The Consciousness of Work and the Values of American Labor Law

Howard Lesnick
University of Pennsylvania, hlesnick@law.upenn.edu

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THE CONSCIOUSNESS OF WORK AND THE VALUES OF
AMERICAN LABOR LAW

VALUES AND ASSUMPTIONS IN AMERICAN LABOR LAW. By JAMES B.
ATLESON. Amherst: University of Massachusetts Press, 1983. Pp. x,
240. $25.00.

HOWARD LESNICK*

This essay is dedicated to the memory of Edward V. Sparer, late Professor
of Law and Social Welfare of the University of Pennsylvania, whose life
and work enriched my own, in more ways than I can recount or recall.

I. THE DECODING OF LABOR LAW DOCTRINE

The opening sentences of Professor Atleson's important new
book, Values and Assumptions in American Labor Law, clearly
express its purpose and central thesis:

The purpose . . . is to investigate the seeming incoherence of American labor
law doctrine. . . . [Its] goal . . . is to demonstrate that the decisions are inco­
herent only if viewed through the lens of the statute and its policies, the way
in which lawyers tend to view coherency. Underlying American labor law is a
set of rarely expressed values that, although illegitimate under contemporary
modes of legal thought, help to explain the judicial and administrative deci­
sions reached. These values and assumptions predate the statute and can be
found in nineteenth-century judicial opinions.1

In referring to “contemporary modes of legal thought,” Professor
Atleson has specifically in mind “the notion that disputes should
be resolved in light of the stated purposes and policies of federal
labor laws, derived primarily from their legislative history and in­
fereces from the text of the statutes.”2 Within this frame­
work—the “received wisdom”3 that characterizes the work product
of judicial and administrative decision makers and of most scholars

* Distinguished Professor of Law, City University of New York Law School at Queens
College. In different ways and at different times, Jack Himmelstein, Karl E. Klare, and
Edward V. Sparer contributed significantly to the evolution of the ideas expressed here.
2. Id. at 1.
3. Id. at 3.
as well—decisions are often criticized as irrational, insufficiently justified, inconsistent with other decisions, or grounded on empirical premises that will not withstand serious inquiry. Legal writing, although often aware of “unvoiced but operative assumptions and values” that fuel particular results, tends either to overlook their existence or simply to note that they exist. It is precisely because they are not part of the traditional mode of legal analysis that these “hidden values” tend to be reflexively set aside. Scholars “attempt to fashion a new and more rational analysis which tries to accommodate the ‘irrational’ results with the received wisdom as well as possible.”

What is at work in adjudicatory decision making, Professor Atleson contends, is

a much more serious and deeply rooted phenomenon than simply whimsical or faulty analysis. In brief, it seems clear that many judicial and administrative decisions are based upon other, often unarticulated, values and assumptions that are not to be found or inferred from the language of the statute or its legislative history. . . . The legal decisions, therefore, may well be ‘rational,’ but only because they are consistent with those hidden values and assumptions.

The book develops the author’s thesis in three dimensions: (1) illustrating its application in the doctrinal development of labor law; (2) articulating the “values and assumptions” that assertedly explain that development; and (3) suggesting the controversiality and historical contingency of those values and assumptions.

Professor Atleson’s work presents major segments of our labor law as exhibits in support of his thesis. His treatment of specific areas is suggestive rather than exhaustive, for reasons he articulates. It is obviously impossible, even in book-length treatment, to “prove” a conclusion based on several decades of reading labor law decisions. Suffice it to say (recognizing that a conclusion of two

4. Id.
5. Id. at 2-3. The presence of “unstated but deeply held premises,” Atleson reasons, “helps explain why social-science data is often treated as irrelevant.” Id.
6. Atleson looks at the law as it regards the replacement of strikers (Ch.1); the application of the concept of unprotected concerted activity to sitdown and slowdown strikes, employee decisions to respect picket lines, and wildcat strikes (Chs. 3, 4); organizational activity on company premises (Ch. 5); strikes over safety issues (Ch. 6); the scope of collective bargaining (Ch. 7); employer actions burdening concerted activities, but motivated by non-discriminatory aims (Ch. 8); and the obligations of a successor employer (Ch. 10).
7. Id. at 3-4.
witnesses is logically no more compelling than that of one) that his reading resonates with my own. 8

What are the values and assumptions that make coherent (if illegitimate) this body of law? The many themes that Professor Atleson draws out of the decisions may be expressed, I believe, within two fundamental, mutually reinforcing propositions: (1) It is in the public interest for private management to retain discretion over the manner and goals of production; and (2) It is appropriate to view the work relation as a hierarchial one.

Judicial deference to managerial discretion characterized the Supreme Court's first consideration of the impact of the National Labor Relations Act (NLRA) on the right to strike. The Court was at pains to make a statement that was "designed to assuage fears, predominantly felt by employers, concerning the impact of the Wagner Act; it does not speak to employees or their unions, nor does it seem particularly concerned that the Wagner Act was designed to grant economic rights, and thus power, to workers." 9 Legal principles that seem to countenance threats to productivity or continued production, 10 or to the mobility of capital, 11 bear a heavy burden of justification in terms of statutory language or legislative history. The way to protect the substantive interest in maximizing production is to protect employer discretion to choose how and when to maintain production. 12

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8. For two examples of specific critiques that are exhaustive and that, in my judgment, wholly devastate the legitimacy (in traditional terms) of the areas of Supreme Court work with which they deal, see Hart & Prichard, The Fansteel Case: Employee Misconduct and the Remedial Powers of the National Labor Relations Board, 52 Harvard Law Review 1275 (1939), and Oldham, Organized Labor, the Environment, and the Taft-Hartley Act, 71 Michigan Law Review 936, 981-1002 (1973). One could, I am convinced, compile a catalogue of such works that, in range and persuasive force, would sufficiently make the case.

9. J. Atleson, supra note 1, at 19, referring to NLRB v. Mackay Radio & Tel. Co., 304 U.S. 333 (1938). The same reassurance characterizes the Court's initial grappling, in NLRB v. Jones & Laughlin Steel Co., 301 U.S. 1 (1937), with the effect of the NLRA on freedom of contract and the employer's power to hire and fire. As Atleson states it:

Do not fear, [the Court] seems to say, private ordering is still the order of the day except insofar as narrow incursions are required by the NLRA. The language suggests not the development of a new mode of legal thought, but, rather, the staying power of the views of the past in limiting the scope of change.

