, and philosophically. Rights discourse individualizes the struggle at work. The union movement, however, was built on and nourished by solidarity and community. The powerless can only progress their work life in

**The author wishes to acknowledge the assistance of his associate, Stephanie Cogen, with the research for this article.*

concert with each other, not alone. Fighting individually, workers lose; fighting together, workers can win. There is a reason why the lyrics to “Solidarity Forever” read: “what force on earth is weaker than the feeble strength of one? But the union makes us strong.”⁵

The replacement of solidarity as the anchor for labor justice with “individual human rights” will mean the end of the union movement as we know it.

A complete turn toward the individual rights approach by the labor movement will signal the surrender of the fight for workplace solidarity and the unique and crucial position that our movement has occupied over the last 100 years in the permanent struggle for justice for those at work.⁶ Without the primacy of solidarity, the union movement is little more than a political grouping along the lines of the environmental movement or the American Association of Retired Persons (AARP), and will be forced to rely on tactics like direct mail solicitation and revenues from labor banks and insurance plans. The concerns of seniors and environmental issues are extraordinarily important. But a labor movement which mimics them is not the labor movement that has been the force for 20th century social change in this country. It is not the same movement as that which brought us the weekend or that shut down the Port of Oakland in May 2008 to call for an end to the war in Iraq.

Many in the labor movement find this reframing debate to be abstract and a waste of time.⁷ It is not. Those working on the ideological underpinnings of the labor movement are to be

commended. But, the move to elevate individual rights over solidarity has a normative component. That is, any reframing is not simply a pragmatic move; it controls how we think and how we fight. Words and ideas matter; the effect of “right to work” laws is but one obvious example.

In thinking of the effects of labor’s strategic decisions, consider the issue of “meat and potatoes” unionism. For much of the history of the American labor movement, a debate has raged over the proper role of the movement in the politics of the country. The dominant strain has been that workers should focus on what is closest to them, their wages and benefits, and pay less attention to the larger political and systemic trends.

While electoral activity has increased as union’s organizational success has declined, most of labor continues to stress this strategic ideology. “Meat and potatoes” is a seductive way to organize, and many of the higher density unions stress this approach; yet the result of its primacy is that workers are influenced ideologically with a resulting difficulty in mounting movements to confront the source of their oppression systematically, or to understand why “an injury to one is an injury to all.” Constant battles among building trades and rail unions, to take just two sectors, and a membership often out of step with the new positions of labor’s leaders on immigration, are the result. Elevating human rights to the dominant position within labor ideology will eviscerate support for the common concerns of all workers that is the keystone of labor solidarity. Thus, the issue of individual rights versus solidarity is a crucial discussion, as its ramifications will penetrate the consciousness and actions of workers everywhere.

Interestingly, this same debate over which should be primary, individual rights or of the solidarity of community, took place in the civil

rights movement 40 years ago. Certain activists and theologians, such as Howard Thurman, argued for a greater emphasis on individuality than they believed could be found in the “beloved community” advocated by Martin Luther King. Yet, it was through this “beloved community” that King was able to play the role that he did in the struggle for civil rights and to make the links that undergirded his move, shortly before his murder, to elevate his opposition to the war in Vietnam, strengthening the link between the two struggles.⁸

Philosophically, the human rights approach is part of a move to “atomism,” which the Canadian philosopher Charles Taylor describes as the theory of advocating “a vision of society as in some sense constituted by individuals for the fulfillment of ends which were primarily individual.” Atomism implies “the priority of the individual and his rights over society,” which is the fundamental flaw of current human rights ideology and practice. Taylor writes:

Theories which assert the primacy of rights are those which take as the fundamental, or at least a fundamental, principle of their political theory the ascription of certain rights to individuals and which deny the same status to a principle of belonging or obligation, that is, a principle which states our obligation as men [sic] to belong to or sustain society, or a society of a certain type, or to obey authority or an authority of a certain type.⁹

Unions are all about obligations to our fellow workers. The perceptive political scientist, C.B. Macpherson, argued that a narrowly selfish and rationalistic view of individualism makes it impossible to find a valid theory of obligation to each other in a system that stresses possessive individualism. He writes, “[t]he difficulties . . . [are in the] conception of the individual as essentially

the proprietor of his own person or capacities, owing nothing to society for them.”¹⁰ Historically, the labor movement has stood in opposition to this philosophy.

Labor unions are communities in which tremendous nascent power resides. Contemporary liberal theory and cultural practice, out of which the rights reframing emanates, has devalued the role of solidarity, and diminished the crucial component of community in movements for

Unions are all about obligations to our fellow workers.

social change.¹¹ Philosophically, in contrast to an individualistic focus, for all but the most advantaged, entering into a community provides moral meaning. Participation in a community of struggle, such as a strike or job action, can lead to practical answers to existential anxieties, as well as to economic concerns. A conception of unity and solidarity as the intentional ideology of labor communities promotes a strong ethical foundation in a world in which globalized capitalism only offers a “dog eat dog” mentality.¹² It is in such communities that workers can find the passion and enthusiasm necessary for the movement of the less powerful against the institutions that strive to divide resources in a manner favorable to the elite.

