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Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards by Lance COMPA, Ithaca, N.Y.: Cornell University Press-ILR Press, 2004, 220 pp., ISBN 0-8014-8964-4.

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[See table of contents](#)

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Book Reviews

Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards

by Lance COMPA, Ithaca, N.Y.: Cornell University Press-ILR Press, 2004, 220 pp., ISBN 0-8014-8964-4.

Unfair Advantage was first published in 2000 as a report by Human Rights Watch, a nongovernmental organization that has investigated human rights violations worldwide since 1978. In this book, Lance Campa, a lawyer, professor, and former union organizer, examines failures under U.S. law to ensure workers' right to freedom of association—that is, the right to form and participate in unions to protect and advocate for their interests. By focusing on freedom of association as a basic human right, the book seeks to shift the debate about this aspect of labour law in the U.S. from one of competing economic interests to the more fundamental ethical terrain of fundamental rights.

This ILR Press book reproduces the original Human Rights Watch report, adding an introductory chapter that highlights reactions to its initial publication and updates some of the cases presented in the main body of the report. The report itself begins with a summary and recommendations. Subsequent chapters review relevant international labour standards and U.S. law. The author then presents 100 pages of narrative case examples that illustrate how the rights of workers to freedom of association and collective bargaining are violated under the current law. Some of these are attributable to gaps in the law, such as the exclusion of groups of workers from coverage under the National

Labor Relations Act (e.g., agricultural workers, supervisors, and independent contractors) or to imbalances in protection (e.g., lack of restrictions on permanent striker replacements). Other violations reflect situations in which the law ostensibly offers protection, but where the realities of enforcement (e.g., excessive delays in the legal process and trivial penalties when employers are found in violation of the law) negate the law's effectiveness. A short conclusion written for the book version highlights developments since the original report was published.

The "human rights" approach clearly resonates with many in the scholarly and labour community, as documented by the responses to the 2000 report. Whether this can shift the basic terms of debate is an open question. The U.S. has a long tradition of addressing unions primarily as economic institutions. Prior to the 1930s, government interventions favoured the property rights of business owners rather than the rights of employees to collective action. Unions were often viewed as a form of criminal conspiracy to restrict trade. When the federal government's stance shifted in the 1930s to greater support for unions, the rationale continued to be expressed in economic terms. Section 7(a) of the National Recovery Act in 1933, which signaled the Roosevelt administration's openness to unions, was part of an

Act intended to combat “widespread unemployment and disorganization of industry” (NRA, “Declaration of Policy”). Similarly, as Campa notes, the 1935 Wagner Act’s protection for union activity was grounded in the “commerce clause” of the Constitution rather than other rights (such as the freedom of speech and assembly). In current political debate, unions are often characterized as just another “special interest,” rather than as an expression of democratic self-determination.

Unfair Advantage is a timely and important counterbalance to this view. It provides a coherent and convincing argument for shifting the focus of protections for freedom of association from commercial considerations to human rights. As Campa notes: “So long as worker organizing, collective bargaining, and the right to strike are seen only as economic disputes involving the exercise of power in pursuit of higher wages for employees or higher profits for employers, change is unlikely. Reformulating these issues as human rights concerns can begin a process of change” (p. 17).

We’ve seen growing attention to labour rights internationally, with the rise of anti-sweatshop advocacy, which has led to consumer initiatives, codes of conduct for multinationals, and the beginnings of labour provisions within trade agreements. Campa takes this lens of international human rights standards and uses it to examine the labour rights in the U.S. The results are instructive and provide directions for needed change.

Campa’s discussion of the background and legal rationale that has resulted in the current situation in the U.S. also is very helpful for sorting out its shortcomings and their implications. His analysis and presentation reflect both his legal background and his practical experience. For example, his discussion of the “remedial” basis for penalties

for labour law violations (in contrast to more substantial “punitive” fines) clarifies the legal rationale for why fines for firing pro-union workers are ineffective as a deterrent. His description of the operation of the National Labor Relations Board doesn’t become overburdened with detail, but conveys what one needs to know to understand the system. Similarly, his explanation of the realities of the power imbalance created when an employer can hire permanent replacements for striking workers provides a clear argument for changing the law. And his description of “captive meetings” (mandatory anti-union sessions run by management) provides a powerful picture of their potentially dramatic impact.

