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DIGNITY TAKINGS AND WAGE THEFT

CÉSAR F. ROSADO MARZÁN*

I. INTRODUCTION: HUMAN DIGNITY, WAGE THEFT, AND WORK LAW

“The labor of a human being is not a commodity or article of commerce.”¹

Safeguarding human dignity has been one of the key motivating factors behind international labor and employment law (hereinafter referred to as “work law”). Dignitarian agendas in work law include strengthening protections for income fairness, job security, freedom of speech at the workplace, and collective bargaining.² For example, the International Labor Organization (“ILO”), which has been developing and diffusing global norms for the workplace since 1919, underscores “the dignity of the human person, in particular the dignity of human beings at work and through work, which is expressed in the solemn affirmation of the principle that labour is not a commodity.”³ As the epigraph above shows, the same principle has existed in the United States, in the Clayton Antitrust Act of 1914.⁴

While worker claims arising out of employment contracts are generally based on special laws protecting workers—work law—dignitarian prin-

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1. Clayton Act, 15 U.S.C. § 17 (2012).

2. David C. Yamada, *Dignity, “Rankism,” and Hierarchy in the Workplace: Creating a “Dignitarian” Agenda for American Employment Law*, 28 BERKELEY J. EMP. & LAB. L. 305, 315–24 (2007) [hereinafter Yamada, *Dignity, “Rankism,” and Hierarchy*].

3. Janice R. Bellace, *Achieving Social Justice: The Nexus Between the ILO’s Fundamental Rights and Decent Work*, 15 EMP. RTS. & EMP. POL’Y J. 5, 21 (2011) (quoting ILO Director-General Hansene). The ILO states that labor is not a commodity, despite the fact it would be difficult to argue that there is not a “labor market” in capitalist economies. Here, however, we should be reminded of the difference between labor, actual work, and labor *power*, or workers’ capacity to work. It is the latter that is treated like a commodity in a capitalist society. See, e.g., Ernest Mandel, *Introduction* to 1 KARL MARX, CAPITAL 2, 50 n.42 (Ernest Mandel ed., Penguin Books 1990) (1867) (describing labor power as a commodity to be bought and sold in capitalist markets). Work law aims to curtail the most egregious affronts to human dignity created by capitalist treatment of human labor power as a commodity.

4. 15 U.S.C. § 17.



principles have motivated some U.S. employment lawyers to bring *tort*-related claims to courts on workers' behalf. These torts include wrongful discharge in violation of public policy⁵ and the application of the general tort of intentional infliction of emotional distress.⁶ Tort-related claims on behalf of workers with grievances against employers are, however, not very successful in the United States.⁷ What, then, can the hybrid property-tort claim of a "dignity taking"—developed by Professor Bernadette Atuahene,⁸ and the topic this author was asked to reflect on for this symposium of the *Chicago-Kent Law Review*—contribute to work law?

This article argues that dignity takings in the workplace call for stronger labor rights and work law that protects worker organization. While other work law scholars have been calling for expanding private causes of action to protect workers' dignity interests,⁹ this article underscores the need of going back to basics by protecting workers' dignity through organization and collective work law. The essay does not argue that we must abandon altogether any and all attempts to expand litigation-based strategies to protect workers. It argues, however, that labor advocates should reassert their attempts to expand labor rights—including protecting the dignity of workers—through organizing.¹⁰

The essay builds the argument for labor organization and collective work law by exploring one instance of dignity takings at work: when employers fail to pay workers for their work, or what the contemporary labor movement calls "wage theft,"¹¹ and when "worker centers" attempt to rem-

5. See, e.g., Cynthia Estlund, *Wrongful Discharge Protections in an At-Will World*, 74 TEX. L. REV. 1655, 1663 (1996).

6. Mark P. Gergen, *A Grudging Defense of the Role of the Collateral Torts in Wrongful Termination Litigation*, 74 TEX. L. REV. 1693, 1701 (1996); Regina Austin, *Employer Abuse, Worker Resistance, and the Tort of Intentional Infliction of Emotional Distress*, 41 STAN. L. REV. 1, 1 (1988) (arguing that the common perception is that employers may impose some emotional distress on workers as part of their role to supervise and discipline employees).

7. See, e.g., *Perry v. Sindermann*, 408 U.S. 593, 600–02 (1972) (explaining that a worker's contract of employment with a for-cause termination clause may be a property interest in their employment). The author thanks Professor David Yamada for raising this point.

8. BERNADETTE ATUAHENE, WE WANT WHAT'S OURS: LEARNING FROM SOUTH AFRICA'S LAND RESTITUTION PROGRAM 4–5 (2014); Bernadette Atuahene, *Dignity Takings and Dignity Restoration: Creating a New Theoretical Framework for Understanding Involuntary Property Loss and the Remedies Required*, 41 LAW & SOC. INQUIRY 796, 797 (2016) [hereinafter Atuahene, *Dignity Takings and Dignity Restoration*].

9. See *infra* Part II.A.

10. See, e.g., RUTH DUKES, THE LABOUR CONSTITUTION: THE ENDURING IDEA OF LABOUR LAW (2014) (describing the importance of working class self-organization as the constitutionalizing principle that supports work law).