To be fair, advocates of the human rights approach argue that the freedom to associate and to collectively bargain are human rights and that advocating this approach simply means that these associational freedoms should be put on par with other rights contained in the human rights declarations and conventions. Solidarity, it seems, will come from individual agreements to associate with others. Trying to shoehorn solidarity into

this framework will not work, however. While it may be possible to characterize the freedom to associate and to enter into solidarity with others as an individual right, only indirectly in this reframing is the loss of rights for “another” the loss

Thinking of rights as individual bundles leaves workers unprepared to deal with power.

of rights for “me.” Thinking of rights as individual bundles that we carry with us leaves workers unprepared to deal with power. Maybe workers can speak truth to power acting individually, but stressing individual rights eviscerates the ability to act with others against oppressive power.

To be sure, rights language dominates the discourse today. It is difficult to talk about justice without using the term “rights.”¹³ Yet, rights discourse, while seductive to allies, the press, and as a kickstart to organizing campaigns, robs the movement of the power to actually unite. Those within the human rights community are quite explicit about the ascendancy of individual rights and the denigration of collective action.¹⁴ Many within it believe that individualism and the market are ahistorical, and that collective rights are synonymous with “savage outbreaks of ethnic racial and religious violence.”¹⁵

Militant labor struggles are sure to be placed in the same category. Even Kenneth Roth of Human Rights Watch, the publisher of *Unfair Advantage*, has frankly admitted that human rights arguments are of limited efficacy when “distributive justice” is the goal.¹⁶ Human rights arguments are ineffective, he admitted, “in the amorphous realm of costs and benefits.” Struggles over work-

place justice take place in exactly this “amorphous realm,” however. Adequate wages and benefits in a livable workplace do not feel so amorphous to those workers involved.

In the workplace, the rights approach devalues the decisions that workers make when they consider how much of themselves and their families to put on the line in a workplace struggle. Why should an Air Line Pilots Association (ALPA) pilot care about the contract struggle of Aramark food services workers? It is hard to make a case in the human rights framework that the individual pilot making upwards of \$200,000 a year should put herself out on behalf of the food service worker, unless pure altruism is the motivation. If the question is framed and understood within the concept of solidarity and “an injury to one is an injury to all,” however, the reality *and* the response is different.

Thirty years ago, I was a letter carrier in a low-income neighborhood in Houston. During my time at the post office, many battles were fought, both large and small. The workers in our station hung together as a community, in workplace struggles, and in situations in which a

[Human] rights discourse robs the movement of the power to actually unite.

member of our group needed personal assistance. One of my best friends at work owned a tiny convenience store near his mail route; his store did not generate enough of a profit for him to leave his postal job, but he hoped that some day it, and other businesses he wanted to start, would. We would often meet at the Dairy Queen after running our mail routes and talk about the

battles for dignity and economic advancement at the post office and in society. I was convinced that a larger movement of workers was possible; he was less certain. He would say to me, “if I can get out of here I am gone.” He believed he had options and abilities that many of our co-workers did not; they could never leave the steady paychecks. He knew he had a greater ability to exercise his “rights.” Yet, even given these feelings he stood with us when problems arose at work because he understood the importance of community and solidarity. What does a rights-based approach say to the worker who is not sure whether moving in solidarity with others will advance her personal good, as often it does not, at least in the short run? Should one care for others solely for altruistic reasons? When workers are facing a powerful employer and are considering putting their livelihood on the line, only a focus on solidarity can answer these philosophic yet intensely practical questions; an individual rights-based approach cannot.

Although it is hard to argue against the use of any and all tactics and arguments for union revitalization, the practical future of the human rights approach is not as bright as advocates might hope.¹⁷ Rights do not fall from the sky nor are they contained in the human genome; they are the product of the political forces at the time.¹⁸ U.S. courts are hostile to the idea of collective rights, making the associational rights argument of human rights theorists unlikely to succeed. Even the conservative law professor Mary Ann Glendon has observed that recent judicial decisions on workplace matters are opposed to the “underlying assumption of our labor legislation that an individual might willingly agree to subordinate her own interests to some extent by casting her lot together with fellow workers in pursuit of common ends which are frequently, but not exclusively, economic.”¹⁹ The U.S. government, along with many other countries, refuses to rat-

ify labor-related conventions of the International Labour Organization (ILO) even during times of “labor-friendly” Democratic administrations. The U.S. courts balk at applying human rights standards found in international law and international courts, and are unlikely to do so anytime soon.²⁰

Even in the best trade agreements and international forums and conventions, labor rights advocates have been unable to find ways to effectively enforce standards contained within them. A glaring example can be seen in the use of associational rights arguments against the move by the enemies of labor in the *Oakwood Healthcare* decision to defeat unionization by classifying wide swaths of American workers as “supervisors,” unprotected by the National Labor Relations Act (NLRA).²¹ According to the dissent, the result of the holding of this case may be that by 2012 almost 34 million people, 23.3 percent of the workforce, could lose the scant protections still available under the NLRA. American union lawyers filed a complaint against this decision with the ILO, using human rights-based “core labor standards” arguments that the decision was a blatant denial of the freedom of association for these workers. The ILO decision was mixed at best, despite the rosy face put on it by many in labor; the U.S. Chamber of Commerce was even able to declare victory when the ILO decision was announced.²² It seems that even within these core labor standards as interpreted by the most labor-friendly international tribunal, many “supervisors” can be denied that basic human right, the ability to freely associate.