J. Atleson, supra note 1, at 113.

10. J. Atleson, supra note 1, at 19-34 (replacement of strikers), 50-60 (slowdown strikes), 97-100 (strikes over safety issues).

11. Id. at 124-35 (scope of bargaining), 138-42 (plant closing), 160-70 (successorship).

12. The Mackay principle, permitting permanent replacement of strikers, does not rest on a finding that hiring permanent replacements is necessary in order to maintain produc-
Second, the employer owns the business as well as the premises in which it is carried on.\textsuperscript{13} While the employment relation is a contractual one, the “contract” (almost never written) is read to incorporate status assumptions that require employees to be disciplined, respectful, and loyal.\textsuperscript{14} Looking at decisions involving union access to company property, the scope of protection under section 7, and the duty to bargain under section 8(d), Professor Atleson perceives in the judicial work product a common conditioning viewpoint: “[E]ither . . . the interests of the common enterprise are to be defined exclusively by the employer or . . . there is simply no conflict of interest.”\textsuperscript{15} As he explains,

courts sometimes adopt a unitary view of the enterprise assuming common interests and objectives and shared values. A unitary view assumes that workers acknowledge the legitimacy of norms they are actually defying so their action becomes a breach of promise. In a contractual sense, this view confuses passive acquiescence with active consent. Yet, courts assume that workers, needing jobs, acquiesce in an authoritarian structure regulating their work life.\textsuperscript{16}

This hierarchical structure is justified by a view of management as the proper voice of the needs of the “common enterprise,”\textsuperscript{17} and a view of workers as often irrational and ignorant, ruled by “attention. Indeed, evidence that would support a contrary finding is deemed immaterial. See Hot Shoppes, Inc., 146 N.L.R.B. 802 (1964); see also J. Atleson, supra note 1, at 33 (“the basic value . . . involves more than production—it is . . . the recognition that employers possess the option to maintain production during strikes”).

\textsuperscript{13} See J. Atleson, supra note 1, at 92-93 (organizing activity on company premises), 133-35 (scope of bargaining).

\textsuperscript{14} Id. at 87-90, 11-16. The requirement of subordination applies as well to the employee’s relation to the bargaining and grievance processing structures set up by the collective agreement. See id. at 77-80 (“wildcat” strikes often held unprotected despite lack of real threat to union’s representative status).

\textsuperscript{15} Id. at 94.

\textsuperscript{16} Id.

\textsuperscript{17} Atleson points out that the rhetoric of “common enterprise” is used to imply employee obligations to the company, and not any converse duties. See id. at 92-96. Atleson concludes:

[A]lthough some obligations are imposed on employers to foster and support a joint productive enterprise, there are no or few corollary obligations upon employers to recognize participatory interests of employees, at least beyond express statutory prohibitions imposed upon employers. The absence of mutual obligations of honesty and deference, however, simply highlights the basic message of the disloyalty cases—employees should demonstrate deference and the enterprise should be productive, a goal that, presumably, management will seek without legislative intervention.

Id. at 95. See also id. at 152-56 (scope of bargaining).
Professor Atleson adduces relevant and significant evidence that the prevailing set of values is not based on historical or organizational necessity. Even today, there exists no such "cultural harmony of values" as is ordinarily assumed. He makes clear that the values involved are not those expressed in the NLRA, but are those of preexisting doctrine thought to have survived the statute's enactment. "Over forty years after the passage of the Wagner Act, the common-law notion of inherent worker obligations operates and often limits the seeming implications of federal labor law." The result, Professor Atleson concludes, is that "the institution [of collective bargaining] does not seem to have altered basic assumptions about the workers' place in the employment relationship."

Professor Atleson's work is extraordinarily useful, not only for the content of his hypothesis, but for the methodological advance that it represents over the prevailing patterns of academic scholarship in law. Those patterns ordinarily focus attention on either the clarification of evolving doctrinal principles—What is the "true rule" that decisional bodies are groping to articulate?—or the evaluation of those principles, according to criteria that are presumed to be uncontroversial as guides to adjudicatory (or, occasionally, legislative) decision making. Such an approach begs a host of fundamental questions, including those about the processes of decision making and the role of rational argument, about the range of permissible disagreement and the scope and sources of shared values. In Atleson's hands, however, "[l]egal doctrine is stressed

18. Id. at 99 (quoting from Atleson, Threats to Health and Safety: Employee Self-Help Under the NLRA, 59 Minn. L. Rev. 647, 701 (1975)); see also J. Atleson, supra note 1, at 97-101 (safety strikes), 129-32 (scope of bargaining).
19. See id. at 63-66 (historical error of "implicit assumption that worker attempts to control the work environment [are] somehow novel"), 102-06 (twentieth-century developments were seen "as natural and inevitable, and prior forms of industrial organization were simply forgotten"), 123.
20. Id. at 10; see also id. at 58 ("[d]eep-seated community sentiments' are sometimes cited to justify results that reflect the views of only portions of the community").
21. See, e.g., id. at 62 ("whereas organizational rights are 'granted,' property rights are 'preserved'").
22. Id. at 179.
23. Id. at 180. See also id. at 20 ("an act seemingly created to radically alter economic power is used to institutionalize employer power"), and id. at 52 ("the underlying notions of American labor law have not significantly been altered by the passage of the Wagner Act").
throughout the text, not as an end in itself, but, rather, as evidence of values and ideology, or, if you prefer, consciousness. The task that Professor Atleson has set for himself is to "unmask or decode labor law." In my judgment, that task has the potential of opening fundamental questions to examination and choice.

Although it is clear that Professor Atleson does not approve of the legal development that he has examined, he is not explicit about the matter. He does say, at the very outset of the text, that the values at work are "illegitimate under contemporary modes of legal thought." His hypothesis may be that the "received wisdom" should be properly applied and would delegitimate the prevailing values. Alternatively, he may be asserting that the prevailing values and assumptions are wrong, normatively and empirically. The oblique and laconic quality of his discussion on this central question reflects the great difficulty that legal thought has had in dealing with values. The following discussion explores this problem in the context of these two propositions.