11. The worker center where the author performed participatory research, see *infra* Section III, had identified at least twenty-two forms of "wage theft." These include:

1. Nonpayment of wages outright (common among construction contractors who promise to pay at a job's conclusion, then disappear)

edy those dignity takings through organizing. Worker centers are “community-based mediating institutions that provide support to and organize among communities of low-wage workers.”¹² Many worker centers represent immigrant laborers, undocumented populations, and other subaltern groups of low-wage workers.¹³ Worker centers have been growing significantly in the United States. While in the single digits nationally in the mid-1980s, by 2000 there were thirty-one worker centers in the United States,

2. Nonpayment of time and one half for overtime hours worked beyond the standard 40-hour work week
3. Paying below the minimum wage
4. Paying workers late (beyond when the pay period ends)
5. Having workers work off the clock, unpaid (requiring workers to show up to work early before their shift actually begins; asking workers to stay after work in order to clean up, etc.)
6. Denying workers their last paycheck (when they leave the company or the company closes)
7. Charging workers or deducting from workers’ paychecks for breaking a rule or product on the job
8. Charging workers or deducting from workers’ paychecks for company-provided uniforms or company-provided transportation without requesting the worker’s written permission, when using those uniforms or transportation are required
9. Charging workers for “benefits” such as getting a promotion or taking a sick day
10. Not paying workers for the hours spent traveling on company time
11. Not paying workers for accrued Paid Time Off (PTO), such as unused vacation or sick days, when payment for those days is company policy
12. Not paying workers the first week’s pay upon termination or dismissal, commonly known as “week’s deposit”
13. Misclassifying of workers as “independent contractors,” by which they are denied certain protections and benefits, such as access to unemployment insurance, workers’ compensation, and are not covered by state and federal minimum wage and overtime laws
14. Misclassifying workers as “exempt” or “salaried” employees instead of hourly workers
15. Not giving tipped workers their entire tip, or management keeping the workers’ tips or forcing them to share tips with non-tipped employees
16. Charging workers for a meal break that is not taken or denying workers a meal break
17. Paying workers with debit cards that charge a fee (Fees are normally charged for routine transactions, such as checking the card balance or withdrawing cash)
18. Charging or not reimbursing workers for products they purchase that are required for work
19. Pressuring workers not to file for workers’ compensation when they are injured on the job
20. Denying workers’ [sic] their paycheck for whatever reason- for instance, if the workers do not open a checking account with a particular bank, sign specific agreement or waivers, or forcing them to comply with other requirements
21. Requiring workers’ [sic] to donate a portion of the paycheck to a charity of the employer’s choice
22. Requesting workers to do “voluntary” work (like yard work or attending charity events)

ARISE CHI., WORKERS’ RIGHTS MANUAL 43–44 (2015), <http://arisechicago.org/wp-content/uploads/2016/03/Workers-Rights-Manual-3rd-Edition-2015-2016.pdf> [perma.cc/BB9T-ZG99].

12. JANICE FINE, WORKER CENTERS: ORGANIZING COMMUNITIES AT THE EDGE OF THE DREAM 11 (2006).

13. *See id.*



over 130 by 2005, and 214 in 2012.¹⁴ Worker centers are, thus, growing institutions. However, worker centers differ from traditional labor unions, which attempt to organize workers to “deal with” and bargain collectively with employers, in that they generally do not try to reach collective bargaining relationships with employers.¹⁵ Rather, they organize workers for essentially single-purpose campaigns, such as those to recover stolen wages.¹⁶

The essay further sustains its argument for labor organizing on two stories of wage theft that I drew from an ethnographic fieldwork project that I did recently of a Chicago worker center, Arise Chicago. As both stories will show, employers may attempt to infantilize workers—one of the elements of dignity takings¹⁷—by assertively subordinating workers.¹⁸ However, civil society pressures, such as those that worker centers could exert on employers, and workers’ own organizing efforts, which are protected by work law, preclude employers from always exerting such domination over workers and hence infantilizing them. Employers may try to infantilize workers but will not always be successful. Workers can resist attempts to steal their dignity through organizing. On the other hand, when governments fail to adequately legislate for workers’ rights, or fail to enforce those rights, workers’ capacity to organize wanes and their human dignity may be at stake. In this fashion, the dignity takings literature enriches work law by underlining the importance of labor organizing, and of legislation that enforces the right to organize. By organizing, however, this article does not necessarily refer to organizing for collective bargaining purposes, but rather the type of “Section 7” organizing pursued by worker centers of one-shot, specific campaigns.¹⁹

14. See generally JANICE FINE & NIK THEODORE, WORKER CENTERS 2012: COMMUNITY BASED AND WORKER LED ORGANIZATIONS, https://smlr.rutgers.edu/sites/default/files/images/news/Center_and_ForeignBorn_2012_orange_layout_current%20%281%29.png [https://perma.cc/3TQV-899M].

15. Eli Naduris-Weissman, *The Worker Center Movement and Traditional Labor Law: A Contextual Analysis*, 30 BERKELEY J. EMP. & LAB. L. 232, 285–86 (explaining that worker centers generally do not “deal with” employers under the National Labor Relations Act (“NLRA”), setting them outside the bounds of what are “labor organizations” under the NLRA).

16. *Id.* at 287.

17. See generally Atuahene, *Dignity Takings and Dignity Restoration*, *supra* note 8.

18. See, e.g., GUY DAVIDOV, A PURPOSIVE APPROACH TO LABOUR LAW 34–48 (2016) (discussing the key concepts of subordination and dependency in comparative work law).

19. 29 U.S.C. §§ 157, 158(a)(1) (2012). But see Kati L. Griffith, *Worker Centers and Labor Law Protections: Why Aren’t They Having Their Cake?*, 36 BERKELEY J. EMP. & LAB. L. 331, 335–37 (2015) (describing how most worker centers seldom seek government protection of collective work law rights when workers face retaliation because of engaging in protected, converted activity).

Section II of this article summarizes existing literature on human dignity and workers' rights. Section III describes where this article drew its stories of wage theft, from a larger ethnographic project of a Chicago worker center. Section IV describes the two stories of wage theft drawn from my fieldnotes, showing one instance where a dignity taking likely occurred, and one where it did not, despite the employer's best efforts to steal wages and infantilize the workers in the process. The article then discusses and concludes.

II. HUMAN DIGNITY AND WORKERS' RIGHTS

This section describes how human dignity has been a time-honored, motivating goal of international work law. However, dignitarian, private causes of action seldom succeed in the employment context in the United States, despite calls by some scholars to expand these causes of action to improve workers' rights. Finally, the section details how dignity takings may apply in the employment context. It suggests that dignity takings may come to the aid of workers' rights by focusing labor advocates' energies on buttressing work law.

