ABSTRACT. Recent trends in business ethics along with growing attacks upon unions, suggest that employee rights will be a major social concern for business managers during the next decade. However, in most of the discussions of employee rights to date, the very meaning and legitimacy of such rights are often uncritically taken for granted. In this paper, we develop an account of employee rights and defend this conception against what we take to be the strongest in-principle objections to it.

I

During the past few decades much of the public and academic attention paid to the moral climate of business has been focused upon issues which are essentially external to business operations. In particular, the discussions in business ethics have focused primarily on those areas where business operations impact upon the well-being either of society as a whole or of those consumers who purchase the products which business provides. Witness the change in social consciousness with respect to environmental concerns and the increasing demands for truth in advertising and product safety.

Until recently, little public attention has been paid to those moral issues which are essentially internal to the operations of business. Nonetheless a growing concern with the welfare of employees may be changing all of this. The public interest in worker safety which gave rise to OSHA and the public outcry which followed the most publicized cases of whistle-blowing attest to this concern. Indeed, many believe that employee rights will be the major social issue confronting business managers in the next decade. Already most major business journals have published articles addressing such topics as employee privacy, due process, free speech, and access to the findings of safety inspectors.1

Unfortunately, these academic discussions of employee rights often fail to carefully define the meaning of ‘employee right’ and often fail to adequately defend why such rights can be reasonably ascribed to workers. Recent political events make these failings especially pressing. The power and effectiveness of unions have eroded significantly in the past few years. Decisions by the Supreme Court, the Reagan Administration’s Department of Labor, and N.L.R.B., along with the recession and a declining membership, place in jeopardy the traditional institutional mechanism for protecting employees. There is a danger, then, that the welfare of employees will be without significant protection unless some other means for protecting certain basic human goods in employment can be found. As one step towards finding such other means, this paper defends a conception of employee rights as presumptive moral entitlements not subject to bargaining within the employment agreement, and by defending this conception against those who would raise in-principle objections to it.

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A number of different uses for the term 'employee right' follow from the origins and grounds for such rights. Thus, for example, 'employee right' might refer to a right possessed by employees on the basis of contractual agreements with employers. Alternatively, it might refer to a right possessed on the basis of government legislation. Thirdly, 'employee rights' might refer to rights possessed independently of any contractual arrangement or legislation. Instances of an employee right in the first sense might be rights to a particular package of health care benefits or rights to a specific number of paid holidays each year. An instance of an employee right in the second sense would be an employee's right to corporate contributions on her behalf into the social security fund. We will not be concerned with either of these meanings in this paper. Rather, our focus will be on the third meaning above and, hereafter, 'employee right' will refer to entitlements possessed by any employee and possessed independently of individual contractual agreements or acts of governments. On our view, such entitlements can exist independently of specific contracts or legislation because the basic moral rights of human persons can place constraints on the treatment those persons receive when operating within their institutional or social roles.

To help clarify this notion of employee right, notice that, in general, both parties to an employment agreement pursue certain goods. Managers seek to maximize profits, insure product quality, maintain their firm's long-term growth and stability, etc. Employees seek high wages, good benefits, safe and pleasant working conditions, etc. In pursuit of these goods, the desires of management and employees often conflict. Higher wages can mean lower profits, greater benefits can threaten long-term stability. To resolve these conflicts and, ideally, to achieve an efficient distribution of these goods, management and employees negotiate an employment agreement. During the negotiation, some goods are bargained away in an effort to secure other goods.

Notice also, however, that not all goods are open to negotiation. Those goods protected by legal rights, for example, are not subject to contract bargaining. An employer cannot insist that, as a condition of employment, an employee accept a wage below the minimum established by law. Nor can an employer use worker's compensation payments as a bargaining chip. Acceptance of sexual harassment also cannot be made a condition of employment. Such goods are deemed so valuable that they have been removed from the negotiating table. Only under the most unusual circumstances might they be overridden. In effect, such goods are part of the costs of doing business. It is presumed that employees are entitled to such goods and even the financial well-being of the firm cannot override this entitlement.

