Articles & Essays

WORKER RIGHTS AS HUMAN RIGHTS: WAGNER ACT VALUES AND MORAL CHOICES

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I. INTRODUCTION

April 12, 1937 at the National Labor Relations Board "was just wild." A "great joy" and a "whole feeling of victory. . . ran through the office — [it was] like a carnival almost for that day and days afterward."[1] On that day, a divided Supreme Court had upheld the Wagner Act as the law of the land. Given today's near universal acknowledgement of the triumph of capitalism and almost universal acceptance of the "free market" values underlying that economic system, it needs to be recalled that when Franklin Delano Roosevelt was inaugurated as president of the United States in the Great Depression year of 1933, the people had lost faith in the virtues of rugged individualism and the allegedly self-generating forces of economic

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1. JAMES A. GROSS, THE MAKING OF THE NATIONAL LABOR RELATIONS BOARD: A STUDY IN ECONOMICS, POLITICS AND THE LAW 231 (1974).

growth. They were receptive to almost any kind of remedial action, including unconventional experiments in economic policy by the federal government. Even then, Wagner's National Labor Relations Act received only a "tepid public blessing" from Roosevelt[2] and that came only after other experiments had failed. Senator Wagner, however, hailed the new law as a "bulwark of industrial peace and justice."[3]

My approach and response to the question of whether we should return to the principles of the Wagner Act are rooted in the belief that the basic foundation of law, including labor law, is moral choice — and that the moral choices we make determine what kind of society we want to have and what kind of people we want to be. More specifically, it is my contention that there can be no satisfactory answer to the return to the Wagner Act question until there is a comprehensive and thorough re-examination of United States domestic labor law and policy using internationally accepted human rights principles as standards for judgment.

The concept of human rights, however, has not been an important influence in the making of United States labor policy. In this country, workers are considered to have only those rights set forth in specific statutes or collective bargaining contracts and those statutes and contracts are subject to shifting political and bargaining power. It is also my contention, however, that the values underlying the Wagner Act and many, but not all, of its provisions are most consistent with the values of human rights.

II. THE VALUES AND THE PROMISE OF THE WAGNER ACT

As I have written elsewhere, the Wagner Act established the most democratic procedure in United States labor history for the participation of workers in the determination of their wages, hours, and working conditions.[4] The Wagner Act was not neutral; the law declared it to be the policy of the United States to encourage the practice and procedure of collective bargaining and to protect workers in their exercise "of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."[5] This was a fundamental change in public policy, particularly

2. *Id.* at 147.

3. *Id.* at 229.

4. James A. Gross, *The Broken Promises of the National Labor Relations Act and the Occupational Safety and Health Act: Conflicting Values and Conceptions of Rights and Justice*, 73 CHI.-KENT L. REV. 351 (1998).

5. Pub. L. No. 74-198, 49 Stat. 449-50 (1935) (codified as amended at 29 U.S.C. §§ 141-44, 167, 171-87 (1944)).

in regard to the role of government regulation of labor relations. The Act promised a protected opportunity for workers through power-sharing to participate in making the decisions that affect their workplace lives. What was then called industrial democracy was to replace employers' unilateral determination of matters affecting wages, hours, and working conditions. The Wagner Act had the potential to bring about a major redistribution of power from the powerful to the powerless at United States workplaces covered by the statute.

J. Warren Madden, the first chairman of the Wagner Act National Labor Relations Board, said that his Board (1935-1940) was "left of center" because the Wagner Act — which encouraged the practice and procedure of collective bargaining — "was left of center."[6] He expected employers to dislike the Act because it reduced their power — "And did anyone ever in the history of the world rejoice at losing power?"[7]

For Wagner, the right to organize and bargain collectively was "at the bottom of social justice for the worker"[8] and was essential for a free and democratic society. He believed that "the struggle for a voice in industry through the process of collective bargaining is at the heart of the struggle for the preservation of political as well as economic democracy in America."[9] He opposed the tyranny of both free-market laissez faire, in which "men become the servile pawns of their masters in the factories" and the authoritarian "super government."[10]

Certainly, the right to physical security and subsistence is indispensable to the enjoyment of all other rights. The Wagner Act labor policy understood, however, that people need more than physical security and subsistence. A full human life begins by not having to depend on others' benevolence, charity, love, pity, or devotion to duty. It also means that one is not helplessly subject to the arbitrary exercise of power by others or to the allegedly impersonal forces of the so-called free market. The Wagner Act understood that this can be achieved only by worker participation in the economic as well as the political and social aspects of their lives. It promoted not the pseudo-participation of form with no substance, but genuine participation where people can influence workplace decisions.