A. Human Dignity and Work Law

Dignitarian commitments in U.S. legal culture go back to the nation's founding. They include "an inherent right to be free of harm to one's person or property."²⁰ Notions of dignity are also found in the common law, particularly in torts involving dignitary harms. The core assumptions of dignitary harms are that all individuals "are autonomous and unique, and are entitled to be treated with respect."²¹ Dignitary injuries are "[a]ctions that would humiliate, torment, threaten, intimidate, pressure, demean, frighten, outrage, or injure a reasonable person."²²

Work law's dignitarian foundations can be traced, *inter alia*, to Western religious foundations.²³ Catholic teachings, for example, make it clear that, to safeguard the dignity of the person, capital must serve labor—not

20. David C. Yamada, *Human Dignity and American Employment Law*, 43 U. RICH. L. REV. 523, 540 (2009) [hereinafter Yamada, *Human Dignity and American Employment Law*].

21. Rose Ehrenreich, *Dignity and Discrimination: Toward a Pluralistic Understanding of Workplace Harassment*, 88 GEO. L. J. 1, 22 (1999).

22. *Id.*

23. Pope Leo XIII, *Rerum Novarum: Encyclical of Pope Leo XIII on Capital and Labor* ¶ 2 (1891), http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum.html [perma.cc/DZB9-345F].



the other way around.²⁴ As the Encyclical of Pope Leo XIII on Capital and Labor states: “The following duties bind the wealthy owner and the employer . . . to respect in every man his dignity as a person ennobled by Christian character.”²⁵ Similarly, it calls for the direct intervention of the state when, among other things, “employers laid burdens upon their workmen which were unjust, or degraded them with conditions repugnant to their dignity as human beings”²⁶ Moreover, those teachings underscore that “all men are equal; there is here no difference between rich and poor, master and servant, ruler and ruled No man may with impunity outrage that human dignity which God Himself treats with great reverence”²⁷ Hence why the Catholic Church has officially supported the rights of workers to join unions, and for their rights to be protected.²⁸

The concept of human dignity is also enshrined in the Universal Declaration of Human Rights and the ILO Constitution. The Universal Declaration of Human Rights, Article 23, states, “[e]veryone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.”²⁹ The ILO Constitution recognizes that “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.”³⁰ Human dignity in ILO jurisprudence is also strongly linked to human rights. Dignity in the workplace is a multi-faceted concept and encompasses the worth and autonomy of the worker.³¹ Recognition of a worker’s dignity “comprises such elements as the development of personal skills in the employment context, perpetuation of self-worth, financial security, and formation of working conditions.”³² Human dignity is the basis of

24. David L. Gregory & Stephen Martir, *The Catholicity of The Middle Class: Reflections on Caritas In Veritate*, 24 NOTRE DAME J.L. ETHICS & PUB. POL’Y 379, 396 (2010).

25. Pope Leo XIII, *supra* note 23, ¶ 20.

26. *Id.* ¶ 36.

27. *Id.* ¶ 40.

28. See Gregory & Martir, *supra* note 24, at 396 (explaining the importance of workers right in Catholic teachings). *But see* ADAM REICH, WITH GOD ON OUR SIDE THE STRUGGLE FOR WORKERS’ RIGHTS IN A CATHOLIC HOSPITAL (2012) (describing how labor unions and Catholic hospitals enter into struggles over who better conforms to moral commitments and not economic ones, leading many hospitals to oppose unionization).

29. Universal Declaration of Human Rights, art. 23, ¶ 1, G.A. Res. 217A, U.N. Doc. A/810 (Dec. 10, 1948).

30. Constitution of the International Labour Organization, annex, art. II, § (a), Oct. 9, 1946, 15 U.N.T.S. 40, 106.

31. See Mariann Arany Tóth, *The Right to Dignity at Work: Reflection on Article 26 of the Revised European Social Charter*, 29 COMP. LAB. L. & POL’Y J. 275, 278 (2008).

32. *Id.* at 277.



equity standards in the employment relationship and requires employers to “set minimum labor standards pertaining to wages, working hours, safety and health, child labor, family leave, and advance notice.”³³

Hence, modern work law’s central tenet, at least at the international level, is to protect economically subordinated and dominated persons—i.e., workers in employment contexts.³⁴ Without work law, workers—as weaker parties in the employment context—lose autonomy, which is paramount to human dignity.³⁵ Dignitarian work law agendas thus attempt to strengthen protections for income fairness, job security, freedom of speech in the workplace, and collective bargaining.³⁶ Work law provides a voice to workers, reaffirming worker autonomy. It brings workers out from subordination and dependency. It helps to define rights and responsibilities needed for healthy and productive workforces, including safeguards for those who have been mistreated at work and safety nets for those who have lost their jobs.³⁷ Dignity also involves an organization’s leadership respecting the contributions and opinions of all workers.³⁸

Emphasizing dignity is also a way to frame the role of work law as a countervailing weight to the “free market.” Ideas of unfettered free markets and management control have been actively promoted in American society and have long framed the debate about how the workplace should be regulated.³⁹ Consequently, free market theory has limited our work laws and is partly responsible for income inequality, job insecurity, and negative health consequences, including psychological disorders.⁴⁰ Changing the frame of the debate to one that focuses on human dignity can help “build public support for stronger labor protections and better enforcement.”⁴¹ A dignitarian framework could yield both hard power on behalf of workers, using law and political leverage, and soft power, by framing human dignity as a worthwhile objective in the public discourse.⁴²

33. *Id.* at 278.

34. See, e.g., Alan Bogg & Cynthia Estlund, *Freedom of Association and the Right to Contest: Getting Back to Basics*, in VOICES AT WORK: CONTINUITY AND CHANGE IN THE COMMON LAW WORLD 141 (Tonia Novitz & Alan Bogg eds., 2014).

35. Sergio Gamonal C. & César F. Rosado Marzán, *Protecting Workers as a Matter of Principle: A Latin American Perspective of U.S. Work Law*, 13 WASH. U. GLOBAL STUD. L. REV. 605 (2014).