II. THE LEGITIMACY OF THE PREVAILING VALUE STRUCTURE

The "received wisdom" is more open-textured than Professor Atleson describes it. The "purposes and policies" of a major regulatory enactment like the NLRA are traditionally seen as set in the broader context of a preexisting value system. Although a new statutory regime alters the authoritativeness of that system to some significant degree, the new regime is not wholly discontinuous with the prior order. A sophisticated traditionalist could accept all of Professor Atleson's critique and deny the judgment of illegitimacy. Invoking the wisdom of legal realism, he or she could assert that, first, the policies of the NLRA are in kind as indeterminate as those of the common law, and, second, resort to "deep-seated community sentiments" is the proper way to avoid the po-

24. Id. at 4.
25. Id. at 181 n.4.
26. See supra quote accompanying note 1.
27. See supra text accompanying notes 2-4.
28. Id.
29. Justice Holmes' statement, in FTC v. American Tobacco Co., 264 U.S. 298, 305-06 (1924), that he would be "loathe" to read a statute as authorizing an agency "to sweep all our traditions into the fire," has a force that is not limited to the avoidance of constitutional questions under relatively specific prohibitions.
30. See supra note 20.
lar failings of a self-delusional pre-Realist formalism and an avow­
edly personal values stance. The former blindly insists that the
statutory text and the materials of the enactment process do pro­
vide determinate answers; the latter undermines or abandons the
distinction between adjudication and legislation, between law and
politics. Each of the hypotheses that I attribute to Professor Atles­
on in the paragraph above falls victim (so our hypothetical tradi­
tionalist would conclude) to one of these failings: The first naively
assumes that there is guidance, of the sort Professor Atleson would
like to find, embedded in the text and purposes of the Wagner Act;
the second simply asks us to make a wholly subjective decision
whether to reject the prevailing values that Professor Atleson (and
a few others, past and present) does not share.

Values and Assumptions in American Labor Law is designed
to answer, as well as to provoke, this charge, although I wish that it
had made its answer less implicit. Professor Atleson and I would
probably take common ground in framing an answer. First, regard­
less of the debatable quality of any particular decision or set of
decisions as an articulation of statutory policy, or as a harmoniza­
tion of a statutory regime with preexisting value systems, the over­
all pattern unarguably is infirm. The NLRA may respect tradi­
tional rights of property and managerial discretion to a significant
degree, but it can hardly be thought to have ratified the work
product of nineteenth-century notions of contract and master-ser­
vant law. Professor Atleson concludes that “the inherent obliga­
tions and responsibilities of the parties have not markedly been
altered by labor legislation,” 31 and that the legal system limits the
protection of the Act “whenever there are any legitimate institu­
tional considerations competing” with it. 32 If these conclusions are
correct, 33 the indictment is plainly well laid.

Professor Atleson’s broader point is that the pervasive cumu­
ulative force of the prevailing values is significantly augmented by
their “unexamined” and “unarticulated” quality. 34 The very belief
that they are society’s values, not simply the judges’, and are

31. J. ATLESON, supra note 1, at 179.
32. Id. at 78 (quoting Schatzki, Majority Rule, Exclusive Representation and the In­
terests of the Individual Workers: Should Exclusivity be Abolished?, 123 U. PA. L. REV.
897, 916 (1975)).
33. See supra note 8 and accompanying text.
34. J. ATLESON, supra note 1, at 4.
therefore an appropriate input to adjudication, demonstrates how easily law can play a mystifying role—that is, can “make contingent political and social choices seem inevitable and natural.”

Professor Atleson disclaims an intention to address the function of law, but he plainly has a reason for seeking to uncover “hidden value structures underlying . . . outwardly value-free legal doctrines or modes of thought.” I believe that his reason is to assert the existence of choice, inviting us to see that the values thus uncovered are ones that we can choose to embrace, and can choose to reject as well. Though at different periods of our history these values have been embraced, they have been and remain deeply controversial.

From here, there are two routes to follow. The first is to consider the implications for judicial (and agency) decision making. It can draw either a “liberal” or a “critical” inference. A liberal inference sees the value of recognizing the contingent and partial quality of easily disguised values and assumptions as disciplining decision makers—at least, good ones—to wring their decisions free of values which too readily have been attributed to a statute or to society. It is, in short, to make the claim of value-free decision making more genuinely maintainable, less self-delusional.

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35. Id. at 181 n.4.
36. He therefore neither joins nor repudiates those whose efforts of “demystification” are avowedly designed to show that the “social functions” of law are to obscure the input of contingent values. Id. (citing Klare, Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941, 62 MINN. L. REV. 265 (1978), and Kennedy, Toward an Historical Understanding of Legal Consciousness, 3 RESEARCH L. & SOC. 3 (1980)).
37. J. ATLESON, supra note 1, at 181 n.4.
38. “Value-free” does not imply a pre-Realist formalism, laying “the law” against “the facts” and reasoning out an answer. It refers to a disinterested search for those values that are embedded in the statute being construed, or in the community. Roberto Unger describes this view, which (in an avowedly uncommon sense) he terms “formalism”:

By formalism I do not mean what the term is usually taken to describe: belief in the availability of a deductive or quasi-deductive method capable of giving determinate solutions to particular problems of legal choice. What I mean by formalism in this context is a commitment to, and therefore also a belief in the possibility of, a method of legal justification that can be clearly contrasted to open-ended disputes about the basic terms of social life, disputes that people call ideological, philosophical, or visionary. Though such conflicts may not be entirely bereft of criteria, they fall far short of the rationality that the formalist claims for legal analysis. The formalism I have in mind characteristically invokes impersonal purposes, policies, and principles as an indispensable component of legal reasoning. [O]nly through such a restrained, relatively apolitical method of
cal inference is that the task is inherently self-delusional, that the entire distinction between legislation and adjudication is per se a mystification.\textsuperscript{39} Professor Atleson shows no inclination to take this route, to draw either inference. Rather he invites the reader to step back from an instrumental stance, which seeks to influence or evaluate decision making, to look at the question of contingent, controversial values and assumptions in a more reflective spirit.

