

## Advance Praise for *The Cambridge Handbook of U.S. Labor Law for the Twenty-First Century*

“Charlotte Garden and Richard Bales have brought together an impressive group of experts to provide a comprehensive look at how our labor laws could and should be strengthened to give workers more collective bargaining power. This book is a valuable contribution to the public debate around a critically important issue at a critically important time.”

Lynn Rhinehart, Senior Fellow, Economic Policy Institute and  
former general counsel, AFL-CIO

“At a time of increasing income inequality and declining union power, this much-needed volume provides many smart and provocative ideas on how to overhaul our nation's labor laws in order to strengthen unions, increase worker power and, most important, lift America's more than 150 million workers. In this book, a who's who of labor experts provide one thoughtful essay after another on many of the key issues that unions and workers face today.”

Steven Greenhouse, long-time labor journalist and author of *Beaten Down, Worked Up: The Past, Present, and Future of American Labor*

“In a year of teacher strikes for the public good, private sector flight attendants standing strong on behalf of locked out federal workers, and New York state farmworkers just winning a century long struggle for collective bargaining rights, *The Cambridge Handbook of U.S. Labor Law for the Twenty-First Century*, is exceptionally timely and relevant. Richard Bates and Charlotte Garden have chosen an outstanding group of scholars who are refreshingly forward looking while still being grounded in the daily reality faced by workers and unions.”

Kate Bronfenbrenner, Senior Lecturer and Director of  
Labor Education Research, Cornell School of Industrial and Labor Relations

“*The Cambridge Handbook of U.S. Labor Law for the Twenty-First Century* is an important resource. A creature of the 1930s New Deal, US labor law has been wholly resistant to legislative change. While most agree that it needs renewal, beyond that there is no consensus. The stasis is, however, not for lack of creativity about reform, as this ambitious project amply displays, with its unique compendium of intelligent essays by leading thinkers, both seasoned and those newer to the field. The Handbook provides a range of opinion and is rich in thought-provoking ideas. It should soon be on the bookshelves of practitioners, scholars, policy makers and activists – indeed, anyone interested in labor law and policy, worker rights and activism, unions and employers, collective bargaining, economic fairness and democracy.”

Wilma B. Liebman, Former chairman, National Labor Relations Board,  
and professor, author, and advisor on labor law and workplace policy

Cambridge University Press  
978-1-108-42883-5 — The Cambridge Handbook of U.S. Labor Law for the Twenty-First Century  
Edited by Richard Bales , Charlotte Garden  
Frontmatter  
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**THE CAMBRIDGE HANDBOOK OF U.S. LABOR LAW FOR  
THE TWENTY-FIRST CENTURY**

Over the last fifty years in the United States, unions have been in deep decline, while income and wealth inequality have grown. In this timely work, editors Richard Bales and Charlotte Garden – with a roster of 35 leading labor scholars – analyze these trends and show how they are linked. Designed to appeal to those being introduced to the field as well as experts seeking new insights, this book demonstrates how federal labor law is failing today's workers and disempowering unions; how union jobs pay better than nonunion jobs and help to increase the wages of even nonunion workers; and how, when union jobs vanish, the wage premium also vanishes. At the same time, the book offers a range of solutions, from the radical, such as a complete overhaul of federal labor law, to the incremental, including reforms that could be undertaken by federal agencies on their own.

Richard Bales is Professor of Law at Ohio Northern University Pettit College of Law and Visiting Professor at University of Akron from 2018 to 2020. He has published more than eighty scholarly articles and authored or co-authored six books on arbitration, ADR in the workplace, employment law, and labor law.

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Cambridge University Press  
978-1-108-42883-5 — The Cambridge Handbook of U.S. Labor Law for the Twenty-First Century  
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# The Cambridge Handbook of U.S. Labor Law for the Twenty-First Century

Edited by

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**CAMBRIDGE**  
UNIVERSITY PRESS

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Frontmatter  
[More Information](#)

CAMBRIDGE  
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom  
One Liberty Plaza, 20th Floor, New York, NY 10006, USA  
477 Williamstown Road, Port Melbourne, VIC 3207, Australia  
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India  
79 Anson Road, #06–04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.  
It furthers the University’s mission by disseminating knowledge in the pursuit of  
education, learning, and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)  
Information on this title: [www.cambridge.org/9781108428835](http://www.cambridge.org/9781108428835)  
DOI: 10.1017/9781108610070

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First published 2020

Printed in the United Kingdom by TJ International Ltd. Padstow Cornwall

*A catalogue record for this publication is available from the British Library.*

*Library of Congress Cataloging-in-Publication Data*

Names: Bales, Richard A., editor. | Garden, Charlotte, editor.

Title: The Cambridge handbook of U.S. labor law for the twenty-first century /  
edited by Richard Bales, Ohio Northern University, Claude W. Pettit College of Law;  
Charlotte Garden, Seattle University School of Law.

Other titles: Cambridge handbook of United States labor law for the twenty-first century

Description: Cambridge, United Kingdom ; New York, NY : Cambridge University Press, 2020. |  
Includes index.