The right of people to participate in the decisions that affect their lives is one of the most fundamental principles of democracy — and it is a fundamental human right (outside the United States, the freedom of

6. James A. Gross, *Conflicting Statutory Purposes: Another Look at Fifty Years of NLRB Law Making,* 39 INDUS. & LAB. REL. REV. 7, 11 (1985).

7. *Id.*

8. *Id.* at 10.

9. *Id.*

10. *Id.*

association and collective bargaining are recognized as human rights).[11] The Wagner Act, therefore, promoted independent labor organization and collective bargaining as essential to a democratic form of government, not merely as the consequences of management mistakes. The Act's dedication to applying principles of democracy and human rights in the workplace was its underlying strength. The Wagner Act sought to eliminate the vulnerability that leaves workers at the mercy of others or of supposedly impersonal economic forces — either of which can transform them from self-reliant participants in society into helpless victims. The law was intended to give workers the opportunity to secure their own rights and interests through participation in workplace decision-making.

III. THE WAGNER ACT PROMISES BROKEN

Labor never came close to achieving the system of workplace democracy envisioned by Senator Wagner. In 1984, a House Labor Committee concluded not only that the labor law had failed to achieve its purpose, but also that the law itself was being used "as a weapon to obstruct collective bargaining" and to create only the illusion of protecting workers against discrimination.[12] My own study of Wagner-Taft-Hartley from 1947-1994, a book entitled *Broken Promise*,[13] 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.

A. Taft-Hartley Act

It began in 1947 with the Taft-Hartley amendments to the Wagner Act.[14] Although Congress carried over to Taft-Hartley the Wagner Act statement that it was the policy of the federal government to encourage collective bargaining,[15] it added a new declaration of policy saying that the

11. *See* James A. Gross, *A Human Rights Perspective on United States Labor Relations Law: A Violation of the Right of Freedom of Association*, 3 EMPLOYEE RTS. & EMP. POL. J. 65, 70-72 (1999).

12. *Id.* at 79.

13. JAMES A. GROSS, BROKEN PROMISE: THE SUBVERSION OF U.S. LABOR RELATIONS POLICY, 1947-1994 (1995).

14. Labor Management Relations Act, 1947, Pub. L. No. 80-101, 61 Stat. 136 (1947) (codified as amended at 29 U.S.C. §§ 141-44, 167, 171-87 (1944)).

15. Gross, *supra* note 4, at 352.

purpose of the Act is to protect the rights of individual employees.[16] Although there is no necessary conflict between the encouragement of collective bargaining and the protection of individual rights, many experts at the time Taft-Hartley became law predicted correctly that this addition plus language asserting the right to refrain from engaging in collective bargaining (Section 7),[17] the addition of several union unfair labor practices (Section 8 (b)),[18] and a provision asserting employers' right of "free speech" (Section 8(c)),[19] would be read as a statutory justification for both the promotion of a policy of individual bargaining and employer resistance to unionization and collective bargaining.

When the employer free speech language was being considered in the Senate in 1947, for example, Senator Wagner (who was too ill to attend the debates on the Senate floor) wrote:

> [The] talk of restoring free speech to the employer is a polite way of reintroducing employer interference, economic retaliation and other insidious means of discouraging union membership and union activity thereby greatly diminishing and restricting the exercise of free speech and free choice by the working men and women of America. No constitutional principle can support this, nor would a just labor-relations policy result from it.[20]

The phrase "employer free speech" concealed the real policy issue: the extent to which, if at all, employers were to be permitted to exert economic power through speech in regard to employees' choice of and participation in unions. Congress and the first Republican-appointed NLRB that applied Section 8(c) went beyond the notion of protecting an individual employee's statutory right to choose or reject unionization and the collective bargaining process; they created an employer right to resist and obstruct unionization. The change moved labor policy from requiring employer neutrality in the early years of the Wagner Act to sanctioning active employer resistance to unionization. The deregulation of employer speech increased the ability of employers to use their economic power to defeat unionization efforts. Few democratic societies, other than our own, condone open opposition by employers to unionization and collective bargaining.