\section*{III. The Consciousness of Work and the Consciousness of Freedom}

When we engage with the values of production, managerial discretion, and workplace hierarchy—and do so for reasons other than to consider their legitimacy as an input to adjudication—what happens? For many, a profound paradox arises. As Professor Atleson states, those values are deeply controversial. While many embrace them wholeheartedly, many find important aspects of them repellent, and their social consequences tragically unjust and destructive. At the same time, even to those in the latter group, there is a ring of inevitable "rightness" in many aspects of the traditional value structure. They seem to describe the world as it really is. Intermittent stirrings to act in violation of the traditional teaching seem hopelessly visionary and out of touch with reality.\textsuperscript{40} The result is a profound sense of alienation and resignation,
"when the choice between despair and illusion seems unavoidable."\(^{41}\)

The dissonance suggests that the question must be addressed at a deeper level than one of the content of particular values. There is a consciousness of work that underlies and shapes our response to questions of law and questions of values. The consciousness of work is a set of ordering perceptions, priorities, and premises\(^{42}\) that answers the questions: What is it to work? What is it that a person is doing when he or she works? The answers are not simply some observed phenomena, but rather a social construct—a choice of some kind that human beings have made for a reason. That quality tends to be masked, however. The answers tend to be perceived as given; their content is initially implicit, and if made explicit tends to be regarded as self-evident and uncontroversially true.\(^{43}\)

There appears to be a mutually reinforcing, mutually legitimating interaction between the prevailing consciousness of work

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the general allegiance to prevailing values. See J. ATLESON, supra note 1, at 158. David Trubek perceptively points out how this allegiance is part of a "complex and contradictory amalgam" with conflicting perceptions: "[W]orking class consciousness is split between a concrete realization of injustice and inequality in day-to-day matters, and an acceptance of broad propositions about the necessity and justice of existing social relations." Trubek, Where the Action Is: Critical Legal Studies and Empiricism 50-51 (1983) (U. of Wis. Law School Disputes Research Program Working Paper No. 1983-10).

41. R. UNGER, supra note 39, at 24.

42. Duncan Kennedy expresses the idea of consciousness in law in these terms:

The notion behind the concept of legal consciousness is that people . . . can share premises . . . that are so basic that actors rarely if ever bring them consciously to mind. Yet everyone, including actors who think they disagree profoundly about the substantive issues that matter, would dismiss without a second thought (perhaps as 'not a legal argument' or as 'simply missing the point') an approach appearing to deny them.


43. For an excellent exposition of the hypothesis that an underlying consciousness is a social construct, see Delaney, Towards a Human Rights Theory of Criminal Law: A Humanistic Perspective, 6 HOFSTRA L. Rev. 831, 839-42 (1978). See also Gordon, supra note 42, at 288 ("[t]hough the structures are built, piece by interlocking piece, with human intentions, people come to 'externalize' them, to attribute to them existence and control over and above human choice; and, moreover, to believe that these structures must be the way they are").
and the law. The following discussion attempts to give content to the prevailing consciousness of work, and then to what I will call an alternative consciousness, illustrating the interaction between the consciousness of work and the law in context at several points. The purpose of this endeavor is to make explicit the reality of the existence of choice, and of its systemic masking, and to suggest further that a focus on consciousness—which underlies both values and law—might enable us to begin to engage with the process of exercising choice.44

The prevailing consciousness of work sees work as an exchange relation, the giving up of leisure, the expending of effort, in return for compensation (income, status). The ingredients of this consciousness cluster around three sets of qualities:

1) Since the work relation is a bilateral, consensual one, there is no right to work. A prospective worker has only the right to look for an employer.

2) The utility of work is defined by the user, initially the employer (the purchaser of labor), but ultimately the consumer of the product or service offered by the employer.

3) The meaning or value of work to the person who works is that it is a means toward self-sufficiency.

Our view of the employment relation as bilateral and consensual interacts powerfully with our notions of freedom and consent in the workplace. The matter can be usefully pursued in the context of a simple, classic situation. Assume that an employer's policy is to employ only people who do not join a union, and that a statute forbids such a practice, making it unlawful for an employer to require nonmembership in a union as a condition of employment. In this state of affairs, who is free and who is coerced?

Viewing work as an exchange relation leads one to find no coercion in a requirement that an employee abandon either a job or the opportunity to join a union, and to regard as coercive a requirement that the employer abandon a criterion of its decision to hire. That, of course, has been the classic response of the law. It was expressed with unparalleled clarity and commitment by the Supreme Court in *Coppage v. Kansas*,45 a case presenting exactly

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44. See, e.g., Klare, Labor Law as Ideology: Toward a New Historiography of Collective Bargaining Law, 4 INDUS. REL. L.J. 450, 482 (1981) ("[t]he mission of all critical social thought is to free us from the illusion of the necessity of existing social arrangements").
45. 236 U.S. 1 (1911).
this situation. Justice Pitney, writing for the Court, explained that
[the term "coerce" [cannot be applied] to the mere insistence by the employer, or its agent, upon its right to prescribe terms upon which alone it would consent to a continuance of the relationship of employer and employee... The evidence shows that it would have been to the advantage of [the employee] from a pecuniary point of view and otherwise, to have been permitted to retain his membership in the union, and at the same time to remain in the employ of the railway company... But, aside from this matter of pecuniary interest, there is nothing to show that [the employee] was subjected to the least pressure or influence, or that he was not a free agent, in all respects competent, and at liberty to choose what was best from the standpoint of his own interests. Of course, if... the representative of the railway company was otherwise within his legal rights in insisting that [the employee] should elect to remain in the employ of the company or to retain his membership in the union, that insistence is not rendered unlawful by the fact that the choice involved a pecuniary sacrifice to [the employee].

To Justice Pitney, the employee's liberty is to choose his or her interest: the job or union membership. The fact that the employer forced the employee to make that choice does not transform liberty into coercion. The employer, after all, is free to enter into the employment relation or not, according to its choice, and this exercise of freedom cannot be branded coercive. It does not change matters that the employee's choice may in reality be a limited one, in that he or she may lack the means to choose union membership at the cost of a job. The Court, far from ignoring that reality, spoke to it eloquently:

No doubt, wherever the right of private property exists, there must and will be inequalities of fortune; and thus it naturally happens that parties negotiating about a contract are not equally unhampered by circumstances. This applies to all contracts, and not merely to that between employer and employee. Indeed a little reflection will show that wherever the right of private property and the right of free contract co-exist, each party when contracting is inevitably more or less influenced by the question whether he has much property, or little, or none; for the contract is made to the very end that each may gain something that he needs or desires more urgently than that which he proposes to give in exchange. And, since it is self-evident that, unless all things are held in common, some persons must have more property than others, it is from the nature of things impossible to uphold freedom of contract and the right of private property without at the same time recognizing as legitimate those inequalities of fortune that are the necessary result of the exercise of those rights.

