It is common knowledge that the United States’ union system is in disarray. In 2012, union density was at 11.3 percent of wage earners, its lowest level since 1916.¹ There is often extreme hostility between employers and employees, among different union branches, or even towards union representatives. More than anything, unions seem to create an atmosphere of distrust. In the wake of declining union membership, it is often asked if unions are still necessary in the modern workplace, or if unionization represents a human right at all. In this paper, I assert that while unionization may not be a fundamental human right, it is still necessary insofar as it facilitates the human right to decent work standards and allows workers control over aspects of their workplace. Understanding this to be the primary focus of unions while keeping in mind the human rights restrictions possible in unions, the US must focus on creating policy that is conducive to human rights on the part of both business and labor itself. The US should create a less antagonistic unionization structure in which laborers play a collaborative role with the government and businesses rather than merely engaging in collective bargaining. This will ensure that business will be more productive and beneficial for the economy as a whole, not exclusively employers or employees. Using the case study of Germany, I will propound that the benefits reaped from traditional unions can be enjoyed in a more efficient, less traditional structure, even in a country like the United States. In this way, it can be assured that businesses and the government both uphold the value of labor rights as essential human rights.

It is commonly accepted in liberal democratic countries that unionization is a human right, yet most often this belief is conveyed as an inherent truth without reasoned justification. The ultimate international standard of human rights, the Universal Declaration of Human Rights, affirms that all people have the right to join unions\(^2\). In addition, rhetoric stating that union membership is a human right is fairly pervasive in society, as in their formation unions were often presented as a human right as a means of rhetorically convincing people to join them. For example, the poetry of radical unionist Albert Parsons, a member of the infamous Haymarket Riot, presents labor as a right, imploring workers to “arise” against “the oppressor’s hand”\(^3\) as a means of persuading citizens of the gloriousness of unions. Even today, in light of legislation proposed in Wisconsin and Ohio restricting public employees from collective bargaining, unionization was portrayed as a right that the government attempted to restrict\(^4\). This is not to say that there was never discussion of the consequences that would come from limiting public bargaining rights, but often these consequences were presented as self-evident. We have yet to see a reason for this justification that is not rhetorical or that proves the value of unions.

Like the general public, few academics are willing to straightforwardly claim that unions are not a human right. However, Kevin Kolben provides an interesting argument for how unionization has become overly conflated with human rights rhetoric, which may provide insight into why there is resistance to questioning unionization as a human right. In the twentieth century, the human rights movement and the labor movement initially diverged as both gained political momentum, as both movements independently attracted enough popular attention to

\(^4\) AFL-CIO. “Collective Bargaining.”
sustain their presence in public attention. In more recent years, as the attention paid to both the labor movement and human movement waned, their arguments converged and borrowed each other’s rhetoric. The current conflation of labor and human right rhetoric is helpful for progress in the labor movement, but conversely, it often leads to exaggerations of harm and overreliance on the easy to state but harsh claim of human rights violations in the realm of labor issues. Because claiming that something is a human rights violation is relatively easy but instantly causes an outcry, it is an effective and seductive claim. We see this happen frequently—many groups and individuals claim the importance of labor rights as human rights without giving substantive reasons for why this is the case. We should pay more attention to why these labor rights are actually useful or even necessary, rather than just assuming that they are for any bias or preconceived reason.

One obvious reason that unionization is understood to be a necessary right is that it is an associational right protected by the First Amendment. Unions are a form of associating with people with similar interests, analogous to political parties, churches, or interest groups. In America, freedom of association and assembly are vital human rights. Because these groups are a method of expressing individual identity and beliefs, choosing to join a union is a human right. All people have the right to choose by whom their interests will be represented in various political and organizational spheres. Just as people can choose which political parties or lobbying groups best represent their governmental interests, they can choose which union best represents their interests in the workplace. This seems to make the argument that union membership is a human right almost undisputable.