Since many of the most important employment decisions cannot be individually negotiated, worker's choice is not simply between individual and collective bargaining but rather between participation in or exclusion

16. 29 U.S.C. § 141.
17. 29 U.S.C. § 157 (1944).
18. 29 U.S.C. § 158(b) (1944).
19. 29 U.S.C. § 158(c) (1944).
20. Gross, *supra* note 11, at 89 (citing Robert F. Wagner, The Wagner Act—A Reappraisal, 93 CONG. REC. A895, A896 (1947), *reprinted* in 2 LMRA, LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, 935, 938 (1948)).

from the decision-making process that directly affects their lives. The concept added to Taft-Hartley of the federal government as a neutral guarantor of employee free choice between individual and collective bargaining, and indifferent to the choice made, is clearly inconsistent with the Wagner Act concept that was retained in Taft-Hartley–of the federal government as a promoter of collective bargaining. The Taft-Hartley Act contains both conceptions of the government's role so that the NLRB can choose between the contradictory statutory purposes and still claim that they are conforming to statutory intent — leaving the perception that the meaning of the law depends on which political party won the last election.

B. The White House

Lack of courageous leadership in the White House, no matter who the occupant, has also contributed to breaking the promise of the Wagner Act. No president in the last twenty-five years or so has made and endorsed a clear statement of the rights of workers to organize and bargain collectively. Strong presidential support can be the difference between success and failure in Congress. Compare, for example, the Clinton administration's unwillingness in 1994 to provide the same intense political support that it gave to the North American Free Trade Agreement ("NAFTA") to a bill that would have made it illegal for an employer to hire permanent replacements for economic strikers.

A presidential administration can also change agency policy without legislative action through its power to appoint agency members. Ronald Reagan, for example, appointed people to the NLRB who were hostile to the law they were supposed to carry out. During that period, the national labor policy became one of maximizing employers' ability to compete in domestic and foreign markets by deregulating the management end of labor-management relations. Management's authority to manage was elevated above employers' statutory obligations to bargain.[21]

C. Congress

Since 1947 Congress has not used its power to legislate, investigate, and appropriate in ways that would promote the freedom of association and collective bargaining. To the contrary, congressional opponents of the NLRB, in recent years, have sought to achieve deregulation through appropriation cuts and riders to appropriation bills rather than the legislative process, often under the guise of balancing the budget.

Congress has done nothing to promote vigorous enforcement of the

21. GROSS, *supra* note 13, at 246-271.

law so that at least violators should not be able to profit from their violations. More than thirty years ago, then NLRB Chairman, Frank McCulloch, told Congress that the Board's remedies were not sufficient to achieve the purposes of the NLRA.[22] Today those same remedies still do not deter employers from violating the law. The inadequacy of these remedies coupled with the delays in issuing remedial orders actually make it "cost efficient"[23] for employers to violate the Act. Enforcement of the labor law has not been a top priority in the White House or Congress.

D. The Courts

The courts, particularly the Supreme Court, could have issued decisions that implemented participatory democracy at the workplace, but instead have chosen to expand employers' unilateral control over the most important entrepreneurial decisions. These rulings undercut collective bargaining and, subsequently, the purposes and policies of the Act that encourage organization and collective bargaining. From Justice Potter Stewart's classic value-laden 1964 dicta excluding those decisions "at the core of entrepreneurial control,"[24] from the obligation to bargain to the 1981 value-judgment-riddled Supreme Court decision in *First National Maintenance Corporation v. NLRB*[25] to the Court's 1992 decision in *Lechmere, Inc. v. NLRB*[26], the Supreme Court has issued major rulings that not only defy the intent of the NLRA to encourage the practice and procedure of collective bargaining, but also echo "the pre-New Deal hostility to organized labor that federal labor law aimed to reverse."[27]

E. Organized Labor

Organized labor has been in a long-term decline. Much of this decline can be attributed to widespread employer opposition to unionization, but some of the decline is its own fault. Organized labor has not been able to shake the unsavory image created by the late 1950's McClellan hearing which fixed in the public's mind the still-powerful picture of exploited union members controlled by corrupt and dictatorial leaders whose only

22. Gross, *supra* note 4, at 361.

23. David L. Gregory, *Working For A Living*, 58 BROOK. L. REV. 1355, 1367 (1993).

24. *Fibreboard Paper Prods. Corp. v. NLRB*, 379 U.S. 203, 223 (1964).