36. Yamada, *Dignity, “Rankism,” and Hierarchy*, *supra* note 2, at 315–24.

37. Yamada, *Human Dignity and American Employment Law*, *supra* note 20, at 539.

38. Yamada, *Dignity, “Rankism,” and Hierarchy*, *supra* note 2, at 308–09; ROBERT W. FULLER, *ALL RISE: SOMEBODIES, NOBODIES, AND THE POLITICS OF DIGNITY* ch. 4 (2006).

39. Yamada, *Human Dignity and American Employment Law*, *supra* note 20, at 524.

40. *Id.*

41. *Id.*

42. *Id.* at 552.

Finally, U.S. federal law, like the ILO, recognizes that labor is not a commodity.⁴³ However, many scholars see existing legal structures and remedies in U.S. work law as inadequate for protecting workers' dignity.⁴⁴ Some scholars try to expand current legal doctrines in tandem with the changing nature of subordinated work through a dignitarian lens. For example, some have argued that tort law could be broadened to address dignitary harms in the workplace. Areas where a dignitarian agenda can broaden work law include bullying, employment discrimination, and dispute resolution.⁴⁵ Professor David Yamada, for example, proposes a new statutory private cause of action against workplace bullying as a form of restoring dignity to the workplace.⁴⁶ Professor Rose Ehrenreich argues that Title VII protections are insufficient to remedy the dignitary harm of workplace sexual harassment.⁴⁷ She recommends a tort-based approach to address workplace harassment because such harassment is a dignitary harm that violates a person's right to be treated with respect.⁴⁸ Professor Catherine Fisk proposes that workplace humiliation be actionable under tort law, as the infliction of shame or humiliation at work can be particularly damaging psychologically.⁴⁹ However, such calls have yet to be seriously considered by legislators and courts.⁵⁰

Some market-oriented scholars also see valuing dignity as a way of changing workplace conditions. Professor Michael Selmi, for example, argues that changes towards more humane workplaces and workplaces with more dignity can be driven by socially conscious consumer demand.⁵¹ Selmi argues that if consumers were given comprehensive information about an employer's treatment of workers, they may adjust their behavior to reward employers with more humane workplaces.⁵² However, some observers may opine that consumers generally care little about workers' conditions; many appear indifferent. In fact, many consumer-based cam-

43. 15 U.S.C. § 17 (2012)

44. See, e.g., Cynthia Estlund, *The Ossification of American Labor Law*, 102 COLUM. L. REV. 1527 (2002).

45. Yamada, *Human Dignity and American Employment Law*, *supra* note 20, at 564–66.

46. David C. Yamada, *The Phenomenon of 'Workplace Bullying' and the Need for Status: Blind Hostile Work Environment Protection*, 88 GEO. L. J. 475 (2000).

47. See Ehrenreich, *supra* note 21, at 27.

48. *Id.* at 63.

49. See Catherine L. Fisk, *Humiliation at Work*, 8 WM. & MARY J. WOMEN & L. 73, 80–81 (2001).

50. Yamada, *supra* note 46, at 478.

51. See Michael Selmi, *Hostess and the Search for Workplace Dignity*, 52 WASHBURN L. J. 517, 518 (2013).

52. *Id.*

paigns for worker rights fail.⁵³ Thus, dignitarian goals thus remain hortatory or aspirational in the consumer field.

The discussion above shows that human dignity pervades in Western legal culture and in international work law. However, dignitarian private causes of action have some way to go in the United States. Could dignitarian agendas still find their way to aid workers in the United States? Perhaps Atuahene's conception of dignity takings may offer some hints of how to better connect dignitarian concerns with workers' rights.

B. Wage Theft and Dignity Takings

Professor Atuahene defines a "dignity taking" as "when a state directly or indirectly destroys property or confiscates various property rights from owners or occupiers and the intentional or unintentional outcome is dehumanization or infantilization."⁵⁴ Wage theft may thus lead to a dignity taking if employers confiscate workers' property, such as wages, and infantilize or dehumanize them in the process. According to Atuahene, the state may also be culpable in situations of dignity takings when it fails to protect individuals from such takings; the state thus needs to legislate proper work laws to curb wage theft and any resulting dignity takings.⁵⁵ While sometimes employers may be *legally* justified for not paying workers, such as in the case of insolvency, very few cases of unpaid wages include an employer who has a legal reason to not pay. Most cases involve either purposeful or negligent treatment of workers to cheat them out of their wages, facilitated by inadequate work laws and poor enforcement.⁵⁶

53. See generally GAY SEIDMAN, *BEYOND THE BOYCOTT: LABOR RIGHTS, HUMAN RIGHTS, AND TRANSNATIONAL ACTIVISM* (2007) (showing how consumer boycotts are successful only when a state actor threatens bad actors with sanctions).

54. Bernadette Atuahene, *Takings as a Sociolegal Concept: An Interdisciplinary Examination of Involuntary Property Loss*, 12 ANN. REV. L. & SOC. SCI. 171, 178 (2016).

55. States could be responsible for wage theft and any resulting dignity taking when they fail to adequately legislate guarantees that workers' wages are paid. Inadequate legislation is palpable in cases where the state enables workers to be classified as non-employees, such as independent contractors, enabling employers to shirk wage and hour laws. See also ANNETTE BERNHARDT ET AL., *BROKEN LAWS, UNPROTECTED WORKERS: VIOLATIONS OF EMPLOYMENT AND LABOR LAWS IN AMERICA'S CITIES* 53 (2009) (identifying inadequate protections due to gaps in legal coverage and immigration status, enabling employers to flout work law); LANCE COMPA, *UNFAIR ADVANTAGE: WORKERS' FREEDOM OF ASSOCIATION IN THE UNITED STATES UNDER INTERNATIONAL HUMAN RIGHTS STANDARDS* 9 (2004) (explaining how the United States provides for weak collective labor rights and violated international labor standards); DAVID WEIL, *THE FISSURED WORKPLACE: WHY WORK BECAME SO BAD FOR SO MANY AND WHAT CAN BE DONE TO IMPROVE IT* 76–77 (2014) (arguing, *inter alia*, that contracting through third parties has enabled employers to flout employment laws).