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7 US Bill of Rights, 1791.
However, this reasoning applies best to merely being a part of a union, not in participating in specific unionization activities. Some union practices can infringe upon others’ human rights. Even if identifying oneself as a union member is a right, there have been assertions that certain union practices border on conspiratorial activity. The historical precedent for this belief is the New York case of *People vs. Kostka*, even though this ruling has since then been overturned. In *People vs. Kostka*, union members were convicted for standing outside of a local bakery and passing out handbills stating that the owner of the bakery treated their employees poorly. Because these men were obstructing the bakery from its normal business practices, they were said to be participating in a conspiracy. One more modern example of unions participating in unlawful activities is that of secondary boycotting: unions cannot organize boycotts against companies that collaborate with an unsavory third party. For example, unions cannot boycott Wal-Mart for the poor treatment of its janitors, as a third party contracted by Wal-Mart, rather than Wal-Mart itself, employs the janitors; for this reason Wal-Mart is ostensibly not directly responsible for the treatment of the people who clean its buildings. So, even if union membership is an inherent right, it is not clear that union activity is always a human right, as it can be unlawful or even restrict others’ rights.

Also, in some instances, unions may not only safeguard the rights of their members but also actually infringe upon some of their members’ rights. Perhaps most importantly, unions within a workplace can restrict individuals’ choice to join a union by instituting a closed shop, in which a worker’s employment is conditional on joining a specific union. This practice is meant to eliminate the possibility that an individual could work under different conditions from his or

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8 *People vs. Kostka*, New York Criminal Courts 481.
her coworkers, thus undermining the collective bargaining effort within the shop. Yet closed shops restrict the range of choices available to workers—which is extremely problematic because unions are meant to provide laborers with more control over the conditions of their workplace. Some workers may even feel that they will be more successful in negotiating directly with employers than through the intermediate body of a union. It is not possible to state that it is in every worker’s interest to have union representation, much less representation by the particular union in question. Therefore, closed shops are a restriction of human rights insofar as they dictate to laborers what their interests are and by whom their labor interests will be represented.

Even without the imperative of a closed shop, workers’ rights can be restricted on a substantial level. Some workers may want some form of union representation, but not in the form that the union dictated to them by their trade or location may provide. Evidently, not everyone will agree with the specific practices of their own union. It may be assumed that participating in a union implies some tacit agreement to the details of its practices, some laborers may just concede to join a union whose practices they dislike, because they have more of a chance of coming to compromises with their employers if they bargain with others than by themselves. Of course, the democratic structure of most American unions will ensure that the interests of any union will be the aggregate of its members’ interests, but in instances where a laborer’s trade or location may not allow them to choose a union that best suits their interests, they do not have much of a choice to find a union that is best for them. Of course, this is partially an issue with democratic governance itself, but it is an issue that unionization should attempt to limit, as its main purpose is to increase worker’s control over their workplace. Furthermore, not every worker will want to join any union at all, but will be forced to in a closed shop situation. These examples prove that the American union system can actually undermine human rights to some
extent by forcing workers to unionize when they may not agree with the practice. By undermining the empowerment of workers that they were meant to uphold, unions can reduce the efficiency of the workplace and undercut workers’ rights and progress.

Despite all of the negative aspects of unions previously delineated, we can determine that there are actually very compelling reasons for why we have unions today. It has been made clear that unions can restrict individual liberty and undermine human rights efforts, but without unions, it is evident that companies can commit much more severe human rights violations without any sort of recourse. Unions protect human rights not only by raising wages or restricting house, but even more importantly by increasing worker participation in the workplace, creating a healthier working environment, and lowering risk of arbitrary employer practices. Without unions, employers have no protection from indiscriminate and unjustified treatment by employers, and thus have no means of recourse when their employment is exploited or if they are treated unfairly in the workplace. Essentially, unions, as a collectivization of laborers and their interests, are meant to be a means of protection from the inherently asymmetrical relationship between employer and employee. Assuming that laborers’ individual interests are mostly similar to those that unions claim to represent, unionization is a means of preserving laborers’ rights in an often exploitative environment.