Clearly, there is reason to accept the existence of some legal entitlements which lie beyond the scope of employment bargaining. We believe, moreover, that there is a wide range of other goods to which employees should also have presumptive entitlement. What we are calling 'employee rights' are, like the minimum wage, goods which should not be subject to normal employee-employer negotiation. Unlike the minimum wage, employee rights in our sense are secured by moral and not merely legal entitlements.

More precisely, an employee right in our sense will be a general and presumptive moral entitlement of any employee to receive certain goods or be protected from certain harms in the workplace. We hold an employee right such as this to exist whenever there are valid moral reasons which are independent of the specifics of any employment contract and which support the provision of the appropriate goods or treatments. If there are acceptable moral grounds for recognizing such an employee right, then that right creates prima facie moral obligations on the part of others who are able to provide the relevant goods or treatment. In general, this conception of an employee right can be defined as an entitlement that places presumptive moral constraints on the content of the employment contract. Those constraints define, in part, the moral limitations on the employment contract by removing certain goods from the bargaining
A Defense of Employee Rights

369

process. In this way, employee rights function to prevent employees from being placed in the fundamentally coercive position of having to choose between their job and other basic human goods or treatments.

Since we wish to defend this conception of employee rights against objections that might be raised against it, we need to emphasize several aspects of our conception more directly. First, we should note that the rights, obligations, entitlements and constraints to which we refer are moral ones. We are not addressing here the question of whether there should be other social or legal constraints enforcing the moral requirements that our conception of employee rights places on employment contracts.

Second, under our conception the existence of an employee right places moral limitations upon both prospective employers and employees since it presumptively removes certain goods or treatments from the class of items which are subject to bargaining or negotiation in employment contracts. This marks an important distinction between employee rights in our sense and other, more ordinarily recognized, rights. Many, if not most, rights which an individual is held to possess are entitlements to goods over which the individual has the power of exchange. That is, normally a right such as a right to my car is such that I can decide to surrender my car in exchange for some agreeable compensation. However, our conception of employee rights places prior constraints on the content of employment contracts in such a way as to limit the contracting powers of prospective employees. Thus, on our reading, an employee right to due process before dismissal is an entitlement which the employee is not free to bargain away in exchange for other goods. Hopefully, the reasons for this perhaps peculiar attribute of employee rights will be clear on the basis of the arguments which follow.²

The third thing we should note is that we are not claiming that there never are any considerations which would be sufficient to override the presumptive entitlement provided by a validly grounded employee right. We are simply arguing that the class of considerations which could legitimately override the presumptive entitlement does not include considerations such as (simply) increasing profit margin for a business or (simply) increasing wage levels or other financial benefits for employees. We only mean that the goods or treatments at issue in a validly grounded employee right should not be part of the normal economic bartering process.

Finally, we should emphasize that in committing ourselves to the possibility of an employee right (in the sense described) for all employees, we are not committing ourselves to the claim that all employees are thereby entitled to receive exactly the same goods or treatments. What we do hold, however, is that all employees would have exactly the same entitlements, though those entitlements, when accurately described, might allow for differences in treatment or differences in the provision of goods.

This last qualification allows that the specific objects of an employee right can be tied to the specific role or service for which the employee contracts. Thus, an employee right to privacy might be an entitlement, possessed equally by all employees, to be free from prying into matters of their past that are not reasonably job-related. Thus, for a construction worker, questions about educational performance might not be relevant while for a university professor such questions most certainly would be relevant.³ Again, we hold for a conception of employee rights which sees the rights of employees as both uniform and beyond the bargaining process. But, we do not hold that this requires that every employee in every job category must be provided exactly the same goods or treatments.

We believe that our conception of employee rights corresponds with what many commentators in business ethics have in mind. Discussions of employee rights to free speech on political matters, for example, must implicitly see those rights as placing prior constraints on political matters, for example, must implicitly see those rights as placing prior constraints on employment contracts and as being beyond the normal wage bargaining process. However, most of the discussions of employee rights which have appeared so far all assume that it is sensible to dis-
cuss the nature of specific employee rights and to investigate what obligations those rights generate in practice.