Strategically, those who oppose labor frame the workplace as one where each worker is an individual *in opposition* to other workers. An overemphasis on human rights in the labor context plays into their hands. Employers have made much of their ability to exercise their speech and property rights at work²³; it is unclear how a

rights-based approach to labor could limit these employer rights. The current anti-union National Labor Relations Board (NLRB) is masterful at using rights arguments to destroy workplace justice; open any recent decision of the NLRB to see how the concept of rights is being used to guarantee employer victories and union defeats. To take just one example, in approving the action of an employer that repudiated a union contract, the NLRB majority in *Nott Co.* held that “The Board has followed a restrictive policy in regard to accretion because it *forecloses the employees’ basic right* to select their bargaining representative.”²⁴ One of the unresolved issues of the rights movement, in all environments, is how to balance opposing sets of rights. There is little chance that we will win this battle in the labor context in this country anytime soon.²⁵

In conclusion, six years ago in this journal, Nelson Lichtenstein wrote, “[t]he eclipse of trade unionism is not just one of declining numbers, bargaining leverage, and political clout. It has had a moral and ideological dimension as well.”²⁶ Today, labor is in crisis, social movements are in ideological disarray, and ex-

treme individualism has caused pain throughout the world. The only way for unions to successfully act in response is to revitalize the primacy of solidarity, for themselves and for the leadership and direction that they can offer to all. People are crying out for ideas and solutions. With solidarity at the forefront, the union movement can powerfully and productively speak and act in relation to this economic and ideological system which divides, isolates, and oppresses. Among the social movements, only the union movement has a realistic chance of playing this leading role.

An overemphasis on human rights in the labor context plays into the hands of those who oppose labor.

While the human rights advocates in labor should be saluted for working on an ideology for revitalization, the rights approach is the wrong way for the movement of the working-class to proceed. ■

Notes

1. Lance A. Compa, *Unfair Advantage: Workers’ Freedom of Association in the United States under International Human Rights Standards*, Human Rights Watch, (August 2000).

2. For example, see this post on a 2007 AFL-CIO blog concerning a Working People’s Summit. “The summit opens on International Human Rights Day (Dec. 10), a time when U.S. unions *traditionally* mobilize to restore the freedom to join unions.” Available at <http://blog.aflcio.org/2007/08/13/a-working-peoples-global-summit> (emphasis added).

3. Lance Compa, “Labor’s New Opening to International Human Rights Standards,” *Working USA: The Journal of Labor and Society* 11 (March 2008): 99, 116.

4. Many will reply that we have already seen the end of the labor movement as we know it. Or, alternatively, many say that even if we have not, this is an unstoppable

conclusion, given the array of forces in the workplace today. I remain optimistic, however.

5. “Solidarity Forever,” written by Ralph Chaplin.

6. Maybe the best we will be able to hope for is “solitarily,” the word coined by *The Colbert Report* regarding individuals who sit in front of their computer cyberly exercising their “rights” with others.

7. Those who take this position argue that anything taking us away from day to day organizing is counterproductive. As one who has heard the argument against reflection for the past 40 years while our movement has steadily shrunk, I am unimpressed. The importance of a discussion in labor has recently been made by several unions and commentators. See, e.g., Bill Fletcher, Jr. and Fernando Gaspasin, *Solidarity Divided*, University of California Press (2008).

8. See Walter Earl Fluker, “They Looked for a City: A Comparison of the Idea of Community

in Howard Thurman and Martin Luther King, Jr., *The Journal of Religious Ethics* 18 (Fall 1990).

9. Charles Taylor, *Philosophy and the Human Sciences*—Philosophical Paper 2, Cambridge University Press (1985): 187-210.

10. C.B. Macpherson, *The Political Theory of Possessive Individualism*, Oxford University Press (1962): 3.

11. Here, advocates of “post-modern identity-based organizing” overlap with the individual human rights advocates. See, e.g., Maria L. Ontiveros, “A New Course for Labour Unions: Identity-Based Organizing as a Response to Globalization,” and Michael Selmi and Molly S. McUsic, “Difference and Solidarity: Unions in a Postmodern Age,” in Joanne Jonathan, Richard Michael Fischl, and Karl Klare, eds., *Labour Law in an Era of Globalization*, Oxford University Press (2002). The time for solidarity and the willingness to deemphasize a part of oneself for the benefit of others has seemingly past, the argument goes. Influenced by Foucault, anti-essentialism, and other post-modern doctrines, this stress on radical individualism promotes and fetishizes the “self.” Of course, particular factors, such as race, gender, ethnicity, and religion are integral parts of labor struggles. In fact, most of the successful labor struggles with which I have been involved in the American South and Southwest have involved a “community of identity” component along with the workplace dimension. However, advocates for workers must recognize that the post-modern mantra of unencumbered choice combined with an overinflated view of the self that celebrates differences rather than workplace commonalities is sapping the ability of people to unite around areas of common concern.

12. Gunter Grass wrote that “the concept of ‘solidarity’ is relegated to the dictionary’s list of foreign words.” “The Gravest Generation,” *The New York Times*, May 7, 2005.