56. See BERNHARDT ET AL., *supra* note 55, at 49–52 (advocating for stricter penalties against scofflaw employers).

However, as stated above, dignity takings require more than just a taking of property; they also require dehumanization or infantilization—in essence, a violation of the victim’s dignity as a human being. Because work law has understood the employment relationship essentially to be one based on subordination and dependency, similar to that between a parent and child, infantilization of workers pervades employment.⁵⁷ Thus, work law doctrine posits that work law is necessary to equalize asymmetrical employment relationships; it raises workers from subordination.⁵⁸ We can thus argue that by lifting workers from subordination, work law also deinfantilizes the employment relationship for workers. Workers need work law to protect their dignity. Below we will see how work laws that protect the basic rights of workers to organize can help to reaffirm workers’ dignity.

III. THE CASE OF ARISE CHICAGO

This article draws two stories of wage theft from an ethnography of a worker center, Arise Chicago, done by me. One of the primary roles of Arise Chicago, as is of most worker centers, is to assist workers who are victims of wage theft.⁵⁹ In its own words, Arise Chicago is

a membership-based community resource for workers, both immigrant and native-born, to learn about their rights and organize with fellow workers to improve workplace conditions. Since opening its doors in 2002, the Arise Chicago Worker Center has collaborated with nearly 2,500 workers to recover over \$5 million in owed wages and compensation. [Arise Chicago’s] workplace justice campaigns train workers to know their rights, file complaints with government agencies, organize direct actions, and access legal representation With over 300 low-wage Polish and Latino immigrant worker members, almost half of whom are women, it is the only Chicago-based organization regularly involves the religious community in its campaigns and is the only worker center in the country with a Polish organizer focusing solely on the Polish community.⁶⁰

I chose to study Arise Chicago because it is one of the main worker centers in the United States.⁶¹

57. Bogg & Estlund, *supra* note 34, at 156–57.

58. *Id.*; Gamonal & Rosado, *supra* note 35.

59. KIM BOBO, WAGE THEFT IN AMERICA: WHY MILLIONS OF WORKING AMERICANS ARE NOT GETTING PAID—AND WHAT WE CAN DO ABOUT IT 95 (2011); FINE, *supra* note 12, at 78–79.

60. *About Us*, ARISE CHI., <http://arisechicago.org/about-us/> [<https://perma.cc/9R2M-G79P>].

61. BOBO, *supra* note 59, at 89–91 (discussing the role of Arise Chicago in aiding workers alleging wage theft when the worker was called the Chicago Interfaith Worker Center.); FINE, *supra* note 12, at 22–24, 125 (highlighting Arise Chicago when it was called the Chicago Interfaith Worker Center).

I spent about twelve months (February of 2015 through September of 2015, and January of 2016 through May of 2016) as an organizer of Arise Chicago to perform participant observation at the worker center. I spent between one and three days a week at the worker center as a workplace organizer. I performed intakes of workers with alleged complaints against their employers. I analyzed whether the workers had colorable claims and if Arise Chicago could collaborate with the worker center to initiate a campaign to remedy those grievances.

In some instances, I determined that a campaign could be effective for the grieving worker. Campaigns could include: writing demand letters to the employer; requesting a meeting with the employer to negotiate the claim with the worker; picketing the employer; organizing groups of co-workers, religious organizations, labor unions, other worker centers, and other “allies”; denouncing the employer with state and local authorities; and suing the employer through a private attorney. If the worker wanted Arise to collaborate with him or her in organizing such a campaign, I would help the worker in that matter. The worker had to join the worker center and would be asked to pay a nominal membership fee of \$30 for the year. The fees could be paid month-by-month. The worker did not need to pay dues, however, to receive support from the worker center.⁶²

I led about a handful of such campaigns and supported at least another handful of other campaigns led by the full-time staff organizer. I also participated in weekly staff meetings where I could learn about the work of other organizers engaged in strategic campaigns (campaigns that included coordination with labor unions), faith-labor solidarity, policy campaigns, and domestic worker organizing. Finally, I also participated in a number of “know your rights” workshops given to all workers who seek the aid of the worker center. During my time as a participant observer, I interviewed all the full-time staff members (seven of them) except one organizer who joined halfway through my participation in the worker center.

I recorded my observations as daily “jottings” in pocket-sized reporter notebooks. Then, I transcribed my “jottings” into more formal fieldnotes. At certain times during my fieldwork, I also wrote short memos to myself. These memos served as preliminary analyses of my data, where I tried to

62. For more information on how Arise Chicago and other worker centers are supported monetarily, see César F. Rosado Marzán, *Worker Centers and the Moral Economy: Disrupting Through Brokerage, Prestige, and Moral Framing*, 2017 U. CHI. LEGAL F. 409 (2017).



make sense of what I was experiencing and establish themes observed in my fieldwork.⁶³

The dignity takings stories told below thus come from my fieldnotes, principally those relating to workplace campaigns. They are told not to prove that all dignity takings in the labor context must be one or the other of those stories told below, but to show *how* dignity takings may or may not occur in the employment context. In this sense, this article has descriptive aims of a phenomenon yet to be understood in the employment context: dignity takings.

A. How Arise Chicago Sees Dignity at Work

Now therefore, behold the cry of the children of Israel is come unto me: and I have also seen the oppression wherewith the Egyptians oppress them. Come now therefore, and I will send thee into Pharaoh, that thou mayest bring forth my people the children of Israel out of Egypt.⁶⁴

Arise Chicago is rooted not only in immigrant, low-wage communities, but also in an interfaith religious network. That network values protecting human dignity as part of its interfaith mission. Hence, while the worker center aims to make sure work law is enforced in favor of workers, it does so not merely out of legal duties, but also out of moral commitments. It tries to connect its values with the law. As similarly stated in *Rerum Novarum*, according to its “Abrahamic” commitments, Arise Chicago activists and leaders frequently state that human beings are created “in the image of God” and deserve to be treated with “dignity and respect.”⁶⁵ In its basic “know your rights” workshops given to workers who wanted to start a workplace campaign, the worker center’s organizer would talk about how workers’ dignity was at stake in the employer-dominated workplace. Workers should reaffirm their dignity through organization and solidarity. As my notes regarding one of these workshops recounted:

[W]e had a very large workshop that started with ten workers, but later more entered as well (two to three more). Marcela⁶⁶ [the organizer] asked them what kinds of issues they wanted to talk about. The workers then started to state the issues they cared about. They said that they wanted to discuss your rights at work, unfair dismissal, disputes at work, elimination of existing benefits, accidents at work, mistreatment at work,

63. For a detailed explanation of ethnographic data collection that follows the method detailed here, see generally ROBERT M. EMERSON ET AL., WRITING ETHNOGRAPHIC FIELDNOTES (1995).