25. 452 U.S. 666 (1981) (removing employers' decisions to close part of their business from the list of mandatory subjects of bargaining).

26. 502 U.S. 527 (1992) (where a naked property right trumped workers' freedom of association).

27. Cynthia L. Estlund, *Labor, Property, and Sovereignty After* Lechmere," 46 STAN. L. REV., 305, 328 (1994).

interest was personal enrichment.[28]

Organized labor's political influence has also declined as both major political parties began moving rightward toward an ideological consensus that espoused a politics of "centrist" conservatism. Labor's legislative agenda has been given consistently low priority. Unions must also bear some of the blame for restricting the scope of bargaining which has fallen short of the potential envisioned by Senator Wagner. In general, unions defined for themselves too narrow a role in the operation of the enterprise. The understanding between labor and management–in which labor was the junior partner who bargained only in limited areas while allowing management unrestricted authority to manage–was the product of limited vision.

F. Employer Resistance

I am persuaded, however, that the determined opposition of United States employers taken as a whole has been the biggest obstacle to the Wagner Act policy of organization and collective participation for workers at their workplaces. As Professor Benjamin Aaron has pointed out, "employer resistance to unions has deep historical roots and is still strong and growing."[29] Shortly after a conference at Cornell University commemorating the fiftieth anniversary of the Wagner Act, former NLRB chairman McCulloch deplored "artful anti-collective bargaining propaganda,"[30] "countless employer campaigns vilifying unions and trumpeting employer benevolence as the workers' best friend,"[31] and other impediments to "basic human aspirations to have a meaningful voice in shaping one's own destiny."[32] McCulloch also feared that the "social partnership" of labor and management anticipated by the principles of Wagner-Taft-Hartley was becoming "increasingly foreign" as the result of "the growing attacks upon the labor movement" by its management opponents.[33]

IV. VALUES CONTRARY TO THOSE OF THE WAGNER ACT

Over the years, there have been a number of proposed legislative changes intended to remedy at least certain aspects of the broken promise.

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28. Gross, *supra* note 13, at 122-123.

29. Benjamin Aaron, *The NLRB, Labor Courts, and Industrial Tribunals: A Selective Comparison*, 39 INDUS. & LAB. REL. REV. 35, 35 (1985).

30. Gross, *supra* note 6, at 17.

31. *Id.*

32. *Id.*

33. *Id.* at 18.

These suggestions include the following:

- increase the effectiveness of NLRB remedies
- end the permanent replacement of economic strikers
- crack down on the anti-union consulting industry
- improve union access to employees during representation election campaigns
- lift prohibitions on secondary activity
- minimize employer involvement in representation campaigns by the use of authorization card certifications
- end the distinction between mandatory and permissive subjects of bargaining by permitting bargaining over all issues that directly or indirectly affect people's working lives
- 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
- allow for minority unions and end exclusive representation
- make the discretionary 10(J) injunction[34] mandatory in cases involving employees discharged for union activity
- expand the coverage of the Act to extend participation to as many workers as possible.

Labor history before and after the passage of the Wagner Act helps us understand why none of these proposals or any other legislative attempts to redeem the promise of the Wagner Act are likely to succeed. Much of the debate about the NLRA has focused on such proposals to amend the law and the strategies, objectives and relative political power of those who would gain or lose as a consequence of such legislative changes. As stated earlier, however, the answer to the question about returning to the principles of the Wagner Act is at its core a question about a choice of values.

A. *The Values of Business and Free Market Economies*

Every economic system has historical roots and embodies value judgments about the individual person, law, private property, liberty, and the role of government. A particular system and theory are chosen because they yield policy implications compatible with some one's or some group's vision of how the world should be.

It is unnecessary to review the well-documented history of how the legal system, for example, was used in an increasingly market-oriented society, not only to secure economic and political power for entrepreneurs and merchants, but also to facilitate a redistribution of wealth in their favor

34. 29 U.S.C. § 160 (1998).

at the expense of workers, farmers, consumers, and other less powerful people. The common law was a powerful force in facilitating economic development, particularly through the development of still-prevalent doctrines of property rights. When these contract doctrines were extended to treat the employment relation the same as any other contract, the result was not liberating or rights-endowing for workers.

