Liberty and Justice for All
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The key issue at stake throughout most of American labor history has not been wages or working conditions, but the very right of workers to form and join unions. Whenever workers have asserted this right, employers have vigorously opposed it. Their attempts to defeat union organization have frequently involved coercion, violence, and even deadly force, often backed and sometimes exercised by the government on employers' behalf. But employers have also sought to exercise what the sociologist Pierre Bourdieu called symbolic power, "the power to make people see and believe, to get them to know and recognize, to impose the legitimate definition of the divisions of the social world and, thereby, to make and unmake groups." This form of power became especially significant following the enactment of the 1935 National Labor Relations Act (NLRA).

Following decades of struggle, the NLRA finally affirmed and guaranteed workers' rights to organize and bargain collectively. Protecting these rights, the law's preamble declared, helped to "ensure a wise distribution of wealth," "maintain a full flow of purchasing power," and "prevent recurrent depressions." Moreover, insisted Senator Robert Wagner, the law's architect, unions were good for democracy as well the economy. "Democracy," he declared, "cannot work unless it is honored in the factory as well as the polling booth; men cannot be truly free in body and spirit unless their freedom extends into the places where they earn their daily bread." (These truths are important to remember now, in the midst of the country's worst economic crisis since the Great Depression, when advocates of the right-wing economic policies that created the crisis shamelessly seek to make unions scapegoats for it.) Employers were unconvinced. Confident that the Supreme Court would strike down the law, they brazenly flouted it in the meantime. The Supreme Court upheld the law in 1937, but it was not until after the Second World War that business leaders stopped calling for its repeal.

Struggles over workers' right to unionize did end there, however. Ironically, the NLRA provided new opportunities for employers to wield symbolic power against union organizing because the law's protection was selective. The NLRA did not cover government employees, domestic servants, or agricultural laborers—exclusions that were racially significant at a time when domestic and agricultural labor accounted for most of black employment. Later amendments excluded independent contractors and foremen. Furthermore, the jurisdiction of the National Labor Relations Board (the body charged with enforcing the law) was limited to industries engaged in interstate commerce or whose operations affected that commerce, leaving out employees of purely local business enterprises. Writing in the *Industrial and Labor Relations Review* in 1951—during the heyday of American unionism—Robert Rosenthal estimated that the NLRA covered only 56 percent of the 1948 labor force. Given the large numbers of American workers excluded from its protection, Rosenthal concluded that the NLRA could "scarcely be called either 'labor's Magna Carta,' or the 'labor law of the land,'" nor could it "accurately be called a national labor law." Moreover, the law failed to define many of the excluded occupational categories, leaving the task to the National Labor Relations

Board and the courts. Consequently, Rosenthal added, "the definitions of 'employee' ... are for the most part changing definitions, subject to the varying temperaments and the degree of discretion of board and court personnel." Under these circumstances, the classification of workers became vitally important, for it determined whether their right to unionize would be legally recognized and protected.

In my book *Citizens and Paupers*, I show how struggles over the classification of workers were an essential dimension of their struggles to organize, bargain collectively, and claim the protection of minimum-wage and maximum-hours laws in two revealing cases. The first case involved the efforts of the Workers Alliance of America to organize Works Progress Administration workers in the 1930s. The second case involved the efforts of community organizers and labor unions to organize tens of thousands of workfare workers in New York City in the 1990s. In both cases, powerful opponents insisted that the workers in question were not really employees—and thus not entitled to the rights and protections of state and federal labor laws. In both cases, their rights were denied not because they were government workers, but because their employment was defined as a form of relief or welfare and thus not a "real" job. And in both cases, workers understood that in order to secure government recognition and protection for their rights, they would need to contest their classification and establish a new vision of the social world. These kinds of classification struggles, readily apparent in the twentieth century, remain a prominent aspect of labor conflicts in the twenty-first century. In 2004, for instance, the National Labor Relations Board—with new members appointed by George W. Bush—overturned a previous decision and ruled that graduate student employees at private universities are not "primarily" employees and therefore not protected by the NLRA. As a result, private universities no longer have to recognize their unions.

In the 1930s, it was union leaders who called the NLRA "labor's Magna Carta." Today, it is employers—the same employers who once opposed the law and now routinely violate it—who describe it this way, eager to convince workers that any reform of the law is a threat to workers' rights. In fact, the NLRA is hardly sacred or untouchable. It has been amended in the past, sometimes in ways that benefited workers, more often to the advantage of employers. It is both an object and terrain of struggle—and hence always subject to change—as well as a legal and regulatory framework that will shape future struggles between labor and management. With Congress poised to vote on the most progressive labor law reform in decades, the Employee Free Choice Act, American workers' historic struggle for the fundamental freedom to form and join unions continues.

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