64. *Exodus* 3:9–10; see also BOBO, *supra* note 59, at 75.

65. Interview with Arise Chicago staffer (Mar. 10, 2016).

66. All persons’ names in this essay have been redacted. I used pseudonyms to protect the identity of all persons.

and the right to speak back to the employer. However, Marcela put these all down under the rubric of “human dignity” at work.⁶⁷

The worker center posits that the process of protecting human dignity comes through community and workplace-based solidarity. The Executive Director of the worker center, a Methodist minister, told me that there was a parallel between God’s calling on Moses to lead the Israelites out of slavery in Egypt, referenced above, and workers’ self-organization to protect their rights today.⁶⁸ Kim Bobo, the former Executive Director and founder of Interfaith Worker Justice, a national organization of faith-labor organizations, attests to this view among faith-labor advocates.⁶⁹ As she mentions:

Workplace organizing is not new. Labor and community organizers claim that Moses was the first organizer. He probably was not—there were surely many organizers before him seeking justice in the workplace. Nonetheless, he clearly helped organized the Israelites to fight the oppression of the Egyptians against the slaves. Moses proposed a three-day strike, which infuriated the Pharaoh.⁷⁰

As we will see below, today, secular work law attempts to provide support to workers who act in concert, in some ways similar to the support God promised Moses to lead the enslaved Israelites out of Egypt. As we will see immediately below, without concerted activity and the support that work law provides, workers who are victims of wage theft may suffer alone, with their dignity violated. Those who find a collective voice, aided by civil society, such as by a worker center, and mobilizing work law, may rise above indignity.

B. Josefina: “We were being treated like little girls.”

The case of Josefina was heart-wrenching. Josefina was a worker into her fifties, albeit she looked older. She emigrated to the United States several years ago from Mexico. She was undocumented. She worked in a commercial laundry for over three years. In those three years, she was never paid her wages in full. She went whole weeks without pay, only to receive a check in consideration for the work that she performed for just one of the weeks owed. The employer employed other, similar immigrant women, most of them Latina. According to Josefina, the employer never paid on time. She owed wages to everyone in the laundry.

67. Author’s fieldnotes.

68. BOBO, *supra* note 59, at 75.

69. *Id.* at 85.

70. *Id.*

Josefina did not resign from her job because she was afraid of not being able to find other work. She had a son and a husband to help take care of. She did not sue the employer because she thought, as an undocumented worker, she had no rights to sue employers. She was also afraid—in fact terrified—of losing her job if she pursued legal action. Despite the fact that she was never paid appropriately, the employer, a Polish female immigrant herself, would sometimes offer small parties with popsicles, cake, and refreshments to the workers. Workers were supposed to show up at the conference room, eat sweets, and outwardly show contentment, if not gratitude towards the matriarch who owned the laundry. Workers were, in this manner, not worthy of being paid what they were owed for their work, but paid what the matriarch desired alongside these childish, birthday-like parties where workers had to show gratitude. These parties emphasized, rather than diminished, the power relationships at work.

The worker decided to quit her job and fight for her rights when one day the owner of the laundry started to yell at her for being too slow, in front of everyone else in the workplace. Josefina was so traumatized by the verbal abuse that she had to be placed in the hospital, where she stayed for several days being treated for neurosis. After her treatment, she decided never to return. Only a few days earlier, one of her coworkers, another Latina immigrant, had suddenly died at home. The coworker suffered from similar verbal abuse and wage theft at the workplace. Josefina believed that the job had killed the coworker.

Because Josefina's sister, who worked in a garment factory in Chicago, had been able to join a union organized with the support of Arise Chicago, Josefina decided to seek the assistance of the worker center to recover her owed wages. When she first came to the worker center, her husband and pre-teen son accompanied Josefina. She was emotional and visibly nervous when she spoke.

I asked her to provide me with her pay stubs to calculate any owed wages. She came a week later with her documents. She alleged to have kept copies of all her pay stubs. I calculated that based on the missing stubs and other information in the existing stubs, which evidenced gaps in pay, she was owed about five out of twelve months in 2015, which could amount to \$20,000 or more based on her base pay. I did not have time to calculate her owed wages in 2014 and 2013, but it appeared that the gaps were as pronounced in those years as in 2015. Obviously, Josefina needed a campaign to help her obtain her owed wages. I asked her to return in a week and meet with a worker-leader of the worker center and a full-time organizer.

When Josefina returned to the worker center, she shared her experience with Mireya, a worker-leader, and Cynthia, the full-time organizer. Mireya told Josefina that she had experienced similar mistreatment and wage theft in her own job for over ten years. As they shared stories, Mireya and Josefina concluded that they were treated like “little girls” and not as grown women. As my fieldnotes describe:

Josefina said that the main problem was verbal abuse and lack of payment—“*que no paga*.”

[Mireya] told her that she also went through a similar situation, tolerating 10 years of workplace abuse. English-only rules, despotic treatment. She sought “respect,” but understands it’s difficult to fight for it because one is afraid—“*pero se puede*”—“but one can do it,” she said.

Cynthia kept on pushing the worker about whether or not [the workers, collectively] had tried to validate their rights. [Josefina] then mentioned that, on one occasion, they led a one-hour strike demanding to be paid. The employer not only failed to pay them, but also discounted the one-hour strike. [They never got paid.] However, they did get a half-hour of lunchtime, which they had also been [asking for].