46. Id. at 8-9.
47. Id. at 17.
This approach makes critical a distinction between private and public power: public pressure on choice is coercion, private pressure is freedom. Such a concept of liberty implies a correlative concept of equality. The Court observed that "in all respects employer and employee have equality of right," that is, they are each legally free to enter into an employment contract. That being so, whatever may burden or otherwise influence their choice is an aspect of that freedom and not a denial of it. Justice Pitney's response to Anatole France's sardonic reference to the majestic equality of the law, which forbids the rich as well as the poor to sleep under bridges and beg in the streets, would have been that he was correct: So long as it is not the law that interferes with your freedom, you are free, and the equality that is the majesty of the law is the equality of legal right. Substantive inequality—"inequalities of fortune"—is neither ignored nor lamented; it is valued positively; it is a social good.

In one sense, of course, Coppage is a relic of an earlier day. It has long since been discredited as constitutional law, and its premises have been apparently discredited as social policy by an impressive array of legislation: the National Labor Relations Act of 1935, the Fair Labor Standards Act of 1938, the employment discrimination provisions of the Civil Rights Act of 1964 and similar legislation, the Occupational Safety and Health Act of 1970, and many others. Notwithstanding the great significance of these and other departures from the primacy of our commitment to freedom of contract, the premises of Justice Pitney's opinion—that are derived from and continue to reinforce the exchange notion of work—remain the core of our ideology and the core of our law.

First, the changes that have occurred are ideologically peripheral. The periphery may be extremely complex and significant, but it is nonetheless comprised of exceptions, each of which needs to be justified as a departure from the norm. Moreover, neither a particular regulatory program, nor its totality, is seen as embodying a fundamental rejection of freedom of contract as a primary social value. To the contrary, each regulatory program is explicitly required to be construed to respect the principle of freedom of con-

48. Id. at 11.
tract as much as possible. The pattern that Professor Atleson finds under the NLRA is thus almost literally preordained.

The judicial reaction mirrors the legislative and societal pattern. In each area of regulation, there tends to be a cycle of national responses: Dissatisfied with an aspect of the results of freedom of contract—discrimination against union members or minority groups, unemployment, occupational accidents or disease, or other social ill—we enact protective legislation in response. Inevitably, we soon experience a feeling that we may have “gone too far.” That feeling is sometimes expressed as concern over reverse discrimination or quotas, sometimes as concern over the cost of consumer products and the need to enhance “efficiency,” sometimes in other terms, but the pattern is endemic. It is generally true, as Professor Atleson demonstrates in a number of labor law areas, that regulatory programs tend over time to narrow in scope, to lose much of their animating force. While general perspectives regarding this phenomenon may have value—the problem of “capture” of regulatory agencies by the regulated is often the focus of such perspectives—central to the process of narrowing is the fact that principles given force in regulatory legislation are inconsistent with the prevailing ideology. Although those principles draw their legitimacy from dissatisfaction with the results of the prevailing ideology, the ideology itself is not rejected, and continues to shape our response.

In that ideology, the idea of work as an exchange relation interacts powerfully with our consciousness of freedom and constraint. Freedom of choice is seen just as Justice Pitney saw it: an employee trading off the benefits and burdens of his or her options. It is this framework that channels discussion of occupational health and safety, for example, into a focus on employee trade-offs, reinforcing the assumption that high-risk jobs pay better, and or-

50. This process is reflected in a long tradition of judicial decisions, from NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937), through (and beyond) Mount Healthy City Bd. of Educ. v. Doyle, 429 U.S. 274 (1976).

51. For a discussion of this tendency in the law, see Stone, Legal Fictions, Monthly Rev., Sept. 1983, at 60 (“The law seeks to deny the significance of ... majoritarian interventions into civil society by claiming the occurrences are mere exceptions to the prevailing market principle. It attempts to keep the exceptions narrow and well-demarcated.”).

52. See supra notes 10 & 11 and accompanying text for Atleson’s discussion of the areas of labor law referred to; cf. Klare, supra note 42.
enting reform toward the idea of informed consent.53

IV. THE IMPLICATIONS OF THE TRADITIONAL CONSCIOUSNESS OF WORK

The expression of worker freedom of choice, once thus defined, is further channeled and cabined by the remaining ingredients of the exchange concept of work. First, the principle that the utility of work is defined by the user (again, initially the employer, but ultimately the consumer of the product or service made or offered by the employer) profoundly shapes our sense of what is right and proper in the job relation and in the law. Professor Atleson, in his examination of the fusing of contract and status concepts, has provided a significant historical explanation for the phenomenon that a legally equal consensual relation is usually dominated by the employer.54 Other historical or theoretical explanations can be given.55 But the phenomenon is inherent in the concept that the utility of work is defined by the user. The employee "fills the job"; he or she has a role defined by the job and does not own the job.

This perception is so deeply ingrained in the law that, when it is expressed at all, it is regarded as axiomatic. One modern decision that grapples with the question whether to limit the employment at will doctrine is Geary v. U.S. Steel Corp.56 Geary was a

The decision to undertake dangerous work in exchange for compensation is a basic life decision... A free society respects individual autonomy in those... areas... Only the affected individual can judge whether the compensation offered offsets the resulting health risk... [C]hoice is not free unless it is informed. Workers should have the right to know the risks... when they accept employment.
The possibility that disclosure may not be a sufficient safeguard for "workers with limited bargaining power" is acknowledged in a footnote. Id. at 1800 n.54.

54. See J. Atleson, supra note 1, at 87, concluding that "there was no idyllic, free-market period when employment relationships were" the product of agreement alone. Rather, the law fostered the "fusing of the employment contract with traditional master-servant notions, thereby giving a legal basis" for dominant employer power. Id. at 13.

55. For a powerful depiction of the social manipulation of "consent" to hazardous employment in the period 1870-1920, see W. Graeber, Doing the World's Work: An Ethical Approach to the History of Occupational Health and Safety (1982) (unpublished manuscript). Graeber concludes that "the idea of choice... was less a way of opening up options than of closing them off..." Id.

salesperson concerned about the safety of a new product. He ex­
pressed his fears to his supervisor, who responded (truthfully) that
the company engineers had cleared it. Geary was still troubled, and
talked to his friend, a vice-president of the company. As a result,
the product was recalled and Geary was fired. In the course of re­
jecting Geary's suit for wrongful discharge, the court considered
Geary's argument that a strong public interest in product safety
was at risk:

Certainly the potential for abuse of an employer's power of dismissal is
particularly serious when an employee must exercise independent expert
judgment in matters of product safety, but Geary does not hold himself out
as this sort of employee. He was involved only in the sale of products. There
is no suggestion that he possessed any expert qualifications, or that his duties
extended to making judgments in matters of product safety.57

In other words, Geary's job was to sell the product, not to raise
questions about it. But how did that get to be his job? The answer,
of course, is that the company defined the job, and Geary agreed to
the definition when he was hired. Geary was not hired to be an
engineer. Geary was not hired to concern himself with the safety of
what he was selling—whether his concern arose out of regard for
the user, the company's liability or reputation, or his own self-con­
cept. If Geary in fact had any such concern, it was a personal inter­
est, like the contour of his lawn. He could read books on safety on
Sunday, but unless his employer agreed to purchase that concern,
it had nothing to do with his work.