13. My guess is that for those allies of labor in academia, the rights approach makes it easier to interact with students who have had little exposure to the labor movement or the idea of solidarity, but are ardent advocates of human rights for all.

14. As an example of the focus on individual rights as primary over solidarity and collective rights, among the major human rights treaties are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICCPR is a document that emphasizes the rights of individuals which can easily be held by individuals, such as the right to vote, the right to life, the right to liberty and security of person. The ICESCR covers rights that are more likely to be exercised in groups, such as the right to unionize, rights of the family, rights to education, and the right to take part in cultural life. At present, the ICCPR is a vibrant document on the world stage, the ICESCR nearly moribund.

15. See, for example, Henry J. Steiner and Philip

Alston, *International Human Rights in Context*, 2nd ed., Oxford University Press (2000): 365.

16. Kenneth Roth, “Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization,” *Human Rights Quarterly* 26 (2004): 63. His discussion of the inability of his organization to fight for workplace safety and health issues for child laborers is especially instructive.

17. Nearly six years ago, the historian Nelson Lichtenstein wrote of the incompatibility of the rights approach and the cause of unionism, noting “an inverse relationship [that] may well link the decline of unionism and the rise of 1960s-1970s rights consciousness.” Nelson Lichtenstein, “The Rights Revolution,” *New Labor Forum* 12-1 (2003): 68.

18. “Organization rights are granted to workers by the same authority, the National Government, that preserves property rights.” *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 112 (1956). To quote the human rights authors Steiner and Alston, “Rights are no more determinate in meaning, no less susceptible to varying interpretations and disputes among states, than any other moral, political or legal conception.” See *supra* note 15. In response, some respected rights advocates argue that social ethics should come before rights and thus foreclose interpretations of the rights that are contrary to such ethics. See Amartya Sen, “Work and Rights,” *International Labour Review* 139, No. 2 (2000): 119-128. This is yet to be the operative view, however.

19. Mary Ann Glendon, *Rights Talk*, Free Press (1991).

20. For a taste of the current U.S. Supreme Court thinking on this issue, see *Medillin v. U.S.*, 552 U.S. _ (2008).

21. *Oakwood Healthcare*, 348 NLRB No. 37 (2006).

22. See “Decision of the Committee on Freedom of Association of the ILO,” March 19, 2008. The U.S. Chamber of Commerce called it “good and balanced.” Available at <http://www.chamberpost.com/2008/03/us-labor-law-vi.html/>.

23. Earlier this year, in a case filed by Smithfield Foods against the UFCW and other unions, a federal judge ruled against the unions on a pre-trial motion, “the right to recognize (or not) a union as bargaining representative is among the most valuable and important of rights possessed by business owners.” *Smithfield Foods et al. v. UFCW et al.*, N. 3:07CV641 (E.D. Va.) (Memorandum Opinion filed May 30, 2008).

24. *Nott Co.*, 345 N.L.R.B. No. 23 (2005) (emphasis added).

25. The majority judicial view of property rights should make this clear to all. E.g., *Lechmere, Inc. v. National Labor Relations Board*, 502 U.S. 527 (1992). Even the basic human rights documents, such as the ICCPR, explicitly state that the exercise of associational labor rights may be restricted for the “protection of the rights and freedoms of others.” ICCPR, Article 22 (2).

26. Nelson Lichtenstein, *supra* note 28, at 68.

By Lance Compa

SOLIDARITY AND HUMAN RIGHTS

A Response to Youngdahl

JAY YOUNGDAHL MAKES A VALUABLE CONTRIBUTION TO DISCUSSIONS AMONG LABOR advocates about how to revitalize trade unionism with his case against a “workers’ rights are human rights” reframing focus for the U.S. labor movement. But I think it’s a case for using a human rights frame carefully and strategically, not for ditching it.

The phrase “individual human rights” does not appear in the 2000 Human Rights Watch *Unfair Advantage* report, nor in its 2005 meatpacking report, nor in its 2007 Wal-Mart report. Traditionalists still argue the distinction, but contemporary human rights analysis has moved past the sharp dichotomy between individual rights and collective rights.

The Universal Declaration of Human Rights (UDHR), the textual foundation of the modern human rights movement, embraces freedom of association and the right to form unions alongside rights to a living wage, decent working conditions, and even paid vacations. The fact that the UDHR gave rise to two separate covenants, one civil and political and the other economic and social, was more a reflection of Cold

War posturing between East and West than one of analytical distinctions.

The objection still is made that human rights advocacy leads to “atomization,” as Youngdahl points out. But the stronger argument now is that individuals live in an intricate web of relationships—personal, economic, cultural, juridical, institutional, and more—where the exercise of individual rights takes place. Individual rights can only be fulfilled in this social framework.

The right to organize does not exist in a vacuum. Workers exercise their right to organize for a purpose: to enable them to fight for collective advance in a way they cannot do individually. As Jim Atleson has put it:

The recognition and protection of collective action is critical to the advancement of many kinds of rights, especially work-related rights. These rights are generally stated in individual terms, but all have a collective dimension. Many rights are meaningful only when exercised in a collective manner or, at least, can only be effectively achieved, recognized, and enforced in a collective manner.¹

Youngdahl calls for “solidarity, not human rights” and “solidarity, not meat and potatoes” as guiding principles for the labor movement. What we really need is a skillful, strategic interweaving of these strands into a springboard for labor revitalization. Respecting individual union members’ rights should not weaken solidarity. Individual rights and solidarity are mutually reinforcing. Human Rights Watch recognized this seamlessness of workers’ rights in its *Unfair Advantage* report, with an extensive discussion of secondary boycotts as an important exercise of freedom of association under international human rights principles.