Furthermore, in the Universal Declaration of Human Rights itself, unionization is described as a means of protecting interests, not merely an associational body. This implies that the practices of unionization, not merely just belonging to a union, are important because they uphold human rights. As Sam Gompers, founder of the AFL, asserted, union organization

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“establish[es] and maintain[s] the organization by which the rights of the workers can be the better protected and advanced against the little forms of oppression [imposed upon them]\textsuperscript{14}.”

Unionization is the best method we have in the current American labor structure of ensuring that workers have adequate resources and access to some level of control in their workplace and over how they will work. Unionization is necessary because it facilitates the human right to decent work standards, more than it is actually a human right itself. While it may not actually be a fundamental human right, it does ensure that other human rights are upheld.

Because we can come up with specific reasons why unionization is important, but we also recognize that our current union structure is ineffective, we can determine how a more effective structure for unionization can be pursued in the United States. In the case of the US, the biggest hindrance to a US unionization structure most conducive to human rights is the antagonism inherent in the labor system. Currently, US labor policy centers around the National Labor Relations Board (NLRB), an independent agency of the US government that encourages democratic unionization and collective bargaining with employers\textsuperscript{15}. Unions are created on a regional, trade-specific, or business-specific basis, and defer to the NLRB in cases of disputes or ambiguities\textsuperscript{16}. Most of these unions themselves are built on a democratic system, with elected representatives, a voting system, and so on. Perhaps because of this inherently bureaucratic structure, some level of antagonism seems to be associated with NLRB, both from employers towards laborers and from laborers towards union representatives. It seems that this very structure sets up an “us against them” dichotomy that is inherently hostile because the interests of representative or employers are always assumed to be distinct from the interests of layman.

\textsuperscript{14}“Samuel Gompers Defends the Right to Strike, 1899.”\textit{Major Problems in the History of American Workers}, 130.

\textsuperscript{15}National Labor Relations Board. “Who We Are”.

\textsuperscript{16}National Labor Relations Board. “Who We Are”.
laborers. Looking at the language used on the NLRB website itself shows that this hostility is almost assumed to be present when collective bargaining occurs, with the discussion of how to determine if bargaining is in good faith or not, or in delineating “labor organization conduct what violates the law”\(^\text{17}\). The antagonism surrounding the entire institution of unionization causes hostility and fractionalization within unions themselves, weakening their collective bargaining efforts. Instead, workers should interact with workplace authorities in a non-combative environment, so that the interests of employers and employees are not presented as fundamentally opposed.

A currently proposed moderate solution to the issue of making unions work better for everyone is compulsory minimum representation. Helen Lam and Mark Harcourt advocate compulsory minimum representation in the workplace. They claim that this system would be more beneficial than either open shops or traditional closed shops because it does not intrusively force laborers to unionize or dictate what their interests should be, but it also does not suffer from the problems that free shops face\(^\text{18}\). Unlike in completely open workplaces, no single worker can choose completely different working conditions, which would undercut collective bargaining efforts. Perhaps this solution is a good compromise; it is a good rejoinder to laborers who have become disillusioned with the structure and bureaucracy of unions and do not feel that they are helpful, or those who do not think that their own personal participation in unionization will be worth the time or effort. However, “minimum representation” still has the language of opposition between employer and employee interests. In Lam and Harcourt’s system, there are still two fundamentally irreconcilable sides of the workplace that must bargain to determine how

\(^{17}\) National Labor Relations Board. “Employer/Union Rights and Obligations.”

the workplace will be run, meaning that human rights can continue to be restricted in the name of compromise. This makes unions appear more dispensable and contrary to the interests of business.

If at all politically feasible, a policy which more fundamentally changes this relationship between unionization and government would be much more beneficial to the US as a whole. After all, neither unions nor business leaders are content with the current state of union policy. This all-around hostile atmosphere points to a structure that must be reshaped to be more effective for both sides. The US needs policies that are conducive to human rights on the part of both business and labor itself, maximizing individuals’ choice of labor and unionization conditions. Essentially, the labor structure should be reshaped so that the interests of laborers and their superiors will not be inherently in opposition, but instead we discuss policies that will be most beneficial for the country and for business as a whole. Such a system would also be beneficial in ways other than purely upholding labor rights; this newly cooperative relationship would make business more efficient and happiness inducing. It is not clear how this relationship will be changed under a system of minimum representation, because the essential structure of employer versus employee will remain the same as it is now.

