2 Theoretical Perspectives on Individual Employment Rights

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Theoretical Perspectives on Individual Employment Rights

With the decollectivization of rights at work over the previous generation, the notion of an “individual” employment rights era emerged as the alternative to national labor policies based on collective or association-based worker protections. The right to refuse unsafe work has been swept up in this trend. Global worker health and safety policy has likewise undergone a shift since the 1970s. Once viewed as a component of workers’ freedom of association, the right to refuse unsafe work is now considered a matter of individual employment policy, with specific—and debilitating—controls. In this chapter I discuss some of the major theoretical perspectives in labor scholarship explaining the rise of the individual employment rights era. I also present a basic conceptual framework for this book, the idea of mobilization bias in labor policy.

Numerous individual employment rights laws have been enacted around the world in recent decades. These labor policies typically protect against different forms of discrimination, such as discrimination based on race, gender, or age. Worker health and safety is also addressed through
individual employment rights. These laws range from protection against retaliation for calling a workplace health and safety inspector to protection against discrimination for seeking workers’ injury compensation. These systems typically function through individual-level enforcement, in contrast to classic national labor policies based on association and collective workplace governance. The greater burden is thus placed on the individual to enforce specific legal rights.

North America has greatly influenced the rise of the individual employment rights era. In the United States and Canada in particular, collective labor protection has had an uneasy, even violent, history in an employment system that is rooted in the common law tradition. In that tradition, the judiciary has reinforced the traditional master-servant notions in labor relations, “giving a legal basis for the power employers desired.” Certain legal assumptions about the employment relationship were read as implicit in the employment relationship, even after protective labor law statutes clearly outlined stronger collective or associational protections for workers. James Atleson’s study of U.S. national labor policy, for example, found that the common law was used repeatedly to maintain the status of workers in an employment relationship as disposable, even as new legal statutes were passed to protect workers from dismissal. “The servant’s deference or respect need not be earned but, rather, was implicit in the employment relationship” as employer freedom was not “circumscribed on the theory that the ‘common-enterprise’ notion involves corresponding obligations of employer to their employees.”

Three key characteristics of individual employment rights distinguish them from collective and associational forms of workplace governance. The first is an absence of a negotiation with workers regarding what is to be protected. The second critical difference is that an obligation is placed on individual workers to seek enforcement, in contrast to enforcement through representation by a workers’ collective institution such as a union. Third, as in the Anglo-American common law systems, individual employment rights afford no prescribed role for workers in direct day-to-day workplace governance. As the statutory obligations are established by politicians and elaborated in regulations for individual workers to enforce, the standards themselves are not subject to worker negotiation, are not tailored to a locality, come with no mechanism to be strengthened beyond the basics of the law where needed, and altogether leave workers with a
more passive role in creating and governing the standards that are to be enforced.

Criticizing individual employment rights can be misinterpreted by those who advocate antidiscrimination protections as such rights attempt to prohibit basic human indignities in work and employment. It is important to note, however, that questioning the nature of the individual employment right is not the same thing as questioning the affronts to dignity they purport to protect against. The question is one of efficacy as a model for workplace regulation. Paul Frymer’s study of racism and labor law gives an example of how advocating against discrimination at work has taken different forms. Some civil rights groups fought to have racial discrimination protections amended to the “duty of fair representation” provisions of basic U.S. national labor relations law. These protections would have created a collective avenue for protection against what is today only an individual employment rights protection. The question is one of efficacy in enforcement rather than of the social value of the protection.³

With the rise of the Washington Consensus in international relations and the growth of antiregulatory business ideologies in the 1970s, the practice of creating individual employment rights detached from collective and associational workplace governance expanded over time beyond North America’s borders. These politics would shape not only national labor policies on occupational safety and health; they would also shape our definition and understanding of international labor and human rights norms. Understanding the origins of the individual employment rights era is, therefore, important to help understand the global model for the right to refuse.