The problem with making solidarity a sole priority is taking it to a logical conclusion. China justifies its state union monopoly as one serving the collective good. In Mexico, the “exclusion clause” in labor contracts (their term for a closed shop) lets unions expel dissident members, and the worker thereby gets fired. Mexico’s corporatist unions justify the exclusion clause citing the need for solidarity in the face of employer power, but it is more often a way to destroy independent unionism. Making rights subordinate to solidarity starts a slippery slope that can end in rights falling off a cliff.

I do plead guilty to a belief in the Western individual rights tradition. If I had to choose

between civil and political rights versus economic and social rights, I would choose the first. I used to call this bourgeois liberalism, but seeing what damage can be done to people in the name of the collective good gives caution now. The point is not to choose, but to combine.

NOT “EITHER-OR”

KNOW ABOUT BOOKER T. WASHINGTON AND his promotion of individual education as the answer to the race question. I am not familiar with Howard Thurman as a foil to Martin Luther King’s “beloved community,” but I don’t think that “either-or” is the right way to frame the debate. All social movements contain a bundle of animating forces, both individual and solidaristic.

“I Am A Man” was just as important a slogan as “We Shall Overcome” and “Black Power” for the civil rights movement. In the same way, “Workers’ Rights are Human Rights” can join “Solidarity Forever” as leit-

Individual rights and solidarity are mutually reinforcing.

motifs for the labor movement. Daniel Webster hit the right note in his famous 1830 speech foreshadowing the civil war: “Not liberty, then union. Liberty *and* union, now and forever, one and inseparable.” We should not have to choose between human rights versus solidarity as the touchstone of an effective labor movement. We can advocate both, insisting that they go hand-in-hand.

The fact that anti-labor forces appropriate “rights talk” doesn’t mean we should leave

the field. This is contested terrain. A look at the “human rights” claims of anti-labor groups, like those promoting “paycheck protection” and “right-to-work,” exposes their hypocrisy. The “paycheck protection” crowd just wants to destroy workers’ exercise of associational rights in the political arena. Contrary to its claimed mission of promoting individual workers’ freedom from union dues, the National Right to Work Committee devotes most of its efforts to attacking trade unions and the very idea of workers’ rights to organize and to bargain collectively.

Making rights subordinate to solidarity starts a slippery slope that can end in rights falling off a cliff.

The Committee gave away the ghost in a boastful article about helping to decertify the United Auto Workers (UAW) at the big Saint-Gobain (formerly Norton Abrasives) plant in Worcester, Massachusetts in 2005. The group characterized its role in the decertification process not as one addressing mandatory dues payments—management had not agreed to such a provision in bargaining (management must agree to require dues payments by non-members)—but as one by which “employees will be free from union monopoly control over terms and conditions of employment. Workers can now be rewarded on their individual merit.”²²

This statement exposes the real mission of the National Right to Work Committee. It’s not about individual rights, it’s about individual “merit,” a code word for letting the market (and employer favoritism)

trump collective bargaining. Under a cover of concern about compulsory union dues, the Committee attacks workers’ freedom of association at its very core, seeking to destroy the representational role of workers’ chosen unions.

We should fight to gain ground for our concept of human rights, not cede it by saying that human rights talk doesn’t get us anywhere so let’s just do solidarity forever. Yes, the union makes us strong. But we have to be open-eyed about the balance of forces and the defensive position in which organized workers find themselves. “Union power” is not a winning slogan in a political climate polluted by anti-labor propaganda and biases. Workers need allies, and human rights framing and arguments can help build alliances.

By developing and using human rights advocacy, the labor movement is not “going over” to an individualistic frame. Labor’s turn toward human rights has not been a one-way thrust. The labor movement is drawing the human rights community its way, too. Human rights groups that formerly stood apart from labor struggles, viewing them not as human rights concerns but as institutional tests of strength, are now committed to promoting workers’ rights.

We should not undervalue human rights activists’ move toward greater understanding, sympathy, and solidarity with workers’ struggles. They add valuable resources and commitments to labor’s traditional allies in civil rights, women’s interest groups, and other organizations. One example is the U.S. Human Rights Network, 200 national, regional, and local groups active in social justice organizing efforts whose mission statement says:

At this moment in history the notion of applying a universal human rights framework to the United States seems to be striking a chord with activists around the country. Those working for social justice in the U.S. who have been exposed to this approach are finding that a human rights umbrella offers promising answers to the lingering doubts they have long held about the U.S. and the ability of domestic single-issue movements—often working in isolation—to create long-term change. Full U.S. compliance with universal human rights standards will require the development of a broad-based, democratic movement that is dedicated to the long-term goal of transforming U.S. political culture. The consolidation of this base and the development of a cadre of human rights activists from these communities will provide the foundation for an expanded effort to build a popular base of support across all sectors of U.S. society.