Employer definitions of the job need not be explicit. The law
attributes to an employer a definition consonant with the underly­
ing concept of work. For example, in Elk Lumber Co.,58 one of the
major exhibits adduced by Professor Atleson in support of his the­
sis,59 employees who reduced their work effort in an attempt to
induce an employer to rescind a wage cut were held to have
breached their employment contract, even though they had not vi­
olated any express agreement or specific direction of the employer.
The National Labor Relations Board viewed it as "implied in the
contract of hiring" that employees would "serve faithfully and be
regardful of the interests of the employer," and that they would
not be permitted to "select what parts of their allotted tasks they

57. Id. at 171, 319 A.2d at 178-79.
58. 91 N.L.R.B. 333 (1950).
59. J. ATLESON, supra note 1, at 50-53.
cared to perform of their own volition.”

The final aspect of the traditional consciousness of work is the idea that the meaning of work to the person who works is that it is a means toward self-sufficiency. That perception makes it seem self-evident that there is no legitimate employee interest in the product, but only in the pay and working conditions. Professor Atleson describes the constriction of the law defining the scope of collective bargaining. For example, when unionized physicians or nurses seek to contract with their hospital employer over “quality of care” issues (sometimes by the pressure of a strike), the general response is that it is none of their business. It is the business of the board of directors, of public or private contributors, or of consumers. Residents and nurses are in their job for what they get out of it, not what they put into it.

The Geary decision also illustrates the point. The extent of an employee’s autonomy is defined by the employer. The employee consents to the arrangement in taking the job. He or she legally is free to refuse to take the job on the terms offered, but that is the moment of choice. Once he or she signs on, and has not chosen to sign off, an employee continues to work on the employer’s terms. The quality of the employer’s product is none of the employee’s business unless the employer has chosen to make it so.

60. 91 N.L.R.B. at 337-38. As Atleson observes, “the employer’s expectation of work output is called a ‘production standard,’ a goal to be reached. Workers’ attempt[s] to define the level at which they will expend energy, however, are called ‘output restrictions’ or ‘slowdowns.’” J. ATLESON, supra note 1, at 51.

61. See id. at chs. 7-9.

62. Atleson’s critique of Teamsters v. Daniel, 439 U.S. 551 (1979) (holding that noncontributory pension plans are not “securities” within the meaning of the Securities Acts) ably shows how the underlying perception comes into play even when the subject is undisputably within the zone of legitimate employee interest. Atleson observes:

The employee, says the Court, “surrenders his labor as a whole, and in return receives a compensation package that is substantially devoid of aspects resembling a security. . . .”

. . . The Court, by finding it impossible to segregate an employee’s investment from his noninvestment interests, overlooks the possibility that the entire compensation package is a return for the employee’s “investment” of labor. . . . At base, then, the Court assumes that employees sell their labor in return for a livelihood, and even if, arguably, part of this exchange could be deemed an investment interest, such an investment cannot be separated from other more predominant noninvestment interests, such as wages. Aside from pensions, then the Court assumes that workers do not invest anything in an enterprise. Their labor is purchased like other commodities; it may be treated as a commodity and the labor power purchased is not an investment by the employee in the enterprise.
The idea that the meaning of work is as a means toward self-sufficiency further constrains employee free choice through the corollary notion that there is a moral obligation to render oneself employable. While there is no legal duty to work—in the sense that peonage and slavery are unlawful and delegitimated—that there is a moral obligation to be employable, to change one's self to meet what the market may require. That duty may involve training or education, doing well in school, or developing a skill. It may involve motivation, getting up early, washing one's face and combing one's hair, and learning how to interview and prepare a resume. Some shortcomings may be a cause of scorn, others of sympathy; in either case one is obligated to do what one can to overcome them.

Personal qualities that impair employability are regarded as a "frill." This idea has manifested itself in the law through the "lifestyle" cases involving men with facial hair, women who wear pants, and like issues. The law struggles with the legitimacy of such personal aspects, but they are viewed as personal, and the response suggested by the prevailing concept of work is that one who really wants a job will cut his hair, wear a skirt, or take other like steps when they seem necessary in order to be hired. We see in this process the commoditization of the person in a very literal sense. It is graphically manifested in school: students dressing to interview for jobs, going to "resume school," omitting from their resume or their person those qualities thought likely to be unpopular with employers.

The moral obligation to be employable implies that one unable to get the job he or she wants will take any job he or she can get. That is to say, one's willingness to take a job that is available is itself a moral test. There is much here that is central to the dispute between liberals and conservatives over work requirements in welfare law, as applied to the issue of substandard work. The con-

J. Atleson, supra note 1, at 172.

63. Even this statement needs to be qualified. The law of vagrancy, only recently disappeared from our legal scene, powerfully limited the principle that there is no legal duty to work, and concededly unlawful instances of peonage have been viewed as "simply a desperate attempt to make men earn their living." Pollock v. Williams, 322 U.S. 4, 16 n.26 (1944) (quoting A. B. Hart, The Southern South 287 (1910)).

64. It requires a powerful, countervailing respect for personal differences—like our tradition of religious toleration—to stand against this response. Compare Sherbert v. Verner, 374 U.S. 398 (1963) with TWA v. Hardison, 432 U.S. 53 (1977) (where the "stand" was not strong enough to prevail).
servative perspective for the most part tends to take the labor
market as given, and expresses an interest in attempting to change
the willingness of people to work in the labor market as it is. Presi­
dent Nixon said explicitly (as have other leading thinkers going
back at least to ancient Greece): “[N]o work is without dignity or
meaning [if it] enables an individual to feed and clothe and shelter
himself, and provide for his family.”65 The liberal perspective
wants to say that there is something wrong with some jobs, but
that response is delegitimated by the prevailing belief that the job
is more or less given and that there is something wrong with a per­
son who does not want to take the least offensive job that he or she
can get. As a result, the liberal perspective gets trapped into dis­
puting the assertion that poor people do not want to work at me­
nial jobs, and finds itself asserting that they do, that they are eager
for work emptying other people’s ash trays and cleaning their
linen, a proposition that is not intuitively obvious.