There are some who would find this presupposition unacceptable because they would deny that there are any grounds at all for recognizing employee rights in the first place. For example, arguments which claim (for whatever reason) that the conditions of the employment contract are properly left to the market-place are common in our society. If such arguments are cogent, then we would have to agree that the rights of individual employees cannot be specified prior to the actual contractual agreement. Since contracts will vary widely, this would have the practical consequence of denying the existence of any substantive right for all employees in all employment contexts. Of course, when one rules out the existence of such rights in general, discussions of the nature and extent of specific rights become superfluous.

We believe that a strong case can be made for the existence of numerous employee rights. We also believe, therefore, that the major arguments which raise in principle objections to employee rights must be answered before we can proceed to discussions of the validity of specific employee rights. It is important to understand that we are not arguing here for the necessity of recognizing any particular employee right. We only intend to show the failing of the major arguments against employee rights in principle, arguments which claim that no employee right can ever be justified. Having demonstrated such failings, we only will have established the legitimacy of discussing whether this or that particular right ought to be acknowledged.

II

The most common argument which raises an in principle objection to the legitimacy of employee rights is one which derives from a concern with a right to liberty, a right which classically is understood as a right to non-interference in one's affairs. Some argue that if we accept a right to liberty, then recognizing employee rights prior to and independently of the employment contract is an undue interference with the parties to the contract and hence a violation of their rights to liberty. In essence, this argument claims that the recognition of a right to liberty requires that the content of contracts be left under the complete control of the persons making the voluntary agreement.

Usually, of course, this argument is offered from the perspective of owners of capital who claim that employee rights such as we have in mind would constitute an illegitimate constraint on their ability to control, use, and dispose of their legally owned property. For instance, employers might argue on the basis of a right to liberty as follows: In exchanging their property for employees' labor, employers should be free to set whatever restrictions on that exchange which they think proper. Likewise, employees should be free to accept or reject the terms of employment. By establishing prior conditions on this contractual arrangement, employee rights deny employers the right to enter into any voluntary agreements which both prospective employers and employees deemed mutually acceptable. Thereby, employee rights in our sense deny them the right to control their property. If an argument such as this employer-voiced one succeeds, then obviously the debate over specific employee rights is moot since such rights would not only be without moral foundation, they would be morally objectionable interferences with free individuals.

In response to this employer argument, let us first point out that liberty is an important ideal in our society because we believe that individuals, for the most part, ought to be able to exercise control over their own lives. Actions which interfere with voluntary agreements thus are in danger of denying a basic belief in the dignity and autonomy of the person. We must, however, also realize that employment contracts are not always ideally voluntary agreements since realities of the employment market often place significantly more power in the hands of the employer than in the hands of the individual prospective employee. This is especially true in times of high unemployment. To a
In these circumstances of unequal power, the concept of a voluntary agreement becomes empty, since voluntary agreements and the control over one's life which they provide are significant only when there are real and multiple options.5 "Accept my contract offer" from a prospective employer when there is small chance of a living wage elsewhere can present no more a voluntary and agreeable choice from the employee's view than "your money or your life" from a gunman. (This, of course, is not meant to suggest that employers personally have the same moral standing as a holdup man.) Thus, any liberty to which we have a right might not be violated by employee rights which place constraints on the contract in order to protect employees. In particular, liberty would not be violated if the constraints are ones that are needed to make the circumstances of the contract approximate more fully an ideally voluntary agreement.

Against this response, some might point out that unions strengthen the bargaining position of employees and therefore no prior moral constraints are needed in order to preserve the voluntariness of the employment contract.6 This, of course, will not do as an analysis of the employment circumstances in the United States since in our country union membership accounts for only 20–25% of those employed at any one time. The vast majority are still in need of guarantees that contract agreements will be voluntary in a real and morally significant sense. Moreover, since levels of unemployment in modern industrial societies are quite variable, the only real guarantee of long term and stable equity in contract agreements may lie in some generally recognized limitations on the content of those employment contracts. We can respond to the employer use of the liberty argument against employee rights in general, then, by noting that such rights may actually be necessary to protect the very value which liberty represents, the freedom to exercise control over one's own life.