Take a look at the Network's member organizations. These are important allies for a labor movement looking for revitalization strategies.³

This is not to say that the human rights case is strictly utilitarian. Recognizing the importance and honoring the dignity of every individual union-represented worker should be the foundation of unions that would not devolve into top-down unresponsive bureaucracies. Not that every individual gets his or her way. Trade unions by definition reconcile, compromise, and sacrifice individual interests to advance the interest of the group. The important thing is that these reconciliations, compromises and sacrifices be fashioned democratically.

I think union members' instinct is to support solidaristic results, bringing up those with the weakest individual bargaining power rather than letting those with the strongest

power put more distance between themselves and the rest. It's not automatic; leadership is important, and so is the basic philosophy of the union.

In my earlier life as a union negotiator with the United Electrical, Radio and Machine Workers of America (UE) and the Newspaper Guild, local union leaders tended to come from higher-skilled ranks (skilled trades people in the UE; reporters and editors in the Guild) because of the same qualities that helped them become highly skilled. But they usually pushed for straight-dollar wage increases rather than percentage raises because they altruistically wanted to help the assembly-line workers and the telephone service employees in advertising and circulation, and understood that the union would be stronger by bringing up the bottom, not further rewarding the top.

Democratic and solidaristic values and histories infused these unions. I concede that these values are not always prevalent in the labor movement. The proliferation of two-tier contracts is evidence enough of that, as Ken Jacobs's piece in this volume discusses. Actually, these values are not always found even in some locals of the UE and the Guild. Unions are complex organisms and not all elements are always going in the same direction.

Workers need allies and human rights arguments can help build alliances.

Nonetheless, the historical arc of labor organization keeps moving toward wage compression, equal pay for work of equal value, and equal benefits, bringing up the bottom at a faster pace than advancing the top. Some

unions that went to two-tier contracts succeeded in reversing them when they could. Trade unionists may not instinctively articulate their motives as human rights-based, but they are indeed reflecting a sense of the dignity of less-skilled workers.

HUMAN RIGHTS AND ECONOMIC GAIN

WORKERS ARE EMPOWERED IN CAMPAIGNS when they are themselves convinced—and convincing the public—that they are vindicating their fundamental human rights, not just seeking a wage increase or more job benefits. Employers are thrown more on the defensive by charges that they are violating workers' human rights. The larger society is more responsive to the notion of trade union organizing as an exercise of human rights rather than economic strength.

Jay Youngdahl objects that the human rights argument does not go far enough toward getting concrete results, criticizing Human Rights Watch Director Ken Roth for saying that “human rights arguments are ineffective in the amorphous realm of costs and benefits.” What Ken Roth is saying is that human rights analysis does not acknowledge a right of union workers to win their demands or to win strikes on their terms.

It would be overreaching to assert a “right to win” as a basic human right. Still, human rights advocates make strong arguments for living wages, safe and healthy working conditions, decent treatment of migrant workers, workers' compensation, health insurance, decent pensions, paid vacations and other social protections, equal pay, non-discrimination, no child labor, limits on working hours, and other “just and favorable conditions of work,” as the UDHR and other human rights instruments put it. Human Rights Watch's own reporting on health and

safety conditions in the meatpacking industry and in agriculture demonstrate this. Amnesty International, Oxfam and other human rights groups have done similar work. Adding a human rights voice strengthens the movement for better working conditions, not weakens it.

PUTTING THE HUMAN RIGHTS CASE TO WORK

MANY UNIONS ARE FINDING THAT THE human rights theme resonates and advances their work. The United Food and Commercial Workers International Union (UFCW) features Human Rights Watch's report on violations in the U.S. meatpacking industry in its ongoing effort to help workers organize at the Smithfield Foods hog-slaughtering plant in Tar Heel, North Carolina. American Federation of State, County, and Municipal Employees (AFSCME) has used a human rights analysis of management's anti-union campaign at the Resurrection Health System in Chicago to build support among community allies there. The Teamsters invoked international human rights principles to counter moves by Cummins, Inc. to foment decertification in the company's distribution and service shops around the country.

I'm first in line to acknowledge that it's a struggle to have the UDHR and the International Labour Organization (ILO) Conventions taken seriously (or for that matter, even to be known) in the United States. But in most of the rest of the world they are taken quite seriously both inside and outside labor movements. Since so many union organizing and bargaining campaigns now involve multinational companies, joint campaign action with

trade unions and allies abroad is critical for success.

The human rights framework is especially helpful in building alliances with European trade unions and allied groups. They are strongly attuned to fundamental rights arguments and knowledgeable about ILO standards. They constantly raise them in European Union labor affairs.

I participated in a webinar in July 2008 with 30 European “socially responsible investment” managers, arranged by U.S. trade unionists who wanted to convey the reality of American management union-busting tactics to a new audience. The Europeans didn’t care about the National Labor Relations Act (NLRA) or the technicalities of labor law violations under U.S. law. They wanted to know how management abuses and labor law failures stack up under ILO standards and international human rights standards. Labor advocates hope they will put pressure on European companies to respect workers’ rights in their U.S. operations.

In 2004, the Teamsters union issued a human rights critique of Maersk-Sealand, the giant Denmark-based international shipping company, for violating rights of association among truck drivers who carry cargo containers from ports to inland distribution centers. The company had fired workers who protested low pay and dangerous conditions, and threatened retaliation against others if they continued their organizing efforts. These company abuses were technically legal because the drivers are defined as independent contractors, not as employees. Independent contractor status means that they are excluded from protections of the NLRA and can be fired and threatened with impunity.