After that strike, the owner of the laundry held a small party for the workers with popsicles and pizza. Mireya mentioned that she experienced the same. “It was ridiculous,” mentioned [Mireya]. The workers understood that the owner was trying to appease them. [Mireya] mentioned how they were being treated like little girls (“*nos trataban como niñas*”). And mentioned that there was no dignity in that.⁷¹

Cynthia continued to prod Josefina on why the spontaneous work stoppage was not successful. It appears that her employer simply stood firm. The concerted activity was not strong enough to make the employer budge.

After that conversation, Josefina, Mireya, and Cynthia agreed that the task now was to try to get other workers and community allies involved in this campaign, so as to build some power against the employer.

This interaction between Josefina, Mireya, and Cynthia explicitly details the way in which workers can be robbed of their property—their wages—and their dignity. An offensive relationship marked by verbal abuse and non-payment of wages generated a condition where the worker became, literally, emotionally sick. The employer, in trying to appease the workers with birthday party-like activities and sweets, treated the women as if they were little girls, exacerbating the vacuum of dignity at the workplace. For the workers, it was clear that they were not treated with dignity. The response of the worker center to this situation of indignity was to start

71. Author’s fieldnotes.

a concerted effort, for Josefina to confront the employer with the aid of others, and get back her money and her dignity in the process.

I could not stay long enough in the worker center to know whether Josefina was able to recover her wages, stand up to the employer, and rise from her subordinated position, hence restoring her sense of dignity. In my experience, however, sometimes workers were able to withstand employers' attempts to take their dignity, as the case below depicts.

C. Restaurant Workers Refuse Subordination

“And the king of Egypt said unto them, Wherefore do ye Moses and Aaron let the people form their works? Get you onto your burdens.”⁷²

While employers may sometimes steal workers' wages, infantilize workers, and thus rob workers of their dignity, sometimes employers fail to take such dignity away. Workers may channel their indignation through concerted activity against the employer, demanding to be paid for their owed wages and for their rights respected going forward. Like what Pharaoh unsuccessfully tried to do with Moses and Aaron—ordering them to work and stop leading a strike against him—employers sometimes try to exert their authority to subordinate workers, infantilizing them, but the workers refuse to be so subordinated. They stand up, sometimes, “with a little help of their friends.” In my research, I encountered that the worker center, its resources, and the perceived protections of work law, which the worker center let the workers know about, contributed to successful dignity restorations where workers rose from subordination.

For example, a group of about seven workers at a restaurant serving Indian food in Chicago were indignant because members of the group had not been paid correctly for overtime. One of them, a delivery driver, argued that he was misclassified as an independent contractor and thus never paid under minimum wage laws. Another, who worked as a “jack of all trades,” sometimes serving as a cook, other times as a dishwasher, and other times as a maintenance worker and handyman (doing painting, repairs, and similar jobs at the restaurant), also argued that he was misclassified as an independent contractor, and was owed wages and overtime pay. They complained, and were visibly upset, by the fact that the owner drove a Mercedes-Benz and bought similar vehicles for all of his children while the workers were owed wages. The injustice motivated, rather than deterred, their capacity to pursue their grievances. The worker center leadership

72. *Exodus* 5:4; BOBO, *supra* note 59, at 73 (citing *Exodus* 5:4).

helped to cement their will to act in concert by explaining to them how the law can help such activity.⁷³ As my notes recounted:

Workers also mentioned that while they were not paid correctly, the boss bought Mercedes Benzes to [sic] his children. At this time the [worker center] director steps in and adds that direct action is important Moreover, better for workers to act in concert under Section 7 [of the NLRA] because if they do so, they would be protected more than under basic at-will employment.⁷⁴

Indeed, under the NLRA, employers cannot discriminate against employees who exercise their Section 7 rights to act in concert for collective bargaining and other mutual aid and protection.⁷⁵ While some evidence suggests that worker centers have been shy, perhaps too shy, to include Section 7 of the NLRA in their campaign strategies, Arise Chicago would make reference to Section 7 in almost every campaign I experienced. Hence, it would explain to workers that, if an employer terminated or took any adverse action against an employee who the employer knew was exercising her Section 7 rights, the employee could file charges with the National Labor Relations Board (“NLRB”). The Board may then require an employer to rebut the employee’s discrimination claim, or be sanctioned by the NLRB.⁷⁶

The organizer then started a discussion to figure out how much the employer owed to the workers under the minimum wage laws. She estimated, along with the workers, that the workers were owed wages amounting to more than \$60,000.

While the workers were determined to start a campaign to get their wages, they discussed the possibility of defeat if the employer closed the business. As my notes recount: “The group continues to discuss their options, and the leader of the group, the handyman, raised the point, ‘what if the employer closes the business.’ He was really worried about the possibility that this could happen through a direct action.”⁷⁷

73. 29 U.S.C. §§ 157, 158(a)(1) (2012).

74. Author’s fieldnotes.

75. 29 U.S.C. §§ 157, 158(a)(1). The NLRA does not protect “workers” but “employees,” which it defines broadly as “any employee, and shall not be limited to the employees of a particular employer . . . ,” with some particular exceptions. *See id.* § 152(3). However, who counts as an “employee” versus an “independent contractor” or some other type of non-covered worker is a topic of significant controversy. *See* César F. Rosado Marzán & Alex Tillett-Saks, *Work, Study, Organize!: Why the Northwestern University Football Players are Employees Under the National Labor Relations Act*, 32 HOFSTRA LAB. & EMP. L. J. 301, 309 (2015) (describing the various tests used by the NLRB to determine employee status).

76. *See* 29 U.S.C. § 160.