This was due in part to the values of the judges who created the doctrines. As Justice Benjamin Cardozo once said, "[t]he decisions of the courts on economic and social questions depend upon their economic and social philosophy."[35] These judges, overwhelmingly "solid, independent men of middle class," were "terrified of class struggle, mob rule, the anarchists and their bombs, railroad strikers and the collapse of the social system as they knew it."[36]

> Employment contract doctrine gave employers a legal basis for the prerogatives they demanded and which free market ideology claimed were essential. That was accomplished by importing into employment contract doctrine the law of master and servant in a way that not only preserved the masters' authority but also absolved employers of the duties masters owed their servants.[37]

In sum, the employment contract became "a legal device for guaranteeing to management the unilateral power to make rules and exercise discretion."[38]

> The values underlying common law employment contract doctrine are still embedded in U.S. beliefs about economic and workplace relations. Those values have been reinforced by folk philosophies such as the "Gospel of Wealth" and "Social Darwinism" that originally [attempted] to reconcile democratic [and religious] beliefs in the free individual with the reality of concentrated corporate economic and political power.[39]

According to these values, workers should remain unorganized and cared for by the "natural aristocracy of ability" that controlled business;[40] business should be free from government regulation; and the prosperity of enterprise "was the way, the truth, the consummate social good."[41] People were poor, therefore, not because of any fault in the system but because

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35. BENJAMIN CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 171 (Yale Univ. Press, 8th ed. 1932) (1921).

36. LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 486 (1973).

37. James A. Gross, *The Common Law Employment Contract and Collective Bargaining: Values and Views of Rights and Justice*, 23 N.Z. J. INDUS. REL. 63, 68 (1998).

38. ALAN FOX, BEYOND CONTRACT: WORK, POWER AND TRUST RELATIONS 188 (1974).

39. Gross, *supra* note 37, at 71.

40. RALPH HENRY GABRIEL, THE COURSE OF AMERICAN DEMOCRATIC THOUGHT 168 (2d ed. 1956).

41. FRIEDMAN, *supra* note 36, at 485.

they were personally defective in capacity, or morals, or both.

Unions had no place in the subsequent Scientific Management approach that imposed tight management control over workers whose obedience was secured by the use of financial and disciplinary "incentives." Unions also were excluded from the human relations movement, the inspiration for current human resource management that "promote[s] harmony without disturbing management's control of the workforce."[42]

Today, it is an article of faith that survival (and jobs) in this era of global competition depends on strategies that are favorable to business and hostile to the core provisions of the Wagner Act and organized labor: the end of costly contracts with unions; the retention or regaining of management prerogatives, power and flexibility; the freedom to overcome other labor cost advantages enjoyed by competitors here and around the world, and the end of government regulations that interfere with the free market's distribution of benefits and burdens.

All of that is rooted in values and ideology. The each-versus-all individualism that drives the free market approach to life induces people not only to be preoccupied with their own personal self-interest, but also 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 a quasi-religious superstition."[43]

V. CONCLUSION: A NEEDED NEW PERSPECTIVE ON THE VALUES OF THE WAGNER ACT

The promises made in the NLRA embody fundamentally different values and conceptions of rights and justice than those underlying the allegedly free market system. This paper reaffirms the moral superiority and democratic nature of those NLRA values. It also contends that the conceptions of workers' rights and social justice underlying Wagner's statute were subordinated to the values of free market economics and the rights of property and management. It is not enough to reaffirm that the provisions of the Wagner Act confirmed that workers were human beings — not mere resources — and that human beings were not to be submissive

42. Gross, *supra* note 37, at 72.

43. Gross, *supra* note 4, at 73 (quoting 2 FRIEDRICH A. HAYEK, THE MIRAGE OF SOCIAL JUSTICE 66 (1976)).

to employers, markets, or governments. It is not enough to reaffirm that those provisions promoted individual rights and responsibility, social obligations, and a democratic approach to employment decisions.