We can also make another response to the employer-voiced liberty argument. Even if we believe that employment contracts usually satisfy the conditions necessary for real voluntariness and control over one's life, there are still other possible justifications for limitations on contract content. In fact, our society already generally accepts limitations on the liberty to contract. Note the restrictions on what can be agreed to in a contract which are apparent in statute, in rulings by congressionally chartered agencies (such as the FDA, the FTC, and the SEC) and in judicial decisions such as those dealing with manufacturer liability for product safety. For example, consenting adults are not free to enter into just any contractual agreement concerning the use and sale of drugs. The drug seller must be licensed, the drug tested and approved, and in some cases even then the buyer still needs a prescription from an independent, licensed third party. Society also places restrictions upon the liberty of individuals to contract for the purchase of such things as plutonium, explosives, automobiles with dangerously located gas tanks, lawnmowers without safety shields, etc.

In each of these cases, society accepts the judgment that even voluntary agreement will not justify contracts on certain matters. Only the most extreme ideologue will find such rulings and legislation unacceptable. Yet the justification of these limitations on contracts presumes that there are important values, e.g., the well-being of the public or of individual consumers, which can supercede the value placed upon liberty of contract. Thus, unless one rejects the propriety of these limitations on the content of contracts, one will have to agree that the placing of prior constraints on the content of contracts is not necessarily illegitimate.

Thus, someone who employs the liberty argument against employee rights generally is left with but one option. He might assert that while there is a collection of values which can on occasion supercede freedom of contract,
those values which employee rights aim to protect are not members of that class. However, since various employee rights may be justified in various ways, since such rights might represent numerous and different values, those who oppose employee rights on the grounds of liberty must address each particular employee right and its proposed justification in turn. Thus, the liberty argument as voiced by an employer can offer no moral grounds for a wholesale rejection of all employee rights. Accordingly, we must draw the conclusion that the respective validity of employee rights and employer liberty can only be determined after a separate discussion of each proposed right.

III

A second broad, and to our minds potentially more serious, challenge to the validity of employee rights as a class also comes from an appeal to liberty. This time, however, the appeal is made by employees rather than employers. Some prospective employees may see the constraints which specific employee rights place upon the employment agreement as a threat to either their wage level or their very employment. For instance, an employer recognizing employee rights to privacy might find guaranteeing those rights a costly affair. The resulting economic condition of the business might force the employer to make wage offers lower than those he might otherwise have made. Employees could then complain that the recognition of an employee right in practice infringes on their ability to bargain for higher wages.

This employee critique amounts to an assertion that restrictions on the content of voluntary employment agreements are paternalistic restrictions of their liberty to decide which goods to forego and which to bargain for. This argument, like the employer appeal to liberty, has the potential for making discussions of particular employee rights moot since it demands total freedom for the employee in deciding the conditions of employment — a freedom which an employee right in our sense disallows.

We take this to be a serious challenge to employee rights in that it appeals to the very value, the liberty of employees, which we had relied upon in our earlier response to the employer-voiced liberty objection. Indeed, it might be claimed that one employee right is the right of liberty and that this right should guarantee employees the freedom to enter into any employment agreement of their choosing. Ultimately, however, we do not think that there is an inconsistency here. We never claimed above that employee liberty was an overriding value; it was one value among many which might support individual employee rights against the employer-voiced claim of liberty. Further, what we said above demonstrated that anyone's liberty, whether employer or employee, is often justifiably restricted by other values. To expand on this will take us into a more detailed response to the employee-voiced liberty challenge.

As a general argument against all employee rights, this liberty argument has serious failings. In the first place, if individual prospective employees are to use this argument to rule out any prior restrictions on the content of employment agreements, they are committed to claiming that in every case the decision as to what constitutes their individual good is best left to them as individuals. In the present context, this becomes the claim that paternalistic interference in an individual's life is morally objectionable and that individuals ought to be left to direct their own lives. These are very strong claims. For while we are legitimately cautioned about paternalistic interferences with people, we certainly accept that some such interferences are allowed. The classic cases, of course, are those where the irrational or the mentally deficient are restrained for their own welfare. However, we need not attempt to assimilate all paternalistic interferences to cases where the individual is assumed to be frequently irrational. We also entertain the morality of such interferences for normally rational adults. Consider as examples the restrictions on the availability of prescription drugs or the rules requiring seat belts in all automobiles. Thus, while we find that allowing individuals to control their own
lives is a significant value, we do not believe that this right to control is absolute.