The Origins of the Individual Employment Rights Era

The nature of the individual employment rights era is a contested topic across a labor scholarship that encompasses history, economics, law, sociology, and political science. At the center of this debate is the question of the nature of individual employment rights, their origins, and why they have come to now replace collective and associational workplace governance. Critiquing a collection of these theories, we gain a better understanding of this debate and lay the groundwork for a more accurate analysis of the
current model protecting the right to refuse unsafe work as advocated globally under international labor and human rights standards.

Nelson Lichtenstein reinvigorated this debate by arguing that the rise of individual employment rights has resulted from the rise of individual rights discourse. This created what he called a “rights consciousness” that has led to the decline of the organized labor movement in the United States. American liberals implicitly endorsed the idea of a rights discourse, but took the view “long associated with anti-union conservatism, that the labor movement could not be trusted to protect the individual rights of its members or of workers in general.” This consciousness advocated “state protection as opposed to collective action,” making this style of human rights rhetoric, in Lichtenstein’s analysis, a great paradox in the rapid decline of trade unions:

All this may well be contrasted, even causally related, to the remarkable growth that has taken place during the last quarter century in the moral authority and sheer political potency of the movement for international human rights. This worldwide endorsement of the human rights idea has become the charter for a new kind of statecraft, even a new kind of globalized civil society.

As deployed in American law and political culture, a discourse of rights has also subverted the very idea and the institutional expression of union solidarity. This is because solidarity is not just a song or a sentiment, but requires a measure of coercion which can enforce the social bond when not all members of the organization—or the picket line—are in full agreement. Unions are combat organizations, and solidarity is not just another word for majority rule, especially when their existence is at stake.

According to Lichtenstein, rights discourse and rights-based organizing strategies have resulted in a series of problems for workers: ineffective legal enforcement removed from the shop-floor concerns of workers, a dependency on legal and technical experts, an incapacity to respond to and deal with broad structural economic and social crises, and a failure to challenge or temper managerial prerogatives and supervisory authority at work.

According to Lichtenstein, individual employment rights have arisen from this political history, a politics that persisted despite their ineffectiveness. Thus, the origin of the individual employment rights era rests on
the shoulders of workers themselves, a tragic political miscalculation made from an unwise political consciousness that was followed regardless of how ineffective it was to protecting workers.

Richard McIntyre has concurred on this point. His book *Are Workers’ Rights Human Rights?* argues that the human rights approach applied to labor policy has given rise to individual employment rights. The connection of rights talk and human rights with individualism has discredited the idea of collective regulation to protect workers’ rights. McIntyre likewise argues that rights claims exist in opposition to notions of collective solidarity and are thus a tragic and strategic weakness for labor unions. One case cited as an exception to this rule is the U.S. public employees’ movements from the 1960s and 1970s, which successfully used rights discourse in their organizing.

A debate published in the *New Labor Forum* illustrated the influence these ideas have within the American trade union movement. Jay Youngdahl, debating Lance Compa, author of a Human Rights Watch report on workers’ freedom of association in the United States, argued against a rights-conscious labor strategy. Pointing to “right to work” laws as an example of rights talk run amok, Youngdahl argued that “unions are all about obligations to our fellow workers” and “the replacement of solidarity as the anchor for labour justice with ‘individual human rights’ will mean the end of the union movement as we know it.” Social atomism is the basic charge:

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.

The overall argument as described by scholars and activists alike has acknowledged explicitly the inefficacy of individual employment rights, yet has pinned the origins of these employment law and policy frameworks squarely on the human rights worldview and advocacy.