Identifiers: LCCN 2019019496 | ISBN 9781108428835 (hardback)

Subjects: LCSH: Labor laws and legislation—United States. | Collective bargaining—Law and  
legislation—United States. | Labor unions—Law and legislation—United States.

Classification: LCC KF3319 .C33 2019 | DDC 344.7301—dc23

LC record available at <https://lccn.loc.gov/2019019496>

ISBN 978-1-108-42883-5 Hardback

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Cambridge University Press  
978-1-108-42883-5 — The Cambridge Handbook of U.S. Labor Law for the Twenty-First Century  
Edited by Richard Bales , Charlotte Garden  
Frontmatter  
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Cambridge University Press  
978-1-108-42883-5 — The Cambridge Handbook of U.S. Labor Law for the Twenty-First Century  
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Frontmatter  
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## Preface

American incomes and wealth today are far less equal than they were fifty years ago, and the inequality is growing. Though productivity, gross domestic product, and (as of this writing) employment rates have risen, wages have not kept pace, meaning that workers are not sharing in the economic gains to which they themselves contribute. Social mobility has fallen commensurately, with significant political consequences.

Over those same fifty years, unions have been in a deep decline. This decline has been met with ambivalence from much of America's heartland and joy from the business community, but its effects are deeply troubling. Nonunion jobs pay less than union jobs and thus contribute to rising inequality. Much less acknowledged, and only now becoming better understood, is that high-paying union jobs help increase the wages even of nonunion workers. When union jobs vanish, the wage premium for other workers goes with them.

The decline in union density long has been noted by American legal and industrial relations scholars, who have responded by advocating for changes to the National Labor Relations Act. This book advances a reform agenda far beyond these traditional fixes. The general premise is that American labor law should be reconsidered and reformed, in ways both incremental and radical, but in all cases with the overall goal of protecting workers, even as the economy and the nature of work are changing rapidly.

Structurally, the book starts with two introductory chapters, providing background empirical information on the dramatic decline of union density and the profound social consequences that decline has precipitated. The remainder of the book is comprised of six different parts. Each part starts with a chapter framing a specific problem or closely related suite of problems that has contributed to the decline in union density; subsequent chapters in that part, each written by a different author, propose different types of reforms to address the problem. Many of these reforms emphasize private sector workplaces governed by the National Labor Relations Act, though some also address public sector unions, the nascent attempt to permit bargaining by independent contractors, or efforts to organize workers through means other than traditional labor unions.

The proposals in this book are not always consistent with each other. Consequently, no one person (including the editors) will agree with each proposal. This feature makes the book unique, and in our view, is a major strength. The book brings together scholars from all sides of the political spectrum with a shared concern about the well-being of American workers. It collects many paths forward, allowing the authors to make, in their own voices, their best case, and allowing readers to decide for themselves how the law should best respond to the crisis that American labor is facing.

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## Acknowledgments

I am extraordinarily lucky to be surrounded by colleagues and friends who care deeply about workplace justice, and who constantly go the extra mile to create a collaborative, supportive scholarly environment in which everyone committed to workplace justice is welcome. I especially want to thank several such people who made unique contributions to this book: Catherine Fisk, who gave me invaluable encouragement and guidance when the idea for the article that eventually became this book was still, at best, half-baked; Dennis Nolan, who has mentored me throughout my career and who encouraged me to solicit authors from across the political spectrum; Kathy Stone, who taught me a love for labor law and with whom I am privileged to collaborate on a wide variety of projects; Laura Cooper, who has encouraged me in more ways than I can count; and Richard Epstein, who served as matchmaker for many authors outside my normal circle of colleagues. I also want to thank my co-editor Charlotte Garden. Charlotte is one of the smartest, hardest-working, and overall nicest people I know, and I am privileged to have had the opportunity to work with her on this project. Finally, I want to thank my wife Tara Reynolds Bales. Her passion for the labor movement is one of the many reasons I am and will always be madly in love with her.

– RB

The last two years have had a “best of times/worst of times” sensibility for labor organizing. On one hand, teachers, tech workers, and hotel workers (among others) have all shown the power of collective action, and are inspirational. On the other hand, the state of labor law – at least at the federal level – has gotten progressively worse, as both the NLRB and the Supreme Court have made decisions that disempower workers and unions. This juxtaposition is the reason for this book – or at least it is my reason for this book. It is workers’ willingness to put themselves on the line that will rebuild the labor movement and the middle class – but labor law can and should do much more, both to respond to workplace power imbalances and to protect workers’ collective action. I hope this book will contribute usefully to the debate about those things should happen.

I am grateful to Richard Bales for inviting me to team up on this project, and for being such a great collaborator. I also appreciate all the chapter authors – thank you for answering our calls and emails for contributions, and for making editing this book such a joy. Thank you also to Dean Annette Clarke of Seattle University School of Law, for research support. And finally, thank you to Owen Davies, who is a source of endless support, and who always reminds me to keep one eye on the bigger picture.

– CG

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