Once one accepts this conclusion, then one is thereby committed to the proposition that liberty cannot presumptively rule out all interferences, even paternalistic ones, and that a decision about whether liberty is of overriding importance can only be made by analyzing the merits of particular alternative claims. Even in the employee's hands, then, liberty cannot generate an argument capable of proving that employee rights are unacceptable in general.

The liberty argument used by employees becomes even less convincing when we recognize that employment conditions can threaten goods, e.g., health, which normally rational individuals would not surrender except under duress. Thus, it would be reasonable to suggest that with such goods at stake, employees wishing to bargain them away need to make an argument in particular cases that such bargaining is not irrational. This, of course, simply means that they must discuss the specific goods that specific employee rights aim to protect and that liberty cannot be grounds for their dismissing the need for such discussions altogether.

A final response to the employee liberty argument against employee rights in general is also telling. If as the argument suggests, we allow each employee to bargain individually, the ability of other employees to gain protections in bargaining is effectively undermined. This result is common in circumstances where separate individuals, all pursuing their own interests, can create circumstances where the interests of all are harmed. For a related example, look to the need to prevent individual employee bargaining in union shops. If this were allowed, the goods available only through coordinated bargaining would be impossible since the employer could play the employees' interests against one another. In order to show that employees in general ought not to be prevented from individual bargaining by the recognition of any employee rights, one would have to show first that the value of such liberty was more significant than the good the particular right aimed to protect. It is possible for example that liberty may be more significant than participating in business decisions but not more significant than employee safety. But this simply means that we have to approach the issue right by particular right, and that we cannot dismiss employee rights wholesale on the basis of the liberty argument. So, we reach the same conclusion once more: an appeal to liberty, whether by employer or employee, cannot serve to prove that there is, in principle, no need to admit the validity of any employee right.

IV

Another common argument for freedom of contract which has been offered frequently in our society is the utilitarian one. Essentially this argument asserts that restrictions on market agreements will lead to less desirable conditions for the society than will the absence of such restrictions. Usually, this utilitarian argument is advanced in defense of a laissez-faire or free market economy. Defenders of the laissez-faire economic system such as Milton Friedman have often argued that the most productive economy is one where individuals are left to pursue their own economic interests in as free and unrestricted an environment as possible. On this view, employee rights, as some among a number of needless restrictions on the content of contracts between self-interested parties, jeopardizes the overall economic well-being of society. Thus, free market theorists will reject all employee rights as harmful deceits.

In response to this argument, we should note that its cogency depends upon a belief in an 'invisible hand' which guarantees that the independent pursuit of self-interest by numerous individuals will always result in the greatest cumulative amount of interests being satisfied in the long run. This belief is more than questionable; it is clear that unrestricted individual pursuit of economic interests is neither necessary nor sufficient for the overall well-being of society. Unregulated market activity will not guarantee well-being. Examples from game theory exist to show that the players in an unregulated game
of self-interest are often worse off than they would have been had they coordinated their efforts by mutually accepting limitations on their behavior. (Consider the arms race as one example.) Beyond these points, we all perceive the grave dangers to the long run general interest in the deterioration of the environment when business operates without environmental regulations. Thus, lack of restraints, e.g., a laissez-faire economy, will not always result in the greatest interest of society.

Alternatively, lack of restraints on economic activity is not necessary for economic well-being either. Western European economies, as well as the Japanese economy, operate under significantly more restrictions on the market than does the American economy. Yet the standard of living in Sweden, Germany, and Japan is relatively high. Thus, there appears no convincing reason to believe that a free market is either a necessary or sufficient condition for realizing the well-being of society. If it is neither, however, there is no reason to accept the free market theorists’ wholesale rejection of employee rights. Their argument is only as convincing as the invisible hand thesis on which it depends.