Kevin Kolben follows this thinking and characterizes the emergence of human rights as a strategic trap for unions and labor rights. Human rights offers a “radically different approach to freedom of association”
compared to labor rights, he argues, and the human rights idea weakens the “commitment to economic justice and workplace democracy principles that have long underpinned labor rights thought and practice.” Kolben finds failure on multiple levels. First, human rights regulate only the relations between states and individuals, not, he argues, the relationship between private actors. Second, labor rights are facilitative and procedural, not substantial and prescriptive rights that focus on standards “such as specified levels of health and safety.” Third, human rights are grounded in notions of individual dignity, through which there is no reconciliation with the idea of collective interests. Fourth, Kolben argues that a series of differences between the labor and human rights movements amount to a culture clash. This includes a legalistic approach versus mobilization, top-down versus bottom-up worldviews, elite versus grassroots leadership, and charity and benevolence versus worker agency and voice. Human rights scholars could take issue with each of Kolben’s arguments, but this view attests to the conceptual challenges faced in the treatment of labor rights and worker freedom of association as a basic human rights concern.

Another explanation for the rise of the individual employment rights era is the shifting axes of social mobilization thesis. Michael Piore and Sean Safford explain the rise of the individual employment rights era and the eclipse of collective forms of workplace governance as a result of shifting identities. Individual employment rights, according to this theory, were driven by shifts in the locus of social and political mobilization. Collective bargaining had emerged under political pressures generated by the mobilization of industrial workers, with unions organized around a set of identities rooted in craft, profession, industry, and enterprise. Employment laws (primarily those from the ’60s and ’70s) were conversely generated by political protest and mobilization around social identities linked to race, ethnicity, and personal characteristics associated with social stigmas. The nature of society itself shifted, and the national policy simply followed, as one would expect in a democratic society, as Piore and Safford explain:

We start from the accepted view that the New Deal collective bargaining system has collapsed. But our argument . . . departs from that view in three critical respects. First we argue that the regime that has replaced collective bargaining is not a market regime at all but rather a regime of substantive employment rights specified in law, judicial opinions, and administrative
rulings, supplemented by mechanisms at the enterprise level that are responsive to these rules and regulations but also susceptible to employee pressures. Second, we argue that the emergence of the new regime has been driven, not by neoliberal ideology, but rather by a shift in the axes of social mobilization from mobilization around economic identities associated with class, industry, occupation, and enterprise to mobilization around identities rooted outside the workplace: sex, race, ethnicity, age, disability, and sexual orientation. Third, the shift in the axes of social mobilization reflects the collapse of the underlying model of social and economic organization upon which the New Deal collective bargaining regime was based. Indeed, the collapse of the New Deal model reflects an even more fundamental shift in our understanding of the nature of industrial society and its direction of evolution in history.15

For Piore and Safford this shift in mobilization “reflects the collapse of the underlying model of social and economic organization upon which the collective bargaining regime was built.” National labor policy is reflective of identity and consciousness as institutions are shaped by the popular will. As with other theories on the underlying nature of the rise of the individual employment rights era, the general regime change has occurred due to a changing individual identity and consciousness among workers.

Following these general sentiments, Nick Salvatore and Jefferson Cowie write in The Long Exception: Rethinking the Place of the New Deal in American History16 about “a deep and abiding individualism” in U.S. culture. The conclusions they reach are similar to Piore and Safford’s. They argue that the rise of collective bargaining was an anomaly in American society and history. With the individual employment rights era, the government has returned to reflect the natural disposition of a society untainted by collective hues:

Despite the collective-sounding left rhetoric that often accompanied demands in the post-1965 civil rights and feminist movements, at the core of these and many other actions was a concern with expanding the rights and freedoms of individuals and social—but not economic—groups. The result would eventually be called “rights consciousness” or “identity politics,” a political outlook that contrasted with the economic liberalism of the New Deal. . . . The draw of individual and group rights over collective material well-being actually speaks to more profound issues: the historical fragility of
class identity in American politics, the exceptional nature of the New Deal order, and the powerful allure of individual rights in American culture.  