A promising policy alternative is found in the German state’s system of unionization, which more actively involves the government in labor issues. Rather than organizing traditional unions as a representative body that bargains with corporate leaders, major trade unions collaborate with the government itself\(^9\). In fact, the largest trade union federation in Germany, comparable in size to the American AFL-CIO, does not participate in any collective bargaining

\(^9\) DGB. “Organisation und Bundesvorstand: Wer wir sind.”
practices at all\textsuperscript{20}. This structure uniquely breaks away from the top-down system of bargaining to which the traditional organization of union activity befalls. This processes is not analogous to the activities of the NLRB, which is an independent body and more of a judicial power in charge of mediating unfair labor practices and providing a support system for burgeoning unions\textsuperscript{21}; instead, the DGB is a trade union itself which is integral in determining specific government legislation on labor standards and conditions\textsuperscript{22}. Legislators in Germany cannot pass laws that will affect union members with the DGB having a say in the process of creating the laws. Thus, involving laborers as well as their superiors in the process of policymaking protects the interests of business as a whole.

Smaller, traditional unions do still exist in Germany, and they do bargain directly with employers, but the DGB is unequivocally the largest and most influential labor body in Germany\textsuperscript{23}. Essentially, the philosophy is that labor unions do not need to be represented as a separate entity from the rest of the government and from business itself, as the system supports a “solidarity economy” in which laborers are just as important as business owners, and economic rights hold the same value as wealth. Not pure profit, but the overall well-being of society and the efficiency of business are emphasized as important considerations in labor policy\textsuperscript{24}. Labor rights are regarded as crucial human rights, and the government recognizes the need to include those who these rights will protect in the relevant policy decisions. The German labor structure, in which traditional unions are replaced by a robust government entity that works with business, is the best means of ensuring the human rights that traditional unions were meant to protect will

\textsuperscript{20} DGB. “Fachabteilungen beim DGB-Bundesvorstand.”
\textsuperscript{21} National Labor Relations Board. “What We Do.”
\textsuperscript{22} DGB. “Fachabteilungen beim DGB-Bundesvorstand.”
\textsuperscript{23} European Trade Institute “Germany: Key Facts.”
\textsuperscript{24} DGB. “Organisation und Bundesvorstand: Wer wir sind.”
be upheld while fostering an environment of free choice and non-hostility that will be most beneficial to everyone. In addition to ensuring laborers’ control over their workplaces and the efficiency of business, this system creates greater workplace morale by involving employers and employees in a collective project.

It is important to show that this is a structure that is feasible for the US to enact. Germany and the US both have declined in manufacturing and industry jobs in the last couple of decades as they have developed into service and finance-based economies. Both countries have low union density—although Germany’s 19 percent unionization rate is significantly higher than the US’s 11 percent. It may be true that this is the case in both countries because of a modern economic shift away from conventionally unionized industries; however, the direct role that the DGB plays in government deliberations means that employees can reap the benefits of unionization without participating in a traditional union themselves. For this reason, and because closed shops are illegal in Germany, many workers may not feel that their direct participation in unions is needed. The government recognizes that they need to support the human right to labor and does not need direct worker participation to facilitate this.

There are counterexamples of other European that emphasize the similarities between the German and American economies. Poland has a union participation rate of 15 percent, even though their economy is not as service based (which would normally mean more union-dense) than either the American or German economies. Poland has no true trade union federation or aggregation of regional unions, just small, local or trade-based bodies that bargain directly with

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25 Thomas Schulz. “We Need to Learn from Germany,” *Spiegel Online International.*
26 European Trade Institute. “Germany: Key Facts.”
27 European Trade Institute. “Poland: Key Facts.”
businesses. Closed shops do not exist in Poland, but despite this, workers are not enthusiastic about union participation, and their bargaining attempts are often futile or too conservative to actually enact tangible changes. Because workers must participate in unions directly to reap the benefits of unionization, but unions have not effectively upheld their interests, many have lost their trust in unions. In Poland, it is evident that like in the US, the traditional structure of unionization has led to a system in which labor rights are not respected, and unionization does not make the workplace more efficient. The US must avoid falling into a system of stagnation like this one by changing its unionization organization so that employers and employees work more collaboratively.

