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Solidarity First: Labor Rights Are Not the Same as Human Rights

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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 Standards<sup>1</sup> 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.<sup>2</sup>

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.”<sup>3</sup>

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.<sup>4</sup> 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

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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.”<sup>5</sup>

*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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup>

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.”<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> 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 re-framing is the loss of rights for “another” the loss

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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.”<sup>13</sup> 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.<sup>14</sup> 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.”<sup>15</sup>

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.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> 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.”<sup>19</sup> 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.<sup>20</sup>

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).<sup>21</sup> 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.<sup>22</sup> 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 work<sup>23</sup>; 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.”<sup>24</sup> 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.<sup>25</sup>

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.”<sup>26</sup> 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.