Taken together, these theories of the rise of the individual employment rights era form a body of labor scholarship that shares an underlying political explanation. It was the changing society as reflected in workers’ changing consciousness that gave rise to the individual employment rights era and the decline of collective workplace governance. The individual employment rights era is the result of a changing social consciousness that became manifested in specific labor and employment institutions of the nation-state. The nature of this era can therefore be explained as a shift in popular consciousness away from unions and collective or associational forms of workplace governance. Where individual employment rights are ineffective, it serves merely as an illustration of a strategically ignorant working class consciousness rooted in a failed system of values and beliefs.

Institutional Politics and Social Exclusion

Raising questions about these dominant theoretical perspectives on the rise of the individual employment rights era, David Montgomery offers a perceptive critique. Individual employment rights, he argues, are the consequence of exclusionary power dynamics and socially contested institutional politics. Depictions of the rise of the individual employment rights era as a reflection of free and open democratic politics “leaves unclear what is to be attributed to counter-mobilizations by business, what to the limited vision of liberal policymakers, and what to the aspirations and fears of workers.” This is in keeping with Montgomery’s typology of the sources of employers’ control: ownership of the means of production, company power over employees, the integration of the educational establishment with corporate power, and the coercive authority of government, which backs a variety of corporate rights.

From this standpoint, determining which argument explains the rise of the individual employment rights era is no easy task. Where exclusionary dynamics and socially contested politics are evident, the dominant theories are called into question. Yet a problem remains on a methodological level when studying the dynamics of exclusionary power relations. If, as these
dominant theories suggest, labor policy change is the result of an open and free democratic process, then the basic decision-making mechanisms should give evidence to support these views. If, however, social exclusion of one variety or another contributed to the rise of individual employment rights, then different tools are needed. Our methodological tools must be capable of studying exclusionary politics. If our analysis is derived from overt decision making and ignores social exclusion, we will likely never see any evidence of social exclusion. Social exclusion must be considered a factor.

Any conceptual model that analyzes labor policy and the rise of the individual employment rights era must capture contested politics. The dominant explanations of individual employment rights ignore great complexity in national labor policymaking. If society’s labor rights institutions respond to social beliefs and values in a textbook democratic fashion, how do we explain socially contested institutional politics and any resulting social exclusion when we find evidence of these dynamics? The short answer is that we do not. Scholarship thus replicates these exclusionary political dynamics. What is required is a labor scholarship capable of capturing these exclusionary social dynamics and the full range of contested institutional politics at play.

Labor and industrial relations scholarship has been challenged by the problem of studying institutional politics over the last century. How social actors struggle to influence labor policy falls broadly under the category of nonmarket political forces. Employer influence-seeking strategies in the shaping of labor institutions have not been a focus in a classic industrial relations scholarship that preferences the study of the rules of the game as they already exist. John Dunlop, a key figure in industrial relations scholarship, did not follow his own advice and study the real-world political influences he deemed necessary to understand how labor policy works. In his analysis of industrial relations systems, Dunlop describes the power and status of the social actors in an industrial relations system as “the product of public policy” and “within the explicit decision of the larger society by political processes.” Workers’ organizations “are formulated in terms of the rights of management,” he noted, but the actual status of management, in contrast to workers, can take a variety of forms, depending on the relationship that exists between business corporations and the government. Dunlop argued “the status of managers and their enterprises in
the industrial relations system may depend upon their standing with bureaucrats, ministers, legislators, or party leaders and their relative influence compared to leaders of workers’ organizations.”23 Dunlop also noted, moreover, that there may well be “a variety of very subtle relations among the actors in a national industrial relations system and thus it is most significant for students of industrial relations systems to see through such veils of government rulemaking” because “the actors in the system seldom confuse form with reality.”24

Although Dunlop’s keen analysis on this point recognized these interrelationships and called for “sensitivity to the complex status of the actors and their interrelations” in an industrial relations system, his focus of attention turned to the study of market rules. (Industrial relations is not the only field to have ignored institutional politics. Chris Carter, Stewart Clegg, and Martin Kornberger describe how business strategy has been ideologically driven by free-market values and a jaundiced view of the role of the state.25)

