1-1-2012

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FOREWORD

THE AMERICAN WORKER

BARBARA J. FICK*

In a journal dedicated to considering issues of law, ethics, and public policy, it seems fitting to ask, "What is the ethical system that should inform the public policy underlying our labor laws?" The answer to that question can be found by looking at the subject of this symposium issue: The American Worker.

Who is the American Worker? Compared to twenty-five years ago, the American worker is more likely to be a woman, a person of minority status, older, more likely to be a temporary or contract worker, and less likely to be employed in manufacturing, to be represented by a union, or to have engaged in a work stoppage.¹ Regardless of how the demographics of workers have

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¹ In 1980, 57.6 percent of the workforce was male and 42.4 percent female, 88.3 percent was white, 9.3 percent was black, and 5.5 percent was Hispanic. See U.S. Census Bureau, Statistical Abstract of the United States 375, tbl.638 (1987). In terms of age, 11.5 percent of the workforce was between the ages of twenty and twenty-four, 56.4 percent between the ages of twenty-five and fifty-four, and 11.5 percent age fifty-five and older. Id. at 379, tbl.644. Finally, in 1980, 22 percent of the workforce was employed in manufacturing jobs, id. at 399, tbl.660, the union density rate was 23 percent, see Econ. Policy Inst., Union Coverage in the United States, 1973–2003, http://www.epinet.org/datazone/05/union.pdf (last visited Apr. 10, 2006), and there were 187 major work stoppages. Press Release, Bureau of Labor Statistics, U.S. Dep’t of Labor, Table 1. Work Stoppages Involving 1000 or More Workers, 1947–2005 (Mar. 3, 2006), available at http://www.bls.gov/news.release/wkstp.t01.htm.

In 2005, 53.6 percent of the workforce was male, 46.4 percent female, 82.5 percent white, 10.8 percent black, and 13.1 percent Hispanic. See Bureau of Labor Statistics, U.S. Dep’t of Labor, Employment and Earnings 207–09, tbls.3&4 (Jan. 2006), available at http://www.bls.gov/cps/cpsa2005.pdf. In terms of age, 9.7 percent of the workforce was between the ages of twenty and twenty-four, 69.4 percent between the ages of twenty-five and fifty-four, and 16.4 percent age fifty-five and older. See id. at 207, tbl.3. Finally in 2003, 9.8 percent of the workforce was employed in manufacturing jobs, U.S. Census Bureau, Statistical Abstract of the United States 391, tbl.601 (2005), and in 2005 the union density rate was 12.5 percent, see Press Release, Bureau of Labor Statistics, U.S. Dep’t of Labor, Union Members in 2005, at 5, tbl.1 (Jan. 20, 2006), available at http://www.bls.gov/news.release/pdf/union2.pdf, and there
changed, the one immutable characteristic is the worker himself. Man (as in humankind) is the subject, not the object, of work, and the dignity to be afforded every individual should be the motivating force driving labor and employment law.

The centrality of the person as the basis for evaluating work is a tenet of Catholic social teaching as expressed in the papal encyclical *Laborem Exercens*: "the primary basis of the value of work is man himself, who is its subject . . . . However true it may be that man is destined for work and called to it, in the first place work is for man and not man for work."

This same focus on the inherent dignity of the worker is reflected in the *Declaration of Philadelphia* adopted by the General Conference of the International Labor Organization (ILO) during the waning days of World War II, affirming that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity . . . ." The recognition of the inherent dignity of all members of the human family formed the basis for the *Universal Declaration of Human Rights*, which includes, *inter alia*, an acknowledgment of basic labor rights as necessary to ensure the dignity of the person.

Focusing on the dignity of the worker may require some reordering of priorities in thinking about labor policy. Often principles of profitability and consumerism are viewed as measures of the legitimacy of labor regulation. While not irrelevant, these principles should not take priority of place. Profit is an indicator of corporate health but is not the sole symptom for diagnosis.

It is possible for the financial accounts to be in order, and yet for the people—who make up the firm's most valuable asset—to be humiliated and their dignity offended. Besides

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2. POPE JOHN PAUL II, ENCYCLICAL LETTER LABOREM EXERCENS No. 27 (1981).


5. Id. at art. 23–24.
being morally reprehensible, this will eventually have negative repercussions on the firm’s economic efficiency. In fact, the purpose of a business firm is not simply to make a profit, but is to be found in its very existence as a community of persons who in various ways are endeavoring to satisfy their basic needs, and who form a particular group at the service of the whole of society.\textsuperscript{6}

Similarly, undue emphasis on consumer benefits (keeping labor costs low so as to keep prices low) can lead to elevating material concerns over human well-being; worker protections and benefits are sacrificed for the consumption of goods. This is not to say that concerns over the cost of goods produced is immaterial. Indeed, one of the purposes for work is to allow for people to fulfill their material needs.\textsuperscript{7} But just as consumption is but one purpose for work, so too should consumer interests be but one aspect for consideration in setting labor policy.\textsuperscript{8}

Finally, it should be noted that consistent with the principle of the inherent dignity of the worker, there is a moral obligation on the employer to treat its employees with the respect due to the person.\textsuperscript{9} This obligation is separate and distinct from any obligations imposed by the state.