At the opposite end of the unionization spectrum, we have the example of Sweden, in which particular economic circumstances has allowed a traditional structure of unionization to flourish. Sweden has 71 percent union density, dramatically higher than any of the previously mentioned countries. This structure of unionization is very traditional, with several large trade confederations and much legitimacy attributed to collective bargaining. Essentially, unionization has become conventional in Sweden, which has accounted for its astonishing success there. Unions are a constructive means of upholding human rights because their importance is more highly regarded than it is in the US. Yet as attractive as this structure may seem, it is not a viable alternative for the United States. A collective bargaining system is given more credibility in Sweden than it could ever be given in the US. Sweden’s more socialist economy does not predicate the same inherently oppositional relationship as the capitalist American system. In the US, the focus on profit and competition practically requires this

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29 European Trade Institute. “Poland: Collective Bargaining.”
30 European Trade Union Institute. “Sweden: Key Facts.”
31 European Trade Union Institute. “Sweden: Key Facts.”
hostility towards unionization, and because employers must focus on making a profit to be competitive, they must continually cut costs, and therefore the temptation to restrict worker privileges and wages is always present. In Sweden, this mentality is substantially lowered, as competition and profit-earning are generally less valued on a societal level. For this reason, the German system is much more feasible than the Swedish system in the US.

There are, however, a few unresolved issues with implementing a German-style union structure in the US. While the system will respect workers’ rights by institutionalizing them and making labor a more active participant in government policy, it could be said that a large body like the DGB claiming to represent all different types of workers restricts individuals’ choice to unionize. It could be said that such a system restricts the right to association, as this body claims that it represents all laborers within the given country, whether workers opt into participation or not. It was previously mentioned that workers can be effectively forced into a certain union in our current system, but as in the German system workers are forced to concede that their labor interests are equivalent to those that this large body upholds, it is unclear how this will be any different.

A possible rejoinder is that because the body is a part of the government itself in this system, not an independent actor as they are in traditional union structure, they are meant to create the best possible policies for the country as a whole, not just laborers. Furthermore, traditional unions do not have to be abolished—if a laborer participates in collective bargaining with a trade union, they can still reap the benefits of having a large institutional body, as the two systems are not mutually exclusive. With this solution, we can keep worker free choice and freedom of association while maintaining the positive benefits of having one or more union bodies negotiate in a non-confrontational manner. More than anything, the German example is
meant to be an example to begin dialogue in America on how to better union practices, more than it is to be a proposal for the laws that need to be instated immediately.

Because it is so often assumed that unionization is a human right, there is little definitive proof that it is a right in and of itself. To the contrary, it has been shown that union participation is not actually a right itself, as it can be imposed upon workers, restricting their choices about how their labor interests will be represented. Yet unionization is still crucial because is the best means of protecting workers’ interests, ensuring that they will be adequately compensated for their work, and protecting them from arbitrary employer practices. Given that unionization is indispensible, we can determine possible policy alternatives to provide for a more efficient and human rights-conducive system in the US. The German policy on unionization is a viable alternative for the US: while traditional unions still exist, the most influential party is one which plays a direct role in establishing government policies on labor rather than intervening in specific collective bargaining disputes. Because having a voice for labor directly in the government instead of merely a body opposing business leaders, a collaborative relationship is created in which labor rights are treated as human rights that the government is committed to defending. This ensures that the policies that are made are most effective and beneficial for all involved. Of course, the bureaucracy of the political system will mean that labor will not reach all of its goals, but the new environment will ensure that it is taken seriously. Besides, in the democratically structured unions of today, there is already much internal bureaucracy that stifles progress. It is clear that the US government should restructure its union policy to be more conducive to human rights in order to create a business environment that is both benevolent and efficient.
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