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# Human Rights in Employment:
## Implications of the International Consensus for Management Teaching and Practice

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Résumé de l'article

The term human rights in employment is commonly used to refer to the rights of minorities to be treated fairly and with justice. The term, however, rightfully encompasses a broader range of issues. There is in fact a very strong international consensus that, in addition to protection against discrimination in employment, young children should not be permitted to engage in exploitative forms of work and employees everywhere should enjoy freedom from forced labour, freedom of association, and the right to bargain collectively. Action designed to thwart the enjoyment of these standards are human rights violations.

The term "human rights violation" most often comes up in the context of discussions about conditions in some of the world's poorer nations but the rights of workers in the supposedly advanced countries are far from sacrosanct.

Although it attracts little adverse attention, the North American employment practice of union avoidance sabotages the right to bargain collectively and thus is morally wrong. It should not be practised by business and it should not be taught in business schools. From a human rights perspective the practice of union avoidance is the moral equivalent of forced labour, child labour and overt discrimination.

If you are sceptical, I can understand. When this notion first occurred to me my reaction was to reject it. Over the years, however, I became a convert to the extent that in 1997 I helped found an organization dedicated to promoting awareness and compliance with core labour rights as human rights. Let me review with you the tortuous road that I travelled to get to this point.

# Human Rights in Employment: Implications of the International Consensus for Management Teaching and Practice[1]

*by*

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The term human rights in employment is commonly used to refer to the rights of minorities to be treated fairly and with justice. The term, however, rightfully encompasses a broader range of issues. There is in fact a very strong international consensus that, in addition to protection against discrimination in employment, young children should not be permitted to engage in exploitative forms of work and employees everywhere should enjoy freedom from forced labour, freedom of association, and the right to bargain collectively. Action designed to thwart the enjoyment of these standards are human rights violations.

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My first job out of Pennsylvania State University was with Chase Manhattan Bank in New York City. I had signed on as a lending officer trainee but after a few weeks I realized that finance was not my thing and so wound up in the ambiguously named Personnel Planning Department. One of its main functions was to advise the bank on how to maintain its non-union status; another was to prepare bank officers being sent overseas to deal with unions in such diverse parts of the world as the Caribbean, Asia and Europe.

One of the projects to which I was assigned was the making of a training film for supervisors entitled *Labor Unions in America*. Although it was distributed by the American Association of Industrial Management, it was bankrolled by Chase. Its basic

theme was that historically unions played an important role in winning workers acceptable conditions. Today, however, most firms had become enlightened and it was no longer necessary for workers to unionize in order to compel their firms to pay them fairly and treat them with dignity. By and large modern employers provided good conditions thereby making unions unnecessary.

The film also discussed many ways that unions - as institutions in their own right - were likely to make the job of management more difficult by, for example, negotiating rigid conditions, forcing management to waste time dealing with frivolous grievances and by going on strike. Unions today, the film concluded, were disruptive and costly and were primarily interested in maximizing their own power and income rather than ensuring the best interests of working people.

Another project that I was involved with was the writing of a formal bank policy on unionization. In essence it said that the bank believed in treating its employees well and, consequentially, it believed that employees had no need to turn to "outside organizations" in order to protect their interests.

At the time, the logic underlying these two projects was just being worked out in American industry. In the 1930s and 1940s there had been a huge increase in unionization and collective bargaining in the US and after World War II it appeared that a new set of labour-management understandings had fallen into place. That "compromise" seemed to suggest that American business was willing to accept trade unions as legitimate institutions and collective bargaining as the preferred way to establish conditions of work.[3]

By the 1960s, however, as my experience in the field at Chase suggests, the Post War Compromise was already crumbling. Companies that had withstood the labour onslaught of the 30s and 40s were in the process of developing substantive and conceptual resources designed to protect their autonomy - their freedom to develop and institute programs without "outside interference."

Academe was a bit slow in picking up on this change. When I arrived in graduate school at the University of Wisconsin in 1969 the understood convention, as stated in textbooks and in classroom lectures, was that collective bargaining was still the preferred method for establishing conditions of employment. The organization of the public sector in the 1960s and early 1970s comforted academics in their belief that this notion was widely accepted in the real world.

By the 1980s, however, there was a good deal of confusion in academe caused by lots of seemingly contradictory signals. Tom Kochan, Bob McKersie and Harry Katz cleared it up when they published *The Transformation of American Industrial Relations* - one of the most widely read books on American IR in the past half-century. They told us that even though lots of IR types in industry still honoured the post war understandings, a growing number of corporate heads didn't. Even in industries where union-management negotiations had become the norm companies were setting up new plants on greenfield

sites where they engaged in policies similar to those that had been worked out earlier at Chase and other companies - policies designed to keep unions out of new plants even though they had been accepted as bargaining partners at other plants.