Of course, an opponent of employee rights on utilitarian grounds does not have to be a defender of the free market. He need not argue that all restraints on voluntary agreements are unacceptable because of their long run negative consequences. He might simply claim that this is just true of employee rights limitations even if not true of restrictions in general. Thus, one might argue that society’s long run interest is harmed by OSHA legislation but not by environmental protection statutes.10

First, against this argument it is helpful to remember here that Sweden, Germany, and Japan (all states with high standards of living) have broad social or legal guarantees of employee rights. Second, this sort of argument cannot be an argument against all employee rights in principle. For surely the success of the argument depends on establishing the likely consequences of recognizing various rights. Of course, though, the consequences for society in recognizing an employee right to safety could be very different than those in recognizing a right to whistleblowing. Again, the argument must be made on a case by case basis, looking at each particular right proposal in turn. Thus, the utilitarian has no more means for offering a single argument to reject all employee rights than does the defender of a right to liberty.

V

One final argument which raises an in principle objection against employee rights requires comment. Many argue that employee rights will prove too costly in practice. They would claim that the costs to business are so high that both employer and employee will be harmed. (This argument is distinct from the utilitarian argument concerning the welfare of society at large.) Though this off-hand dismissal of employee rights is often heard, it cannot easily support the intended conclusion that no employee rights can be acceptable.11 First, we must recognize that the concept of ‘too costly’ is vague, admitting interpretations ranging from ‘leading to financial collapse’ to ‘lower profits’. At the latter extreme, while it may be true that recognizing employee rights will detrimentally affect profits to some degree, lowered return on investment cannot by itself be a reason for dismissing all employee rights. Even if we believe that managers and owners will resist the establishing of rights for employees prior to the employment contract, certainly we cannot accept the proposition that no value or concern is morally more significant than profit. Thus, to show that profits are reduced cannot dispense with all employee rights since one would also have to show, further, that no employee right could be based on moral concerns more significant than profit. That, of course, requires discussion of the moral foundations of specific rights and means that lowered return is not by itself a reason against employee rights generally.

At the other extreme of interpreting ‘too costly’, the financial ruin of the enterprise, it is clear that establishing employee rights need
not have this predicted consequence, either for all proposed employee rights or for all businesses. Thus, if the proposed cost argument is to be a rejection of employee rights in toto, the evidence for the conclusion simply is not there.

VI

While there are undoubtedly other possible arguments against employee rights in general, it should be obvious by now that all will have the same failing. For in order to reject employee rights in principle as so many wish to do, one might advance an argument to show that no limitations upon contract content are acceptable. Since, on analysis, this is a position no one could wish to hold, any who desire a wholesale dismissal of employee rights must focus on the limitations on contracts which such rights impose. But since the grounds for various rights might be different and since the problems in implementing those rights surely vary, arguments against employee rights cannot be wholesale and instead must focus on the strengths or weaknesses of particular rights. But that is to give up the argument and to recognize that the opponent of employee rights must engage himself seriously in discussions of specific employee rights. There simply is no easier route.

We remind the reader that we have argued explicitly only that the legitimacy of employee rights must be addressed by discussing specific rights, each in their turn. We have until this point made no claim that any one of those specific rights must be recognized in practice. To emphasize this, we should point out that any of the foregoing arguments against employee rights generically might be raised against some one of the specific rights proposals. However, at the same time we also caution the reader against raising those previous argument too glibly. Implicit in our responses to the foregoing arguments are suggestions which could lead to the conclusion that those critical arguments do not provide serious countervailing moral considerations to the presumptive moral standing of particular employee rights. This is so, in part, because our arguments suggest that there often are legitimate restrictions which should be placed upon freedom of contract. Appeals to the legitimacy of consumer protection and environmental laws because they protect the welfare of current or future persons are cases in point. If those restraints on contracts are legitimate, the burden of proof falls on those who claim that similarly justified restraints in the form of employee rights are not legitimate.