The prevailing consciousness rests on a world-view that denies
that work can be made to be life-affirming. The “Curse of Adam”
is a metaphorical expression of this notion. It was not by being set
to work that Adam was cursed: “Cursed be the ground,” Genesis
says, “for your sake; in sorrow shall you eat of it; thorns and this­
tles shall it bring forth all your life.”66 In other words, humankind
will be cursed by scarcity and low productivity. Work will be just
barely able to sustain life. That is the way it is, that is the way it is
supposed to be; the only issue is how we deal with that reality. So,
we see repeatedly, in the area of safety and health, the strength of
the belief that it is chimerical to expect the workplace to become
truly safe. This mindset is a powerful input to the law’s response
to the prevalence of hazardous employment, and to our response
to the law. Professor Atleson describes, in critical terms, the way that
the law denies protection to employees who quit work over safety
concerns.67 Our sense of injustice about such a law is blunted by a
basic skepticism about safe work.

Finally, seeing the value of work as a means toward self-suffi­
ciency reinforces the tendency in us to polarize—that is, to see

lyn-White trans. 1959) (“Work is no disgrace: It is idleness which is disgrace.”).
67. J. ATLESON, supra note 1, at 97-100.
only as antithetical—our individualist, competitive aspect and our urge toward cooperation and mutuality. It skews our response to that polarity toward the individualist pole, wherein all communitarian pulls are experienced as threats to the self, and "fellow workers" are seen largely as competitors. Within the traditional model, it seems axiomatic that one’s co-workers are competing sellers of labor in a series of bilateral relationships or prospective relationships with employers. The fundamental idea of unionization was to break with that model, to substitute a collaborative for a competitive vision. And in many ways (if I may overgeneralize), the difficulty with much of what has happened to labor and to the labor movement over the past century inheres in the fact that it attempted to express a different model in the context of the prevailing concept of work. The very attempt is delegitimated by that concept.

The consciousness of union collective action, such as a picket line, is not that of a series of bilateral relations with an employer, but one of an interdependent relation from employee to employee, where employees pursuing their individual self-interest can choose whether to help or to hurt one another, and necessarily must do one or the other. They need not go separate ways thinking that they are necessarily competitors, and they cannot go separate ways thinking that their decisions affect only themselves. The union song, "Which Side Are You On," said this explicitly, the labor movement used to say that explicitly, and in our time Polish workers seek to call themselves by their aspiration: Solidarity.

The law does not recognize that consciousness. The lines it draws, for example, between peaceful picketing and coercive picketing are drawn in a totally different paradigm. To the law, the only pressures on an individual’s choice to cross or observe a picket line that are regarded as an aspect of freedom, rather than coercion, are those impersonally generated through the competitive structure of the market, or those characterized as "social," such as ostracism. Picketing that seeks to trigger an individual decision to act as part of a collectivity of pickets is therefore legitimate only as it aids the individual to weigh those pressures or make that decision. Hence, the emphasis is on rationality, the dissemination of information, and the freedom to choose whether to listen. An al-

68. Decisions often thought to reflect differing judicial attitudes toward picketing are
ternative paradigm would characterize freedom in less wholly privatized terms. It would view picketing as a synergistic interaction between individual and collective will. It would assert that the establishment of a collective will is a legitimate function of a picket line, enhancing the freedom of those who do not choose to join it as well as of those who do. In fact we have so little experience looking at picketing in any way but the traditional paradigm that we can barely begin to say where the line between permissible and coercive appeals might be redrawn.

V. THE IMPLICATIONS OF AN ALTERNATIVE CONSCIOUSNESS

An underlying consciousness shapes our notion of what is an issue—and the existence of that consciousness is not acknowledged. This is not to say that the unspoken assertions are wrong—that, for example, the relation of work is not a bilateral one—but that they are only partially expressive of reality. Their implicit quality gives them a powerful effect on our perceptions. Very much in accord with the view set forth in the above text, Chief Justice Taft wrote in American Steel Foundries v. Tri-City Council, 257 U.S. 184, 204 (1921):

We are a social people, and the accosting by one of another in an inoffensive way, and an offer by one to communicate and discuss information with a view to influencing the other's acts are not regarded as aggression or violation of that other's rights. If, however, the offer is declined as it may rightfully be, then persistence, importunity, following and dogging become unjustifiable annoyance and obstruction which is likely soon to savor of intimidation.

Because Taft is known as a vigorous conservative and because the result in American Steel Foundries was to limit picketing severely, the opinion is usually remembered as the product of a restrictive era. The opinion by Justice Murphy in Thornhill v. Alabama, 310 U.S. 88 (1940), in contrast, is generally thought of as high-water for the judicial protection of picketing. While these traditional readings are not inapt, the two decisions, and the approach of the two justices, are in significant ways more similar than different. Compare, with the passage quoted above, the characterization in Thornhill of constitutionally protected picketing as the "dissemination of information concerning the facts of a labor dispute." Id. at 102.

Both judges view the question of the function of the picket line, and what it is that determines its legitimacy, in a very similar manner. Both visualize a work relationship embedded in the contractual model: The employer is the hub; the employees are the spokes, engaged in a series of bilateral transactions with the employer. Individuals make individual decisions, before and during a strike, to work or not to work. A picket line constitutes an appeal from one or more individuals who have severed this relationship temporarily, as a means of changing it, to other individuals doing similar work, seeking to induce them to join in that effort. Both Thornhill and American Steel Foundries indicate that such an appeal is lawful so long as it is the offer of information and the making of a rational appeal. It is not lawful when it is dogging, importuning or an "enforced discussion of the merits," American Steel Foundries, 257 U.S. at 206, or "a breach of the peace," Thornhill, 310 U.S. at 105.
This implicit consciousness is reflected in the law at the same time as it legitimates the law. The idea that work is a bilateral relation makes it sensible to view the job as belonging to the employer. Indeed, this idea makes it sensible to define work to exclude nonmarket activities such as the care of one’s home or children. And the underlying “sense” seems right, not just in the way that a reasoned conclusion seems right, but in that the point seems axiomatic. It hardly seems that an issue is being decided.