Clearly, Kochan, McKersie and Katz taught us, there was no longer a mutual understanding that collective bargaining was the preferred means to establish conditions of employment. Instead, the theme of the Chase supervisory film had become the general business norm: Unions and collective bargaining are disruptive and a nuisance and if companies do right willingly there is no need for employees to turn to them.

Today that norm has been widely accepted not only in industry but also in academe. Although developed in the United States it has been widely embraced in Canada as well and has been spreading internationally. Based on this theory and the values associated with it, contemporary Human Resource Management text writers commonly provide sections summarizing the best thinking on how to maintain non-union status.

For example, in their widely used text, *Canadian Human Resource Management - A Strategic Approach* Schwind, Das and Wagar say

"In nonunion facilities, an implicit objective of management is often to remain nonunion. Employers frequently adopt either a *union suppression* or *union substitution* approach in order to avoid unionization."

Employers using *union suppression* "may try to intimidate workers, threaten closing or moving the plant or facility, or discriminate against union supporters."

Union substitution on the other hand "examines what unions bring to the employment relationship and then tries to introduce such features into the nonunion workplace."

To use this approach effectively the authors tell us "human resource managers need to actively apply the ideas discussed in earlier chapters of this book. Failure to implement sound human resource policies and practices provides the motivation for workers to form unions." (pp.661-662).

I believe that Schwind, Das and Wagar accurately capture the dominant norm in business schools across North America. Corporations are thought of as clients for professional human resource advice. Descriptively, a corporate objective is to avoid bargaining with employee representatives. Prescriptively, a function of the human resources academic is to help them achieve that end. There are, of course, academics who reject this role but they are the exception that illustrates the rule.

* * *

To this point my purpose has been to be informative. I wanted to review some developments about which most professors of human resources and industrial relations are no doubt generally familiar.

From this point I will be changing gears to be persuasive. I will argue that the dominant norms described above in both business and academe need to be fundamentally rethought because they are morally wrong. When companies like my old employer Chase publicize their union-free preference they engage in a form of harassment no less illicit than sexual harassment. The objective of remaining "union-free" and thus, in the North American context, "collective bargaining-free" is as wrong as seeking to remain Black free or Woman free, or Old free. The pursuit of freedom from unions and collective bargaining, although perfectly legal in the United States and Canada, is as much of a human rights violation as producing goods and services with slave labour or with young children.

At this point I expect that many of you are saying: No way! How can the US - the global champion of democracy - be a hot bed of daily human rights violations on a plane with slavery in Sudan and forced child prostitution in Thailand? How can so common a pattern of behaviour be so wrong?

Please bear with me. As I said above, I too began as a sceptic but the more that I looked into this issue the more difficult it became to deny the conclusion stated above. Let me tell you, in brief outline, the story that my inquiries uncovered.

During the 1930s and 1940s behaviour that today we would all agree was grossly evil was commonplace. Among the worst atrocities were those committed in the context of the holocaust. At that time the world community of nations had no way of dealing with terrible acts committed inside national borders. As a result of the 17th century Treaty of Westphalia (see, for example, Mastanduno and Lyons), the understanding was that countries could do whatever they saw fit within their own borders as long as they did not invade their nation-state neighbours.

After WWII, however, the world community got together and established a global moral code - the Universal Declaration of Human Rights. It laid out the norms against which the behaviour of any nation-state could be assessed. Because the spirit of Westphalia was still strong, the Declaration was self-executing. The only normal sanction that could be assessed against a trespasser was moral indignation. Occasionally, however, the community of nations did act in concert to impose real substantive sanctions as it did against South Africa's policy of apartheid.

Included in the Universal Declaration of Human Rights was the concept of Freedom of Association which, the document asserted, was a fundamental human right no less worthy of respect than the right to vote or the right to trial by jury. The international agency designated to promote respect for this concept was the International Labour Organization - a tripartite (labour, business, government) body tracing its roots to the period after World War I. The ILO is most well known for its establishment of international labour standards. Each year there is a meeting in Geneva of labour, management and government representatives from around the world who debate labour issues and establish standards which, if ratified, become law in member states.[4]

The ILO's policy and approach to Freedom of Association is, however, distinct from its standards work and is less well known. Regardless of labour standard ratification, each member nation of the ILO accepts a responsibility - simply as a function of its membership status - to promote within its national boundaries behaviour consistent with Freedom of Association. To oversee the implementation of this policy the ILO has a committee of international notables (representing all three interests) who review complaints of non-compliance against nation-states. Since its establishment in the 1940s this committee has decided roughly 2000 cases and in its decisions has formulated a practical definition of Freedom of Association. It has also developed a jurisprudence establishing conduct consistent with respect for this universal human right. Among the subsidiary rights that the committee has found to be inherent in the notion of Freedom of Association are the right to strike and the right to bargain collectively (see Bartolomei de la Cruz, von Potobsky and Swepston 1996).