Invoking human rights standards to counter this technicality of U.S. labor law, the union charged that the company’s actions “violate international human rights and labor rights

norms for workers” and emphasized that “[t]he responsibility of multinational corporations to recognize international human rights is becoming an important facet of international law.” The report went on to present detailed case studies of Maersk’s labor rights violations, and recommended that “Maersk should declare publicly its commitment to respect international human rights and labor rights standards, including a policy of non-reprisals against any workers who exercise rights of assembly, association and speech in connection with their employment.”

This was not just a report that sat on shelves. In 2004, workers protested at the Danish embassy in Washington D.C. and at consulates around the United States, distributing copies of it. In 2005, union leaders went to the corporation’s annual shareholders meeting in Copenhagen, distributing copies to investors and to the Danish media, with significant attention.

In 2006, the union introduced a shareholders resolution, common at American companies’ annual meetings but a novelty for Maersk, calling on the company to adopt international labor rights standards as official company policy. Under pressure from the international human rights campaign, Maersk has ended its reprisals against union supporters and is currently engaged in sustained talks with the Teamsters to find a collective bargaining solution for port truck drivers.

In similar fashion, the Teamsters’ use of international human rights and labor rights arguments brought a breakthrough in organizing among private school bus drivers employed by First Student, Inc. in locations around the United States. First Student is the U.S. subsidiary of United Kingdom (UK)-based FirstGroup, a multinational transportation company. The Teamsters brought a human rights critique of

First Student's anti-union campaign tactics—captive audience meetings, one-on-one meetings by supervisors with employees, implicit threats and the like—to UK union and non-governmental organization (NGO) counterparts, the British media, the House of Commons, FirstGroup's annual shareholders meeting, and other audiences. Their combined pressure moved top management to issue a "Freedom of Association" policy requiring neutrality toward worker organizing. First Student management backed away from its aggressive interference, and the Teamsters scored a series of National Labor Relations Board (NLRB) election victories in the past year bringing thousands of new workers into the union.

Trade unionists are also making good use of international human rights instruments and mechanisms. In recent years the ILO's Committee on Freedom of Association has found U.S. violations of workers' organizing and bargaining rights in cases involving immigrant workers, registered nurses, airport security screeners, North Carolina public employees, and university teaching assistants.

Understood: taking rights claims to the ILO or other international human rights bodies does not yield enforceable rulings. It is not a magic bullet, but neither is it a waste of time. The rulings have authoritativeness and moral force; our challenge is to use them creatively to change labor policy discourse in the United States and to convince allies in Europe and around the world that American workers face human rights abuses, too.

Even the National Right to Work Committee sees the potential for ILO rulings advancing U.S. labor's cause. In February 2008, the Committee issued a briefing paper titled *Organized*

*Labor's International Law Project? Transforming Workplace Rights into Human Rights.*⁴ The paper asserted that "[o]rganized labor has 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 signal "legitimate concern that domestic courts may allow themselves to be influenced by the rulings of international tribunals" and warned that "ILO processes are a lobbying tool for organized labor and a potential embarrassment for the United States." The paper concluded that "the U.S. government might well give serious consideration to withdrawing from ILO membership."

COMING BACK HOME: THE POLITICS OF LABOR REFORM

THE NEW LABOR-HUMAN RIGHTS ALLIANCE CAN help win much-needed reform in U.S. labor law, starting with the Employee Free Choice Act (EFCA). Workers want the law on their side. This does not sit well with advocates who see the law as an oppressive, militancy-

The new labor-human rights alliance can help win much-needed reform in U.S. labor law, starting with EFCA.

busting shackle that workers should blow off in favor of direct syndical combat against employers. However, the balance of power in the U.S. economy is such that jettisoning the law and having workers engage in a test of sheer

force with employers would be suicidal. The labor movement still must seek the protective shield of strong labor laws, strongly enforced by federal power. An allied human rights movement can help achieve this goal.

The Wagner Act recognized a basic fact about a capitalist economy: employers inherently hold the upper hand in the workplace based on property ownership, entrepreneurial control, and managerial authority. Accordingly, the law must side with workers to right the balance. Federal labor law and labor law authorities should be forthrightly pro-worker, pro-union, and pro-collective bargaining. But workers cannot win these alone. Fashioning a human rights case for reform can help gain support from fence-sitting politicians and middle-class reformers. Winning even modest legislative victories in this direction will give workers confidence that the law is on their side. In turn, success on the political front will generate new organizing success.

Again, this is not meant to overstate the human rights argument or to exaggerate its effects. Jay Youngdahl makes a powerful case and has generated an important exchange here. Labor advocates cannot just cry “human rights,

human rights” and expect employers to change their behavior or Congress to enact labor law reform. For example, in the EFCA debate, strategists concluded that human rights would be a secondary frame, yielding priority to a “restore the middle-class” argument that would make it easier for workers to organize and bargain to address growing inequality.

Change will be incremental. Labor and human rights advocates still confront general unawareness in the United States of international human rights standards and of the ILO’s work in giving precise meaning to those standards. Advocates still have an enormous educational challenge of making them more widely known and respected.