What would labor relations look like if the dignity of the worker was a central focus? A complete answer to this question would require at least an article, if not a book. In keeping with

\begin{itemize}
  \item \textsuperscript{6} Pope John Paul II, Encyclical Letter Centesimus Annus No. 35 (1991).
  \item \textsuperscript{7} The U.S. Catholic Bishops state: All work has a threefold moral significance. First, it is the principal way that people exercise the distinctive human capacity for self-expression and self-realization. Second, it is the ordinary way for human beings to fulfill their material needs. Finally, work enables people to contribute to the well-being of the larger community. U.S. Conference of Catholic Bishops, Economic Justice for All No. 97 (1986).
  \item \textsuperscript{8} As Labor Secretary Chao points out in her introductory remarks for this symposium issue, infra, one of the elements necessary to ensure opportunity and prosperity for all is a value system that “affirm[s] the dignity of the individual human person.” See Elaine L. Chao, 21st Century Workforce: Change, Challenge & Opportunity, 20 Notre Dame J.L. Ethics & Pub. Pol’y 785, 790 (2006).
  \item \textsuperscript{9} Pope Leo XIII addressed this point in the seminal encyclical letter Rerum Novarum:

  The following duties bind . . . the employer: not to look upon their work people as their bondsmen, but to respect in every man his dignity as a person . . . . [T]o misuse men as though they were things in the pursuit of gain, or to value them solely for their physical powers—that is truly shameful and inhuman.

\end{itemize}
the more modest endeavor of a Foreword, a quick look at three areas might be informative.

Just wages. Readers are no doubt familiar with the recent history of living wage campaigns throughout the United States. The concept of a just wage has a long and rich tradition. As early as 1891, Pope Leo XIII noted that justice requires that "wages ought not to be insufficient to support a frugal and well-behaved wage-earner." More recently, Pope John Paul II defined a just wage as "remuneration which will suffice for establishing and properly maintaining a family and for providing security for its future." Similarly, the Universal Declaration of Human Rights acknowledges the "right to just and favourable remuneration ensuring . . . an existence worthy of human dignity."

How might this principle influence current wage practices if it were incorporated into corporate behavior and government legislation? The notion of a just wage could possibly act as a brake on the exorbitant salary packages enjoyed by corporate officers. Some corporate apologists justify such excesses under the "star" theory, where competition for scarce managerial expertise continuously escalates prices. But, as noted by Security and Exchange Commissioner Roel Campos in a recent speech:

In 1982, the [pay] ratio between chief executives and the average employee was 42:1. In 2004, the ratio of the average CEO pay to that of the average non-management worker in the U.S. was 431:1. There is certainly no evidence that today's executives in the U.S. are 10 times better than twenty years ago. The U.S. ratio far exceeds any international comparison, which remain closer to the historical average. Although internationally there has been a trend towards increased "US-style" pay, according to a 2001 report by management consultants Towers Perrin the same ratio in other heavily developed nations was 25:1 in the case of the UK, 16:1 in France, 11:1 in Germany and as low as 10:1 in Japan (as compared to 531:1 in the U.S. in that same year).
Some corporate entities have embraced a philosophy based on equity in remuneration. For example, the Wall Street Journal reported that John Mackey, CEO of Whole Foods Markets, “limits his pay to no more than 14 times the pay of his average employee.” Unfortunately, this would seem to be the exception rather than the rule. In which case the onus falls to the State to ensure that the dignity of the worker is respected and that a just labor policy is established.

Has the State lived up to its responsibility to ensure a just wage for workers? Hardly. The current federal minimum wage of $5.15 an hour is insufficient to lift a family of two persons, one of whom works a forty hour week the entire year, above the poverty line. Even a wage tethered to the poverty level assumes that a living standard at the poverty line suffices to properly maintain a family and provide security for its future—a proposition that the advocates of a living wage would dispute. The federal government’s abrogation of its responsibility in this area has led at least eighteen states to enact higher minimum wage legislation. Of course this still leaves more than half the states at or below the federal minimum wage level. A labor policy that focused on the dignity and worth of the worker would certainly guarantee a living wage capable of adequately sustaining and providing security for the worker and his family.