Classic industrial relations theorists, despite their exclusive focus on market efficiency frameworks and the related rules of the game, can be commended for focusing on power relations within the employment relationship. The study of power is a core element in industrial relations. John Kelly in *Rethinking Industrial Relations*26 explains that how workers “come to define their interests in collective or individual terms” is an enduring problem across employment relations. “Since workers,” Kelly writes, “occupy a subordinate position in the employment relationship, their collective definitions of interest are subject to repeated challenges by employers as they try to redefine and realign worker interests with corporate goals.”27 To study contested institutional power, however, one must be capable of understanding the many *nonmarket* forces that shape workers’ rights, including the full range of exclusionary political dynamics.

In a varieties of capitalism framework, liberal market economies are those that rely “heavily on the market relationship between individual worker and employer to organize relations with the labor force.”28 It is important to note the role of policy institutions in constructing the landscape of employment relations, however, even where work is said to follow *laissez-faire* principles. Many nonmarket institutions of the state and state labor policy maintain market relations.29 Analyzing the relationship between a worker and an employer could even be more accurately described
as being a largely nonmarket relationship rather than being any kind of “market” relationship. The study of contested political dynamics is thus all the more important.

A better power analysis is needed to understand the dynamics of labor policymaking, including the dynamics of employer countermobilization. My aim is in part to ascertain the origins of the individual employment rights era as it applies to occupational safety and health. This task requires a study of the full range of employer influence-seeking mechanisms in labor policymaking, from overt metrics such as policy demands and political contributions to the more insidious and covert advocacy of value systems, beliefs, and cultural assumptions that, when followed, create obstacles to effectuating workers’ rights. One solution is to take the advice of certain labor and employment relations scholars who encourage the field to examine institutional politics from the “broad, economy and society perspective.”

Power and the Mobilization of Bias

An institutional environments approach recognizes how labor rights policies are embedded in an institutional environment, and how labor policies are “produced and reproduced through processes of social action” and often in self-reinforcing ways:

Rules are embedded not just in behavior, but also in the economic, social and political institutions or arrangements that constitute this behavior, including market and financial structures, state agencies, legal structures, education and training systems, and others. These institutions, and the rules undergirding them, may be seen to comprise the institutional environment within which workers, their unions, and their employers act. They are produced and reproduced through processes of social action and in fact are what make such action possible. . . . Institutional environments shape (and are shaped by) the orientations and identities of the actors and the relationships between them.

Studying the relationships between actors and institutions affords a more complex view of the social world beyond a pluralist decontextualized view of market rules. This approach broadens the study of labor and
employment relations and complements the human rights approach to labor policy as it requires examining first principles and the basic effectiveness of rights frameworks.

In this approach, “nation state paradigms play an important role in shaping institutional environments and the rules that underpin them.” Historical analyses are likewise just as important. Policy templates are created through history and “give rise to deeply embedded ‘institutional norms,’ or beliefs, values, and principles as to the role, rationale for, and legitimacy of established institutions.” These norms, beliefs, values, principles, or templates create a mobilization of bias that privileges some groups, practices, or social actors over others. These social biases can be strengthened if one group “effectively controls the agenda and achieves an ideological hegemony” that serves its interests. Likewise, it can be weakened if the ideological hegemony is challenged. This approach, unlike that of traditional pluralist scholarship, moves industrial relations beyond rules-based pluralism toward the mobilization of bias and the impact that values and beliefs can have in industrial relations and human rights policy.

The mobilization of bias itself cannot be analyzed with any one-dimensional understanding of power. This problem was central to the scholarship of John Gaventa, a political sociologist and student of Stephen Lukes. Like Lukes, Gaventa recognized three “dimensions” or “faces” of power that affect how society makes decisions. Decision making is a power process affected not just by competing social actors in a free market of democracy but also, at times, by both a second and third dimension of power. Gaventa articulated a method to study each face of power and as interrelated phenomena, at times reinforcing each other and at others playing off one another.