Notes


2 Of course, there are analogues to this ‘peculiar’ feature in the area of constitutional rights. Few would be willing to allow that a right to vote should be seen as a right which can be bargained away for money.


4 Arguments of this sort in defense of liberty as the most fundamental right abound among libertarian philosophers and political theorists. Cf. the arguments in favor of the free market in the writings of Robert Nozick, Frederick von Hayek, John Hospers. Classically, libertarians object to any interference with uncoerced contracts and they do not believe coercion exists in normal contractual arrangements between individuals of unequal economic status. Given this, libertarians would object that employee rights, as prior constraints on the behavior of contracting individuals, would be an unjust interference in free market transactions.

5 Of course, some may claim that liberty need not be violated when one has few options, even when the
diminishing of real options is the result of the behavior of another agent. First, one might claim that a violation of A's liberty occurs only when the restriction of A's options is the result of an intentional interference by another with A. Thus, A's liberty would not be violated if an employer, intending to better his own economic status, acts in a way that has the limiting of A's options as an unintended result. The difficulty with his line of argument, however, is that we certainly recognize cases where one individual violates the rights of another, albeit unintentionally; we often hold people responsible for actions with unintended harmful consequences. ('I didn't mean to' is often an unacceptable excuse.) The fact that an interference is unintended, then, does not mean that it cannot be an injustice. For development of this point in connection with the right to liberty, see James Sterba's 'Neo-Libertarianism in his Justice: Alternative Political Perspectives (Wadsworth, Belmont, Ca., 1980). Alternatively, some might argue that employer actions are interferences with the options of a prospective employee, while also arguing that these actions are not interferences with anything to which the employee has a right. The set of interferences here is not identical to the set of unjust interferences. However, if one takes this second approach, then the problem of distinguishing between unjust and not unjust interferences arises. In this regard, see Ronald Dworkin's 'What Rights Do We Have?' in his Taking Rights Seriously (Harvard University Press, Cambridge, Ma, 1977). It is difficult to draw this line in such a way that no employer interference could be a violation of a right. Consider an employer who offers a job only on the condition that the employee provide sexual favors or a pledge not to join a union. Most of us would find such conditions to be unacceptable interferences. However, anyone who wishes to use this argument against employee rights in principle must argue that such limitations are not unjust. Clearly, this would be difficult to do.


7 Cf. again both Northrup (op. cit.) and Martin (op. cit.). Northrup suggests that union membership is more interested in cents-per-hour increases that in specific employee rights. Martin argues that an employee bill of rights would penalize some workers who wish to better themselves. A right to privacy, for example, makes it impossible for prospective employees to present themselves as more attractive candidates for a position than others since employers could be denied access to relevant information. In general, Martin sees employee rights as preventing the choice by prospective employees for more "oppressive personnel policies ... requiring compensation of pecuniary and non-pecuniary differentials over and above what they would receive from alternative employments".

8 The potential contradiction, of course, is that the employer liberty argument was criticized from the importance attached to the liberty of employees. Now, we might be seen as denying the importance of employee liberty, though, of course, we do not.


10 Cf. Tom Donaldson, Corporations and Morality Prentice-Hall, Englewood Cliffs, NJ, 1981) p. 38. Donaldson sees as a potentially difficult argument against employee rights that they might generate gross inefficiency. Such inefficiency would detrimentally affect productivity, of course, with the consequence that there would be less employment and fewer goods for society. As teachers of business ethics well know, this attitude appears frequently. Students often hold that environmental protection is necessary and even cost-beneficial while they simultaneously believe that employee rights, as a piece, are not cost-beneficial. It is intriguing to note that this position is commonly held in conjunction with the belief that employee's well-being is sufficiently protected by unions and/or the open market.

11 Cf. the results of David Ewing's survey of subscribers in the Harvard Business Review 55 (Sept.–Oct., 1977), p. 91. Three-fourths of Ewing's respondents felt that employee rights are increasing the costs of products to consumers and 43% felt that stockholders receive less of a return because of such rights. Standard economic theory suggests that this would lead, if true, to relative disincentives to purchase and to invest. These, in turn, lead to a slower economy and potential wage losses for employees.

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