But 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. 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. ■

Notes

1. See James B. Atleson, “The Voyage of the Neptune Jade: The Perils and Promises of Transnational Labor Solidarity,” *52 Buffalo Law Review* 85 (2004).
2. See National Right to Work Foundation, “Saint-Gobain Workers Throw Out Unwanted UAW Union: Foundation attorneys successfully aid workers in high-profile decertification battle,” *Foundation Action*, (March/April 2005): 4.
3. See <http://www.ushrnetwork.org/>.
4. See Malcolm C. Muggeridge, “Organized Labor’s International Law Project? Transforming Workplace Rights into Human Rights,” National Right to Work Committee, *Engage*, Vol. 9 (February 2008).

By Jay Youngdahl

YOUNGDAHL

REPLIES

I UNDERSTAND WHY LANCE, LIKE MANY IN THE LABOR MOVEMENT, STRESSES THE IMPORTANCE of allies for labor and advocates the human rights framing, using the terminology of these potential friends. In my work in the South, I have tried to explain to human rights activists why they should respect a mass transit strike which would inconvenience them, for example, or why a construction union fighting for area standards should be supported when it places a blowup rat in front of a hospital. Without the human rights frame, to activists who have little understanding of the importance of unions, labor struggles often look uncouth and obstructionist.

Our core problem, however, is not that we do not have enough allies; it is that our movement is presently struggling about our way forward. The question I am raising is: how can workers come together and fight in solidarity, with the understanding that an injury to one is an injury to all? Workers, like most people of the world, have been influenced by the mantra of “me first.” If their leaders tell them that they are fighting first and foremost for individual rights, “me firstism” is sure to be the result. “Me firstism” and solidarity are opposing concepts.

Consider the bitter dispute underway (as of fall 2008) at the St. Joseph Hospital chain in California. There the SEIU-UHW-West has mounted an organizing drive covering thousands of workers at several hospitals. Allies of the workers have attempted to frame the issue as one in which hospital management is at odds with Catholic teaching on social justice, and many of

the workers’ allies have been influenced by the community-centered liberation theology of Gustavo Gutierrez and others. The response of the hospital is that they are protecting individual rights. Resistance to union organizing, a hospital vice president stated, comes from the importance of the individual. Their opposition to unionization is because, “The foundation of the tradition is the human dignity of the individual.”¹ How are workers to respond if they have been inculcated by their union leaders that the fight for individual rights is the basis of the union movement today? Compa and I agree that it is obviously dishonest for enemies of labor to claim they are supporting “rights,” but I do not think it is so obvious to many in our movement, or to many of our potential friends.

Practically, the human rights approach is an imprecise template to place over workplace struggles. The question of what to do with competing

rights has yet to be fleshed out. Read the Universal Declaration of Human Rights (UDHR) and think of all the possible conflicts between individuals claiming certain rights. How are they to be resolved? How do we square the human rights protection of property rights in Article 17 of the UDHR with our advocacy of the labor rights in the document? Do we really think that, at any time in our lifetime, the American judiciary will find labor rights trumping property rights? Further, Compa is wrong to imply that rights have become collective. An individual assertion of a right to associate does not make rights collective. Recently, an important African labor leader, Hassan Sonmonu, criticized those who privilege the human rights frame, questioning “why the human rights agenda was often used to promote individual rights over and above collective rights.² Further, our issues are not mainly procedural, they are substantive. Ken Roth of Human Rights Watch let the cat out of the bag when he said that the human rights framework is not a conducive way to succeed in areas involving these kinds of social and economic advances.

Compa and I agree that both the individual and the social must and will exist.³ Our disagreement is over which must be primary in a union movement that empowers and powerfully supports workers.

A strategy based on solidarity is a practical one. People crave community. The explosive growth in social networking sites on the internet is just one example. Our harried commodified society separates people; but people do not want to bowl alone, they have been forced to. Unions can be the finest examples of caring communities that unite people. A philosophy of solidarity can powerfully and practically connect to and inspire larger society.

The human rights framing just puts off the fundamental issue in the workplace—how are the

The essential difference between Compa and me is the degree of optimism that we have about the ability of working people to take matters into our own hands.

efforts of labor to be divided? This has been the nexus of the fight between labor and capital since the dawn of capitalism. It is why labor can never be a human rights movement like others. The hostile management response to the Employee Free Choice Act (EFCA) is not because it is a human rights issue; it is because increased unionization has the potential to strengthen the ability of workers to get more of the pie.

While he might disagree, I think the essential difference between Compa and me is the degree of optimism that we have about the ability of working people to take matters into our own hands. If unions and working people are in similar straits to those suffering in situations like Darfur, then human rights-centered appeals to friends are the only way to succeed. I understand that this is a bleak time in the global labor movement, but it is not that bleak. If it is, all our efforts will be in vain. ■

Notes

1. “Theology Finds Its Way into a Debate Over Unions,” *The New York Times*, August 9, 2008.
2. *International Union Rights*, Vol. 15, No. 2, (2008): 17. Hassan Sonmonu is the General Secretary of the African labor federation OATUU.
3. Interestingly, Article 29 of the UDHR reads, “Everyone has duties to the community in which alone the free and full development of his (sic) personality is possible.”