Gaventa built on the work of the early critics of simple pluralism, including the work of E. E. Schattschneider, who coined the phrase “the mobilization of bias” with his book *The Semi-Sovereign People: A Realist’s View of Democracy in America*. Schattschneider noted how the democratic pluralist accounts of political exclusion were ungrounded. He introduced the concept of suppression to a rigid political science field when he argued that “it is not necessarily true that people with the greatest needs participate in politics most actively—whoever decides what the game is about also decides who gets in the game.” Thus was born the mobilization of bias. This critique became known as the second dimension of the exercise of power:
Schattschneider introduced a concept later to be developed by Bachrach and Baratz as power’s “second face,” by which power is exercised not just upon participants within the decision-making process but also towards the exclusion of certain participants and issues altogether. Political organizations, like all organizations, develop a “mobilization of bias . . . in favour of the exploitation of certain kinds of conflict and the suppression of others. . . . Some issues are organized into politics while others are organized out.” And, if issues are prevented from arising, so too may actors be prevented from acting. The study of politics must focus “both on who gets what, when and how and who gets left out and how”—and how the two are interrelated.

Peter Bachrach and Morton Baratz extended this critique and contrasted the second face of power with the simple pluralist view of power using the concept of “non-decision-making.”

[They] mistakenly assumed that power and its correlatives are activated and can be observed only in decision-making situations. They have overlooked the equally, if not more important area of what might be called “non-decision-making,” i.e., the practice of limiting the scope of actual decision-making to “safe” issues by manipulating the dominant community values, myths, and political institutions and procedures. To pass over this is to neglect one whole “face” of power.

Through the mobilization of bias, some issues are protected and made “safe” through “non-decision-making” while other issues, ideas, or political actors that may serve to threaten elite power and privilege are marginalized and/or are otherwise excluded.

Lukes first documented the weakness of the two-dimension model of power, and Gaventa built on this work. The two-dimension model did not recognize power where conflict had been avoided altogether. It recognized how people and issues are excluded, but this non-decision-making was said to exist only where the individuals and communities so marginalized hold an awareness of their exclusion:

For the purpose of analysis, a power struggle exists, overtly or covertly, either when both sets of contestants are aware of its existence or when only the less powerful party is aware of it. The latter case is relevant where the domination of status quo defenders is so secure and pervasive that they are oblivious of any persons or groups desirous of challenging their preeminence.
The second face of power focuses on cognizant exclusion, no matter how difficult that exclusion may be to observe and document. Gaventa and Lukes argued this focus may essentially “lead it to neglect what may be the ‘crucial point’: ‘the most effective and insidious use of power is to prevent such conflict from arising in the first place.’”

Silence and submerged conflict required recognizing a third dimension of power. In such a third dimension of power, influence shapes values and beliefs to “pre-empt manifest conflict” and shape “patterns or conceptions of non-conflict” overall. The aim for the social researcher in studying labor and employment systems is to uncover “latent conflict” to “allow ‘for consideration of the many ways in which potential issues are kept out of politics, whether through social forces and institutional practices or through individuals’ decisions’.” These three faces of power each focus on distinct elements of power yet they interact, be it through the functional representation of the first dimension, the cognizant social exclusion of the second face of power, or the preemption of manifest social conflict entirely within the third dimension of power.

The result is an approach capable of analyzing the range of influence-seeking strategies in labor rights policymaking. Studying the mobilization of bias allows for the examination of all forms of contested politics, something the pluralist approach fails to do. Understanding the full range of influence-seeking mechanisms means one can thus understand the full range of employer political activity and countermobilization affecting labor policies and worker protections.