77. Author’s fieldnotes.



The worker center organizer then asked the worker if he really thought that the employer would close the business. The workers talked it over. Perhaps not, they discussed. In their conversation, they became even more determined to build their campaign, sensing a heartfelt injustice. As my notes state:

They talk about the fact that the employer has bills to pay and a lifestyle to defend, including all the new Mercedes Benzes that he bought to his grown children. Workers vented about the fact that the boss lives such a lavish life, while not even paying workers under the law and stealing their tips. The issue of possible closing is thereafter refracted.⁷⁸

In this fashion, group conversation and support, including that of the worker center—along with their new knowledge that their concerted efforts were protected by law, and that they had colorable claims to bring under the wage and hour laws—motivated them to pursue their claim.

The organizer then helped the workers by calling the restaurant owner to come to Arise and discuss the workers' claim. The employer accepted the "invitation," albeit suspiciously, and went to the worker center on various occasions to try to settle the issue with the workers. He argued that the independent contractor issue was, at best, debatable, since the legal standards for independent contractor versus statutory employee were vague. He also argued that the workers likely made more money as independent contractors than as employees since the delivery driver, for example, received the delivery fee paid by customers and kept all tips paid to him. He argued that the workers could work on their own schedules without reprimand. However, he also made threats. He insinuated that the workers were not in the United States legally and, as such, they should be content with what they received.

After the meeting, the workers and the worker center organizer agreed that the owner was at times condescending towards the workers. They thought that the owner tried to "divide and conquer" the workers by speaking individually to each one of them at the negotiating table, and not the group or the delivery driver who acted as the designated spokesperson. As my notes stated:

Another way in which the employer tried to exert its power over the workers during the meeting was by attempting to speak to each, one on one, rather than to the leader of the group, who spoke for all. The leader of the group, while a little nervous and not too sure of himself, and with some . . . support from Cynthia [the full time organizer], read their demands from a form or draft contract that [the worker center] had typed

78. Author's fieldnotes.

up He said that they were looking to be respected at work, not to be retaliated for bringing these claims to him, and that he inform all workers at the restaurant about their rights at work.⁷⁹

The employer tried to re-exert his own power through puffery—stating that he had legal training, albeit not a lawyer—and by telling the workers that they were committing a criminal act by lying about him committing wage theft. As my notes stated: “[A]nother way that he tried to exert his power was by telling [the workers center] that he was a legal assistant . . . and that he knew that if the workers were lying about their claims they might be found liable of ‘fraud’ and go to prison.”⁸⁰

While the statements of the employer made little sense and seemed to amount to nothing more than an overblown self-perception of his legal skills, knowledge, and authority, he was trying to cow workers; he tried to “put them back” in their subordinated, or infantilized place.

The workers were, however, unmoved by the employer’s threats related to immigration status or alleged criminal acts. They remained steadfast to settle their claims as a group. Those classified as “employees” and those classified as independent contractors stuck together until everyone’s claim was resolved. While sometimes they spoke nervously during negotiations, they did not appear cowed and emotionally disturbed, as in the case of Josefina. This was pretty remarkable given that, while four of the six workers were no longer working for the employer, two still remained working for him—a cook and the delivery driver; neither was deterred by the possibility of employer retaliation (in the form of termination or denouncement to government authorities). They eventually settled their claims for tens of thousands of dollars.

In all, this particular situation differed markedly from the one of Josefina. The workers were determined, acted in concert, confronted the employer directly, and were unaffected by his threats. While the employer tried to assert his power and put the workers in their subordinated place, he was incapable. While it is beyond the limits of this paper to determine with precision why these particular workers were determined to act in concert while Josefina’s coworkers did not—at least not yet—it appears that their numbers, the resources and support provided by the worker center, and their mobilization of work law⁸¹ compelled the workers to assert them-

79. Author’s fieldnotes.

80. Author’s fieldnotes.

81. The literature on law and social movements has shown that “legal mobilization” or the use of the law as a resource by social movements, helps to solidify identities and create effective movement

selves and not be infantilized. Hence, organization, numbers, and the mobilization of work law seem to matter for workers to be protected from dignity takings at work.

IV. DISCUSSION AND CONCLUSION

We can empirically differentiate these cases. In Josefina's case, we observed an individual worker who faced years of significant wage theft at work, emotional trauma, and child-like treatment, fitting into the characterization of dignity takings. The Indian restaurant workers' case is not a case of dignity takings, even though the employer apparently stole their wages and tried to deny workers their dignity by keeping them subordinated through threats and puffery. He tried, but ultimately failed to take the workers' dignity away. Unlike Josefina, the workers built a cohesive group that helped them to ward off the dignity taking. The worker center and the work laws enabled the Indian restaurant workers to organize. The worker center made it clear to these workers that they were protected by the NLRA's Section 7 as long as they acted in concert for their mutual aid and protection.⁸² In this fashion, work law provides an institution that equalizes bargaining relationships. Perhaps Josefina will garner similar group solidarity in her workplace. While she experienced confiscation of property and infantilization, and could prevail in a private cause of action *if available in the United States*, she was also on her way to regaining her property and dignity through concerted activity. In that regard, effective work law matters to sustain human dignity. Despite all the weaknesses in current U.S. work law pertaining to the rights of workers to organize, the role that work law can have in remedying power asymmetries remains important today. Basic organizing rights, such as those afforded by Section 7 of the NLRA, are paramount to defend workers' dignity.

To conclude, workers may experience dignity takings at work when employers fail to pay them their wages and infantilize them. Infantilization could be rampant in the employment context, given power asymmetries between employers and workers. If employers dehumanize workers—which could happen in more oppressive and perhaps racist contexts where workers are treated as non-humans or as commodities—a dignity taking could also occur. Hence, work law, as a countervailing power to that of employers, matters to protect human dignity. Dignity takings, a concept

actors. See MICHAEL MCCANN, *RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION* (1994).

82. *But see* Griffith, *supra* note 19, at 335–37 (describing how worker centers seldom file charges in the NLRB when workers face retaliation because of engaging in protected activity).

driven from property law, but with a central dignitarian concern, thus provides significant support for continuing the need for effective work law that protects the rights of workers to organize. The case of Arise Chicago should compel labor advocates to shift at least part of their efforts towards organizing through Section 7 of the NLRA as a means of defending the basic human dignity of workers.