Union representation. The right to form and join trade unions is universally recognized as a basic human right. If man is to be

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16. "Justice, therefore, demands that the interests of the working classes should be carefully watched over by the administration [of the State], so that they who contribute so largely to the advantage of the community may themselves share in the benefits which they create . . . ." POPE LEO XIII, supra note 9, at No. 34.
17. The poverty level for two persons is set at $12,830. Annual Update of the HHS Poverty Guidelines, 70 Fed. Reg. 8374 (Feb. 18, 2005). Based on a 2080 hour work year (40 hours/week x 52 weeks), a worker would need to earn $6.16 an hour to meet the poverty level. To support a family of four at the poverty level of $19,350, a worker would need to earn $9.30. Id.
20. See Universal Declaration, supra note 4, at art. 23, para. 4; see also International Covenant on Civil and Political Rights art. 22, Dec. 19, 1966, 999
the subject of work and not its object, he needs to have an effective voice at the workplace, capable of promoting and defending his rights and interests.\textsuperscript{21} It is the duty of the State to protect this natural right.\textsuperscript{22}

Several of the articles in this symposium issue examine whether the National Labor Relations Board is living up to this obligation.\textsuperscript{23} Many unions are eschewing recourse to the Board and turning instead to neutrality agreements as the mechanism for promoting the right to join unions. The Board mechanisms are viewed as being prone to misuse by employers seeking to delay the process of representation, and the law is seen as inadequate to effectively dissuade employers from violating employee rights. Questions are also raised as to whether the policies underlying current Board decisions are consistent with basic tenets of the statute.

If the right to form and join trade unions is protected, one would expect to see a union density rate in the private sector significantly above the current 7.8 percent.\textsuperscript{24} Indeed, in the public sector, where management opposition to unions is not quite as inbred as in the private sector, union density is 36.5 percent.\textsuperscript{25} The low private sector union density rate, as well as academic studies, suggest that corporate practice has not internalized the moral obligation to respect workers' human right to form and join trade unions, and that the government inadequately pro-

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\bibitem{2} Trade unions "serve the development of an authentic culture of work and help workers to share in a fully human way in the life of their place of employment." \textit{See Pope John Paul II, supra} note 6, at No. 15.
\bibitem{3} "Indeed, the formation of unions 'cannot ... be prohibited by the State,' because 'the State is bound to protect natural rights, not to destroy them ...'." \textit{Id.} at No. 7.
\bibitem{6} \textit{Id.}
A labor policy that honored workers' basic human right to join trade unions would be reflected both in corporate policies allowing for free worker choice and in legislation containing stronger protections for this right.

*Working Hours.* The *Universal Declaration of Human Rights* includes the "right to rest and leisure, including reasonable limitation of working hours" as a fundamental human right. This need for rest was also recognized by Pope John Paul II: "'humane' working hours and adequate free time need to be guaranteed . . ." Yet, according to a 2002 International Labour Office report, American workers put in more hours in the year 2000 than workers in any industrialized country, and in developing countries only South Korean and Czech workers worked longer hours.

Do corporate practices reflect this right to rest? In an era of downsizing, fewer workers are required to do more work, picking up the slack created by layoffs. In times of economic uncertainty, employers are hesitant to add additional workers, instead requiring overtime of their current workforce. One of the articles in this issue explores the problem of sleep deprivation and the American worker.

Does governmental regulation act to guarantee this right to rest? With some exceptions (for example, in transportation industries such as airlines and trucking), American law does not limit the employer's ability to schedule hours of work, merely imposing a monetary premium when employees are required to work over forty hours per week. Even then, this premium is only paid to non-exempt workers, and given the explosion in overtime litigation over the last ten years, it is questionable whether that premium is regularly paid. Nor is there a law requiring employers to provide vacations for their workers. Labor policy focused on the worker would take into account this need for rest, with

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27. See Universal Declaration, supra note 4, at art. 24.

28. See Pope John Paul II, supra note 6, at No. 15.


employers being more attuned to, and willing to address, the problems caused by overwork, and the government imposing meaningful strictures to ensure workers can enjoy a balanced life.\(^{31}\)

There are certainly other aspects of current labor policy that could be critiqued based on a worker-centric ethic, and some of these aspects are raised in other articles in this issue. For example, working mothers,\(^{32}\) immigrant worker rights,\(^{33}\) free trade,\(^{34}\) and the moral hazard created by employment practices liability insurance\(^{35}\) are subjected to examination.

If, as seems to be the case, this worker-centric ethic, based on the innate dignity of the worker, does not adequately inform the public policy underlying U.S. labor law, what should be done? How to begin a dialogue aimed at readjusting the focal point for labor policy? Perhaps, as Professor David Gregory recommends, a general strike might be a good place to start.\(^{36}\)


32. Id.