Management scholars immediately grasped the usefulness of this mobilization of bias idea. Writing in the Journal of Management Studies, Cynthia Hardy described how social actors use power. Describing the third face of power as “unobtrusive power,” Hardy observed it being “used by actors to ensure that potential opposition groups do not challenge them . . . to prevent resistance” and to defeat “declared and identified opponents.” Power includes the “ability to shape values, preferences, cognitions, perceptions so that grievances and issues do not arise or, if they do, they are never articulated or transformed into demands and challenges.” The “ideological hegemony of a wider society” serves as one source of power. The “ability to institutionalize existing power in structures and cultures to protect it from change” is another, as are the symbols, languages, myths, rituals, ceremonies, and settings “engineered by the political strategies of others.”
We can see an example of the value of analyzing the mobilization of bias in one long-standing concern in labor policy: the antiunion strategy of human resource management. Bruce Kaufman documented the early years of human resource management strategy in America in his book *Managing the Human Factor*.\(^{50}\) Kaufman cites Sumner Slichter’s account of these management strategies, which demonstrates how business activism moved from coerced issue exclusion to making conflict latent:

> [Human resource management] is nothing less than an attempt to control the effect of modern industrial development upon men’s minds. . . . [It] has the ambition, the objective of preventing a class struggle, building up a very difficult kind of psychology, creating content with one’s situation and faith and loyalty, faith in employers, a particular employer, and loyalty to a particular employer. It tries to inculcate a faith just as much as a religion tries to inculcate a faith.\(^{51}\)

Buttressing coercion with psychological manipulation suppressed manifest conflict. Matters that were once the subject of heated conflict became non-issues. This approach opens new lines of inquiry into the range of obstacles that barricade labor-policy and worker protection alternatives.

Gaventa’s contribution to the study of the mobilization of bias and the study of these “unobtrusive” power dynamics was his methodology. Lukes was challenged to show how latent social conflict could be studied without the researcher’s assumptions about the “real interests” of the dispossessed or powerless group being projected on them within a study. Gaventa argued that the study of “interests” in the power process does not require their identification and attribution to any group. The researcher’s task was to demonstrate how powerless people and groups “are prevented from acting upon or conceiving certain posited interests” that would logically appear to be closer to their own interests. This alone, he argued, “is sufficient to show that the interests that are expressed . . . are probably not the real ones.”\(^{52}\) Where negative impacts for a group are deduced from the dominant, expressed interests, this is evidence that the interests expressed are likely not the real ones manifest for that group. Where adverse social or human impact and the prevention of action or the prevention of conceiving certain alternative interests coincide, this was strong evidence in favor of the mobilization of bias and what Gaventa called a *false consensus*.  

Studying the mobilization of bias is difficult within an exclusively variable-centered research design. Such an approach rejects “methodological individualism in favor of a more nuanced, historically informed analysis.”53 A qualitative and in-depth case study or a comparative analysis is preferred. Studying power within this analysis involves (1) defining the actual policy choices made in decision making, (2) studying the real-world impact on workers, communities, or any other dispossessed group, and (3) identifying obstacles in decision making, structural or cultural, that have prevented people or groups from acting on or conceiving other decisions more in their interest. By relating this methodology to a study of the right to refuse unsafe work in international labor law, we can, in this context, understand the origins and nature of the individual employment rights era. The remainder of this book accomplishes these specific tasks.

If policy bias is mobilized to a constitution of rights that is “safe” to power and privilege, a grounded, extended case study approach is best.54 This requires “going outside the decision-making arenas and carrying on extensive, time consuming research” to document how those issues and actors are dispossessed by the politics in question. Here “non-actors and non-leaders become important, not as objects of scrutiny in themselves but to discover through their experiences, lives, conditions, and attitudes, whether and by what means power processes may serve to maintain non-conflict” through various mechanisms.55 Examining bias mobilization in historical perspective makes it possible, as Gaventa did in studying power and quiescence in Appalachia, to document the disappearance of rights from a given political discourse; from outright exclusion to, in time, disappearance of manifest conflict and the removal of certain rights, however critical, from a political discourse entirely.