Despite fatalistic views about the futility of trying to reverse the dominant economic and political value choices, history shows that even after long periods of political stability abrupt changes occur when other interests gain prominence. The ability of challengers to redefine a policy issue is but one reason for such change. Therefore, a new perspective is needed on the Wagner Act and its underlying values.[44]

I contend that we need to reexamine U.S. domestic labor policy using internationally accepted human rights principles as standards for judgment. The international human rights movement and organizations, human rights scholars, and even labor organizations and advocates have given little attention to worker rights as human rights. 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."[45] An honest and systematic reexamination and reassessment of our own U.S. labor law would be a long overdue beginning toward the promotion and protection of worker rights. The Human Rights Watch report, *Unfair Advantage: Workers' Freedom of Association in the United States Under International Human Rights Standards*, was a most recent major first step in that direction.[46]

I also contend that the values underlying the Wagner Act, and most but not all of the Act's provisions, are the values most consistent with human rights values. At its core, for example, was the promotion and protection of the freedom of association which "is the bedrock workers' right under international law on which all other labor rights rest."[47] The right to bargain collectively follows directly as an inherent aspect of the

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44. Gross, *supra* note 4, at 382-83.

45. Gross, *supra* note 11, at 68.

46. HUMAN RIGHTS WATCH, UNFAIR ADVANTAGE: WORKERS' FREEDOM OF ASSOCIATION IN THE UNITED STATES UNDER INTERNATIONAL HUMAN RIGHTS STANDARDS (2000).

47. *Id.* at 13. For example, Human Rights Watch pointed out in its report, Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards, some provisions of the Wagner Act, such as the exclusion from coverage of agricultural and domestic workers, openly conflict with international human rights norms that affirm the right of "every person" to form and join trade unions and to bargain collectively. Citing these exclusions, the denial by many states of the right to bargain collectively to public sector employees, as well as additional exclusions in the Taft-Hartley amendments to the Wagner Act, Human Rights Watch concludes that "millions of workers in the United States are excluded from coverage of laws that are supposed to protect the right to organize and bargain collectively." As a consequence, "workers who fall under these exclusions can be summarily fired with impuinity for seeking to form and join a union." *Id.* at 10 and 29.

freedom of association. Consequently, the Wagner Act was intended to enable workers to obtain sufficient power to make the claims of their human rights both known and effective so that respect for their rights was not dependent solely on the interests of the state, their employers, or others. The Wagner Act was a moral choice against servility. Servility is incompatible with human rights.

Wagner's law also reflected his understanding of the necessary interrelatedness of political and economic rights. He recognized that for those without bread, the guarantees of freedom of association, freedom of speech, and political participation are in reality meaningless. He also knew that it was not only the state – but also the employer – that has the explicit power to violate people's rights. He knew that a human being has a right to be free from domination regardless of the source. Making it the policy of the federal government to encourage and protect the practice and procedure of collective bargaining and prohibiting interference with labor organization and collective bargaining emphasize Wagner's understanding that government support and protection are absolutely essential to the exercise of participatory rights at the workplace. The fundamental rights that people need to live a human life, therefore, include not only those a government must not invade but also those a government must provide or promote. Moreover, Wagner's Act was intended to have the government protect and empower those most in need of protection and empowerment.

If the values of the Wagner Act are understood for what they actually are, that is, human rights values, it changes the scheme for giving certain rights priority over other rights. If freedom of association is recognized as a human right, for example, then it gets first priority. That does not mean that property rights, efficiency, or management rights are forsaken; it simply means that those rights no longer are entitled to receive the first priority that courts, administrative agencies, and labor arbitrators have historically given them. It would mean that the fundamental human right of freedom of association should trump both property and speech rights of the employer at the workplace. This could be accomplished without unfairly damaging legitimate employer interests.[48]

Workers' freedom of association is being violated in this country. Yet, as the Human Rights Watch report asserts, "[m]any Americans think of workers' organizing, collective bargaining, and strikes solely as union-versus-management disputes that do not raise human rights concerns."[49] Many are not even aware that they are required by law. All people in this country, not only law-makers and policy-makers, need to understand the moral as well as legal issues involved in labor law and its implementation.

48. See Gross, *supra* note 11 for a thorough discussion.
49. HUMAN RIGHTS WATCH, *supra* note 46, at 7.

Americans need to understand more than the rules of labor law; they need to understand the values underlying those rules. They need to understand, as well, that there are fundamental human rights at issue here and that their decisions about those rights will ultimately determine what kind of people they are and what kind of society they have.

As I said at the outset of this piece, the basic foundation of labor policy is moral choice. The fundamental purpose of labor policy is not efficiency or productivity, but to find a moral basis for achieving human dignity, human solidarity and self-sufficiency, and justice for all people at workplaces and in the larger communities affected by what goes on at those workplaces. Comprehending and promulgating the values of the Wagner Act as human rights is where we need to begin.