When the committee hears a complaint and finds it to have validity, it issues a recommendation to the delinquent government outlining what it ought to do to bring itself into compliance. Because of Westphalia, however, it has no power to impose sanctions beyond public embarrassment.

Until about 10 years ago, this ILO function had a low profile. Certainly the Labour Office did some good in convincing poor and weak nations to conform to international norms but powerful nations generally ignored it when they saw fit to do so.

In the 1990s, however, globalization began to take off. Trade was liberalized and capital began to flow around the world in greater amounts seeking inexpensive venues to produce items such as soccer balls, sport shoes and computer chips. In response labour and human rights groups began to insist that, as the price of admission to the liberal trade club, all nations and all multinational corporations should be required to respect a set of core labour rights as human rights. The labour rights which nearly everyone agreed should be regarded as human rights are, in the words of the ILO's 1998 Declaration of Fundamental Principles and Rights at Work:

Freedom of Association
The effective recognition of the right to bargain collectively
The elimination of all forms of forced or compulsory labour
The effective abolition of child labour
The elimination of discrimination in respect of employment and occupation.

Contrary to what you might think there was no opposition to the declaration from business representatives. In fact, the ILO declaration was affirmed unanimously (but with some abstentions) by business, labour and government representatives from 157 countries. Not only was that declaration overwhelmingly supported by employer representatives but indeed it was initiated by them (see Trebilcock 1998).

Since the early 1990s, these standards have been affirmed by a growing list of organizations representing opinions from across the political spectrum. In addition to the

ILO these core rights have been affirmed to be human rights by the Organization for Economic Cooperation and Development (see OECD 1996), several international congresses sponsored by the United Nations and by the World Trade Organization. In January 1999 UN Secretary General Kofi Annan proposed a Global Compact between the UN, business and civil society groups. The International Chamber of Commerce and about 50 multinational firms individually accepted the terms of the pact committing themselves to promote compliance with international environmental and human rights standards including the core rights noted above (See, e.g., Trebilcock 1998 and the web sites of the ILO and that of the UN's Global Compact).

Both the U.S. government and the U.S. Council on International Business which represents US employer interests at the ILO have been keen supporters of this consensus.

So what does all of this have to do with my assertion that human rights are daily violated in the US? "American workers," you might be thinking, "have the legal right to unionize and engage in collective bargaining if they want to. Haven't they just decided that they don't want to do that and why shouldn't we respect their choice? When employers like Chase make it known publicly that they want to stay union free aren't they doing no more than exercising their constitutional right of free speech? And why shouldn't workers have all of the facts before setting off on a course that may be against their best interests?"

Given contemporary North American conventions these questions and their implied answers are entirely reasonable. But those conventions stem from a fundamental confusion - a collective mindset that obfuscates two distinct notions. In the collective American mind, freedom of association and the right to bargain collectively are conflated. You can't have one without the other. As Clyde Summers recently put it "A vote for 'No Union' is, in practice, a vote for no collective bargaining." (Summers 1999, p.54).

Why is this a problem? Because, while the notion of freedom of association certainly implies freedom not to associate; the right to bargain collectively does not imply a right not to bargain collectively. Indeed the notion that the right not to bargain collectively would have any value to a sane adult who was thinking clearly is preposterous.

Recently a story appeared in the Canadian press about the defeat of a union organizing attempt at a Wal-Mart store in Windsor, Ontario. It was accompanied by a photo of three smiling women - leaders of an ad-hoc group opposing unionization - and their lawyer. That photo reminded me of one that appeared in the 1970s of kidnapee Patty Hearst. She had come to embrace the ideas of her captors to such an extent that she was willingly participating with them in a bank robbery. In both cases, it seems to me, the principals involved were befuddled.

Consider what the women in the Wal-Mart case had accomplished. They had worked diligently to deny themselves any say in the making of the rules of work. They had voted to return to the employer sole authority to determine their wages, working conditions,

hours of work and job security. They had laboured to ensure that should a dispute arise, the employer would have complete authority to decide its outcome.

Quite reasonably, the people involved might not have wanted to be represented by the Canadian Autoworkers Union which had given up the struggle. They might not have liked CAW president Buzz Hargrove's brashness. They might have feared that, because of its history, that union might pressure them to do things about which they did not feel comfortable such as threatening or actually undertaking a strike.

Quite reasonably the principals in this drama might not have wanted to have their relationship with the employer controlled by the rigid and adversarial framework imposed by the Ontario Labour Relations Act[5] .

But if they were thinking straight they would not have been so overjoyed at denying themselves any say in employment decision-making. Since essentially all firms of any size today have rationalized policies that apply equally to all employees, individual bargaining is not an option. Either there is some form of collective codetermination or, with respect to issues such as general wage movements, overall employment levels, hours of work and many more, there is unilateral imposition.