Despite claims of a new era of business social responsibility, union avoidance has grown into a multibillion dollar industry.56 A de facto system of worker-based occupational health and safety enforcement centered on trade union collective bargaining over working conditions was dismantled over the last generation. The individual employment rights era claims to fill this void as workers face the prospect of pursuing rights via individual employment protections, not via collective means. The right to refuse unsafe work as a global human right has been made a “safe” right—a right of limited social protection but “safe” for business, management control, and laissez-faire economics. Business leaders often oppose labor protections,
but at times the prospect of denying stronger rights makes supporting “safe” rights more palatable. A new values system had emerged to co-opt competing policy alternatives with a system of logic that said worker health and safety was a topic too important to be left to “adversarial labor-management relations” through collective bargaining. As this values system took hold at the global level, the realm of the possible shifted. Workers left the notion of strengthening the freedom of association and focused on bargaining the contours of a new ineffective rights regime. This is the story of the globalized model of the right to refuse unsafe work; it is the foundation of the failure of global workplace health and safety policy.

The last generation has witnessed the rise of an aggressive, take-no-prisoners antiregulatory political agenda. This agenda has been spearheaded by businesses and employer countermobilization. As Robert Reich described in *Supercapitalism*, this period saw “investors turn active” as both businesses and financiers “pressured the commissions, lobbied Congress and state legislatures, hired professors to do studies showing the benefits of deregulation. . . .” In time, “the regulatory dams broke,” which “sucked relative equality and stability, as well as other social values, out of the system.” As Alex Carey and Andrew Lohrey described in *Taking the Risk Out of Democracy*, three key developments unfolded in the industrialized democracies by the end of the twentieth century: The growth of democratic participation, including universal suffrage and the rights of workers to organize and collectively bargain; the power of corporations and their growing influence on the political process; and the growth of the use of “corporate propaganda as a means of protecting corporate power against democracy.” Businesses pushed an antiregulatory agenda and strategized “with the single-minded purpose of bringing some target audience to adopt attitudes and beliefs chosen in advance by the sponsors of the communications.” Workers’ health and safety, however, was accepted by the general public as a good and worthy objective of government policy. The strategy in this case would become what economist Albert Hirschman called “the thesis of perverse effect” whereby corporations endorsed the social and economic policy change “sincerely or otherwise, but then attempted to demonstrate that the action proposed or undertaken [by the activists] is ill conceived,” leaving “a chain of unintended consequences” that would result in “the exact contrary of the objective being proclaimed and pursued.” These strategies were used when sheer political force had
failed. Corporate leaders throughout this period organized new political associations such as the Business Roundtable to do their political bidding. Their goals included both defeating new labor laws and moving beyond traditional concerns about collective bargaining to the “lack of public support and understanding for business.” As Harold Wilensky noted, over time business political associations would grow to exert significant power. One decade after the 1972 founding of the Business Roundtable there were over thirty-two hundred business associations lobbying Washington, D.C. These dynamics extended to the international arena.

Whereas the private business corporation once was described as having no more than a “superficial familiarity” with environmental health and safety debates, now they were becoming active shapers of both the domestic and the international policy agendas.

Studying the mobilization of bias can help us understand the true nature of the rise of the individual employment rights era. As a worker protection that was swept up in this trend around the world, the right to refuse unsafe work serves as an important case study for examining this question. It is a question that lies at the heart of industrial relations and global labor rights, namely, when can a human being refuse to perform work they deem as unsafe or hazardous? How does global society define the fundamental boundaries of employee dissent? It is to these questions we now turn. The findings indicate that the rise of the individual employment rights era was not a mere reflection of popular consciousness into new occupational health and safety laws but rather the manipulation of social values toward managerialism and employer control.