My only criticism of the book relates to limitations arising from simply reproducing the report. Some changes would have made it more accessible to the reader. For example, I believe that integrating the case studies with the discussion of the specific aspects of the law and its implementation would have yielded a more effective exposition. Such a large-scale reorganization, however, is a major undertaking for the author and would have increased costs for the publisher. An alternative, which could have been accomplished without changing the text, would have been the addition of an index. For a work that raises so many important specific issues, background material, and case examples, a well-constructed index would go a long way to helping the reader navigate the text.

Unfair Advantage has a wealth of information and is written in a clear and highly readable way. Campa efficiently presents the relevant international labour rights conventions and principles, and his overview of U.S. labour law is particularly useful. The case examples vividly illustrate how these shortcomings play themselves out in real situations. The importance of re-framing freedom of association as

a basic human right may have been the driving force for broader dissemination of the original report in book form, but Campa's other analytic and descriptive contributions also justify its re-issue. *Unfair Advantage* is a valuable addition

to the literature for both the specialist and the general reader.

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Psychologie de la formation, jalons et perspectives

par Jacques LEPLAT, Toulouse : Octarès, 2002, 293 p., ISBN 2-906769-83-5.

Au cours de sa carrière, Jacques Leplat a contribué de façon significative au développement de l'ergonomie et de la psychologie du travail française. Cet ouvrage rassemble diverses contributions de l'auteur au développement de la formation depuis les années cinquante. Ces textes sont regroupés autour de six thèmes pertinents : 1) vues d'ensemble sur les aspects psychologiques de la formation professionnelle; 2) l'analyse de l'activité en vue de la formation; 3) la dimension temporelle dans le travail et dans la formation : le cas du travail manuel; 4) un principe majeur de la formation : la connaissance des résultats; 5) la formation comme acquisition d'habiletés; et 6) une méthode d'assistance à la formation : l'enseignement programmé.

Pour chacun de ces thèmes, l'auteur regroupe des textes rédigés entre 1955 et 1998. Un tel exercice permet notamment de saisir l'évolution des idées et des perspectives de la formation. Cette réflexion permet également de mieux saisir les bases théoriques et méthodologiques des travaux contemporains sur la formation en psychologie du travail mais également en ergonomie française.

La thématique abordant les vues d'ensemble sur les aspects psychologiques de la formation professionnelle se compose de deux textes (1955 et 1992). Le premier (1955) pose le problème de la formation et de la contribution de la psychologie au contenu ainsi qu'à sa structure. L'auteur voyait alors l'apport possible de la psychologie

comme outil efficace pour surmonter les difficultés de la formation. Le second texte (1992) se positionne résolument dans une perspective de la psychologie cognitive pour contribuer à l'élaboration d'une formation. La discussion porte sur quatre phases d'élaboration d'un programme de formation : l'étude des conditions initiales, le diagnostic des problèmes de formation, l'élaboration et la mise en œuvre de la formation et, finalement, l'évaluation des résultats. L'étude des conditions s'illustre par deux questions : « formation de qui ? » et « formation à quoi ? ». Le diagnostic vise à documenter les caractéristiques des formés, les compétences requises pour une tâche et les compétences à acquérir. L'élaboration de la formation concerne la conception du contenu et des méthodes ainsi que la réalisation de la formation. Finalement, l'évaluation des résultats vise à mesurer l'atteinte des objectifs et l'utilité de la formation.

La thématique de l'analyse de l'activité en vue de la formation se compose également de deux textes (1955 et 1998). Le premier (1955) montre la pertinence de « l'analyse du travail » pour la formation. Par le biais d'une démarche expérimentale, l'auteur montre la pertinence des résultats et d'une méthode d'analyse du travail pour contribuer à la formation. Le second texte (1998) se situe dans un contexte d'activités physiques et sportives où l'auteur discute de la pertinence de l'analyse de l'activité en ergonomie pour comprendre une activité et pour la transformer. Cette réflexion met en évidence des préoccupations communes