The legitimating impact is reciprocal. The law made sense of by our consciousness in turn makes our consciousness make sense. I do not suggest that the law has a causal input here. It is not because we view work a certain way that certain things happen. It is more that there is a sense of dissonance being pushed away, of alternatives being pushed out of awareness. To his great credit, Professor Atleson has not allowed himself to suppress the dissonance. It is not accidental, however, that his critique is muted, his values position largely implicit, and his “legal” position focused on perceptions regarding statutory purpose and on invocation of principles like even-handedness. Unless the dissonance is seen as reflecting a difference at the level of consciousness, and the partial quality of the traditional consciousness made the explicit subject of attention, its strictures will silently narrow the debate, in ways that predetermine the result.

The completion of the process is the reification of social reality, that is, the failure or refusal to acknowledge that our perception of social reality is a choice—a human product—that embodies a consciousness. The ultimate imprisonment is that which establishes the jail as the boundary of reality, and thereby denies its own existence.

An alternative consciousness starts from the ontological reality that work is the expression of a basic human need. An alternative consciousness of work sees the prevailing concept as grounded in reality and as a partial view of reality. Work is more than the sale

69. For a useful, brief discussion of the interaction between a “system of ideas” and “the actual structure of social life,” see Frug, The City as a Legal Concept, 93 Harv. L. Rev. 1057, 1074-80 (1980). For a succinct statement of the critical perspective on this central issue, and some penetrating questions about it, see Trubek, supra note 40, at 45-48.

70. See, e.g., discussion cited supra notes 15, 20, 21.

71. John Delaney has ably demonstrated how the reification of social reality is itself a reinforcement of the authoritarian, hierarchical aspects of the traditional consciousness. See Delaney, supra note 43, at 843-47.
of a saleable portion of oneself in return for self-sufficiency; it is an expression of one's energy, one's capacity and desire to be useful, one's responsibility and connection to fellow humans.\textsuperscript{72}

A recent embodiment of this alternative concept is the Encyclical Letter of Pope John Paul II, \textit{On Human Work}.\textsuperscript{73} The Encyclical speaks critically of the traditional consciousness, according to which, "work was understood and treated as a sort of 'merchandise' that the worker sells to the employer, who at the same time is the possessor of the capital, that is to say, of all the working tools and means that make productions possible..."\textsuperscript{74} By contrast, the Encyclical asserts:

\begin{quote}
[W]ork is a good thing for man... It is not only good in the sense that it is useful or something to enjoy; it is also good as being something worthy, that is to say, something that corresponds to man's dignity, that expresses this dignity and increases it... [T]hrough work man not only transforms nature, adapting it to his own needs, but he also achieves fulfillment as a human being and indeed, in a sense, becomes more a human being.\textsuperscript{75}
\end{quote}

From the perspective of an alternative consciousness, all issues are transformed, that is, are seen in a broader context. If one without work is without an essential aspect of his or her humanity, there is a moral basis for a right to work. Marge Piercy's lines are apt here: "The pitcher cries for water to carry, and a person for work that is real."\textsuperscript{76} In place of the dichotomization of public and private,\textsuperscript{77} we would think it self-evident that they are mutually reinforcing and severally responsible.\textsuperscript{78}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{72} See, e.g., Klare, supra note 44, at 451 ("work can and should provide dignity and meaning to life... it can and should be a mode of expression, development and realization of the human self").
\item \textsuperscript{73} Pope John Paul II, \textit{On Human Work} (Encyclical Letter 1981).
\item \textsuperscript{74} Id. at 17-18.
\item \textsuperscript{75} Id. at 23.
\item \textsuperscript{76} Piercy, \textit{To Be Of Use}, in \textit{CIRCLES ON THE WATER: SELECTED POEMS OF MARGE PIERCY} (1982).
\item \textsuperscript{77} See text accompanying note 47 supra.
\item \textsuperscript{78} See Klare, \textit{The Public/Private Distinction in Labor Law}, 130 U. PA. L. REV. 1358, 1417-18 (1982) (criticizing the role that the "public/private" distinction plays in making the prevalent social order seem inevitable and unchangeable).
\end{enumerate}
\end{footnotesize}
Seeing the utility of work as not wholly external to the worker, and its meaning as more than a means toward self-sufficiency, would tend to legitimate the issue of work restructuring—the desire to make the workplace consonant with the values of a democratic social order and a fully enfranchised citizenry, and to make work consonant with the values of the individual worker. The dissonance that regularly prompts departures from the regime of the traditional consciousness would be recognized as a response to the deepest urges of the human spirit, and alternatives would not reflexively be seen as legitimate only as they can be accommodated to the traditional concept. The effect, in short, would be to legitimate the effort to lift the Curse of Adam.

Profound as such a shift would be in its impact on legal development, an alternative consciousness of work would, most fundamentally, counteract the tendency to polarize individual and community. It would facilitate a recognition that both a legitimate self-assertive aspect and a genuine concern for others are essential attributes of our individuality. This fuller recognition of the meaning of individuality was given voice some seventeen centuries ago in the Talmudic aphorism:

“If I am not for myself, who is for me? If I am for my own self only, what am I?”

An alternative consciousness would see efficiency as seeking to maximize something more than the quantity of things that exists in the world, and freedom as something more than permission to compete with one another for scarce resources.

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79. See Klare, supra note 78, at 1387. “[T]he workplace is one of people’s most important learning environments.”

80. Ethics of the Fathers 1:14, in THE BABYLONIAN TALMUD, Order Nezikin, Tractate Aboth 8 (Soncino ed. 1935). A modern, secular expression of this thought eloquently concludes B. ACKERMAN’S SOCIAL JUSTICE AND THE LIBERAL STATE 378 (1980). Roberto Unger seeks to demonstrate that “a necessary implication of the self’s attempt to retain its individuality” is the struggle to transcend the paradox between its individual and its social nature. R. Unger, supra note 39, at 217. As John Delaney expresses it: “The person may not be artificially abstracted from the various social contexts in which he or she achieves realization and meaning... The individual search for fulfillment... is inseparable from the same quest of others.” Delaney, supra note 43, at 853.
VI. Conclusion

Professor Atleson's quiet questioning of matters usually taken for granted is designed, I believe, to invite his readers to discern a door in what is often seen as an unbroken wall. Following his invitation, I have described what I see beyond the door—a space that ends in another door, through which I have looked but have not yet ventured. But the value of his enterprise is not dependent on the validity of my (or others') description of the space beyond the door. Truth inheres in the search for it, and scholarship has value as it encourages the intensification of the search. By those criteria, Values and Assumptions in American Labor Law is a significant milestone in the evolution of our thinking about law and the work relation.