What options exist other than representation by a conventional union and bargaining under the rules of the labour relations act and the antagonistic behaviour it has fostered? The situation of the Faculty Association at McMaster University provides an example of the possibilities.

Although the Association is not a certified union it has been recognized voluntarily by the university as the representative of the faculty's employment interests. The relationship is very flexible and constantly in flux. As new issues arise joint committees are established to address them. The Association has developed a procedure with the administration under which it negotiates wage movements on an annual basis. If there is an impasse it is settled by reference to an arbitrator who must choose the last offer of one side or the other. Both sides work hard to avoid falling into an "us and them" rut. Like employees everywhere, faculty members are concerned with their conditions of work but that does not stop them from being keenly committed to the prosperity of the university as a whole.

With the goodwill of employers, situations similar to that at McMaster could flourish across North America.

Instead we have permitted conventions to become deeply rooted under which it is considered legitimate for employers to deny to employees any say in making the rules unless they have gone through an arduous certification procedure leading to a rigid and adversarial process. Not only are these conventions bad for workers and contrary to international human rights norms, but also they are a cancer in our body politic. By inducing working people passively to accept or, as in the Wal-Mart case, actively to work for denial of voice at work our conventions foster in employees attitudes of deference to authority inimical to a healthy democracy.

Could public policy actively encourage or even require collective bargaining while at the same time respecting freedom of association? Yes it could. To see how consider the situation in Germany[6] .

Contrary to North American norms unionization and collective bargaining are treated as entirely separate issues requiring entirely different policy approaches. Because of the high regard in which freedom of association is held, mandatory union membership is illegal in Germany. Indeed the unions are forbidden even to negotiate terms that apply exclusively to union members. Nevertheless, nearly all German workers have their employment interests represented through a set of overlapping and intertwining institutions. Multi-employer collective agreements negotiated between unions and employer associations cover most German workers. Because of a law under which such agreements may be extended to unassociated companies and their employees it is all but impossible for a corporation even to attempt to pursue the bargaining free policy so common in North America. In addition, German law requires the establishment of statutory works councils elected by all employees whether unionized or not in all enterprises with five or more employees. These entities have a legal right to codetermine a list of employment issues specified in law. German policy also provides for worker representation on the directing boards of German corporations.

These institutions are much more consistent with international human rights norms and they have proven to be practical and workable in a modern economy. Indeed, there is research which suggests that they add value to corporations rather than detracting from it[7].

Many social problems are difficult to solve - the persistence of discrimination for instance. But the representation shortfall is not in that category. If employers and governments had the will to do so, the gap could be erased in a short time. Techniques used by the Germans have been emulated in several other advanced countries and, with appropriate modifications, could certainly be applied in North America if our governments and employers had the mind to do so.

With respect to the right to bargain collectively; the right of working people to codecide conditions of employment; the responsibility of employers to involve employees in making the rules and the responsibility of government to ensure that no working person is subject to regulation without representation we North Americans are participating in a huge contradiction. Externally we preach compliance with the global consensus regarding core labour rights as human rights but internally we fully accept the daily violation of one of those rights. I don't think that contradiction can continue indefinitely. The more North Americans hear about the global human rights consensus and its implications the less they will be able to continue to think of themselves as good people. When enough of them become uncomfortable things will change.

I hope that I have convinced you to at least look further into this issue. If you do, I am confident that those of you who have accepted the union avoidance convention and its rhetorical supports, will be convinced to reject it. At the very least this perspective needs

to be included in textbooks in human resource management, industrial relations and business ethics and debate on it ought to be part of every relevant course.

**Endnotes**

1. This paper is a revised version of my Distinguished Speaker Address presented at the annual meeting of the Eastern Academy of Management, Danvers, MA, 11 May 2000.

2. The name of the organization is the Society for the Promotion of Human Rights in Employment. Information on its mission and activities to date may be found at http://www.mericleinc.com/Sphre/.

3. I review these developments in my book *Industrial Relations Under Liberal Democracy*. University of South Carolina Press, 1995.

4. Background information on the ILO may be found at its website: http://www.ilo.org .

5. I critique Canadian labour law in Adams 1995 and American law in Adams 1993.

6. For an introductory overview of German employment relations practices see Furstenberg, 1998.

7. A commission consisting of "leading figures from the business community, trade unions, collective organisations and politics" recently gave the complex of German employment institutions high marks. The full version of the report is available in German: Bertelsmann Stiftung Bilanz und Perspektiven: Bericht der Kommission Mitbestimmung, Gütersloh 1998. An english version may be down loaded from http://www.mpi-fg-koeln.mpg.de/bericht/endberticht/inhalf_e.html.

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