CHAPTER 2

THE PRESIDENTIAL ADDRESS: TOWARD A "KINDER AND GENTLER" SOCIETY

HOWARD S. BLOCK*

Introduction

An incident occurred earlier this year that convinced me I had selected an appropriate subject for my presidential address. My daughter, who works on the Berkeley campus, asked whether I could help the sister of a friend, a senior who was on the verge of being discharged from a part-time bank position she had held during her four years at Berkeley. This young woman was an "A" student with impeccable character traits. I suggested that she contact me. She called a few moments later, in tears, and related that $1,600 was found missing from her cash drawer—a drawer to which several other bank employees had access—and the bank had made it clear that it was preparing to discharge her. Four long years of training and a planned career in banking were about to be shattered. What could she do? I explained there was very little she could do. She was what the law calls an "at-will" employee. The bank could discharge her for virtually any reason or for no reason at all. She had no recourse.

This story has a happy ending. I had her contact an attorney who wrote to the bank what my mother calls a "lawyer letter" and, as a result, she was not discharged.

Such incidents are by no means unique. The vast majority of U.S. employees are vulnerable to unjust termination without recourse. Why is such an extreme injustice allowed to continue? After all, we are a caring society. Whenever there is a tornado in Kansas, an earthquake in Turkey, or some disaster in Timbuktu, we are there with food and medical supplies. If a small child slips

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*President, National Academy of Arbitrators. I am indebted to Suzanne V. Wilson, J.D., Harvard Law School, for research assistance in the preparation of this paper.

down a shaft, hundreds of Americans maintain a 24 hour vigil and millions more follow the events on the nightly news.

We are a democratic society with a cultural commitment to due process. We believe no one should be deprived of life, liberty, or property without due process of law. Other nations of the world look to our democratic institutions for inspiration. Then why, it must be asked, are an estimated two-thirds of the U.S. work force vulnerable to unjust termination of their employment? The remaining one-third fall into three basic categories: unionized employees covered by the just-cause provisions of collective bargaining agreements, federal employees protected under the Civil Service Reform Act of 1978, and state and local employees who enjoy a range of statutory protections.[1]

Professor Theodore J. St. Antoine, a recognized authority on the issue of wrongful termination, has reported the following:

> Protection against unfair discharge is now provided by statute in about sixty countries around the world, including all the Common Market, Sweden, Norway, Japan, Canada, and others in South America, Africa, and Asia. . . . The United States remains the last major industrial democracy that has not heeded the call for unjust dismissal legislation.[2]

The culprit is an antiquated doctrine known as employment-at-will—a common law rule that has its origins in the 19th century economic philosophy known as laissez-faire. While the laissez-faire philosophy expired in the 20th century, the at-will doctrine remains alive and well. As a common law judge described it in 1884, employers "may dismiss their employees at will, be they many or few, for good cause, for no cause or even for cause morally wrong, without being thereby guilty of legal wrong."[3] The at-will concept was premised on the myth of equality of opportunity. The rationale was that employer and employee are equally free to contract the terms of employment and to terminate their relationship without each other's consent.

Perhaps those premises had some merit in the 19th century when jobs and production were much different; but those premises have little validity in modern industrial society with the

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[1]For an excellent discussion of wrongful termination issues and an economic rationale for judicial revision of common law rules, *see* Note, *Protecting At-Will Employees Against Wrongful Discharge: The Duty to Terminate Only in Good Faith*, 93 HARV. L. REV. 1816 (1980).

[2]St. Antoine, *A Seed Germinates: Unjust Discharge Reform Heads Toward Full Flower*, 67 NEB. L. REV. 56, 68–69 (1988).

[3]Payne v. Western & A.R.R., 81 Tenn. 507, 519–520 (1884).

dramatic decline in unskilled and semiskilled jobs and the extraordinary increase in specialization.

The freedom to quit means little to employees dependent upon regular earnings for food, rent, and clothing. Indeed, with 6 to 7 percent unemployment, when an employee's skills are often not interchangeable from employer to employer, the freedom to quit is largely illusory. In short, the premises of this 19th century doctrine find no reasonable basis for support in the 20th century, let alone on the threshold of the 21st century.

Vulnerability of At-Will Employees

No doubt most at-will employers try to exercise their unilateral right to discharge in a reasonable manner. They see no need for change. Nevertheless, one need not be in the arbitration profession very long to realize that human fallibility, coupled with pressures of the workplace, often results in arbitrary judgments. As a result, in a significant number of at-will discharges serious injustice is committed. Professor Jack Stieber, a distinguished arbitrator who has written with great sensitivity on this subject, has conservatively estimated the impact of a just-cause standard on U.S. employees subject to the at-will doctrine:

> About 150,000 of these workers would have been found to have been discharged [each year] without just cause and reinstated to their former jobs if they had the right to appeal to an impartial arbitrator as do almost all unionized workers.[4]

Such figures cannot adequately portray the human element in an unjustified discharge. I offer one example from my own experience to make the point. When supervisors are confronted with serious misconduct, such as theft of company property, there is a tendency to overreact. Obviously, no employer can be expected to condone theft. I share the view of virtually all arbitrators that theft warrants discharge on a first occurrence without regard to length of service or prior work record. Nevertheless, a charge of such gravity requires substantial proof. In several arbitration cases presented to me, an employee was discharged based upon unfounded assumptions and an inadequate investigation that completely failed to prove the charges. In those cases the employee was reinstated under the just-cause

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[4]Stieber, *Recent Developments in Employment-at-Will*, 36 LAB. L.J. 557, 558 (1985).

provision of a collective bargaining agreement. Now, contemplate for one moment the immense loss that an employee suffers—financially, psychologically, emotionally, socially—if that employee has no recourse, no way to challenge the employer's unjustified decision. Should a kinder, gentler society tolerate this kind of result or provide some possibility of redress?

By this comparison to the rights of unionized workers under collective bargaining agreements, I do not suggest that the procedures developed by arbitrators and the parties in just-cause cases should be indiscriminately transplanted to at-will employees. Not at all. What I do suggest is that the at-will doctrine formulated in the 20th century is an anachronism and that at-will employees should not be vulnerable to unjust dismissal without due process, that is, the right to a fair hearing based upon objective standards.

Over the past quarter century a broad range of proposals have been advanced by scholars that would provide some recourse for unjust dismissal.[5] As could be expected, there is considerable variation in these proposals. However, there appears to be unanimity among these commentators that the at-will doctrine can no longer be justified.

The remedy requires both judicial and legislative action.

Judicial Action

State courts have been sensitive to mounting criticism of the at-will doctrine. They have recognized exceptions but only in those cases involving the most egregious conduct. To mention just a few examples: An early case frequently cited involved a female employee who was discharged for refusing to date her foreman.[6] In another celebrated case a restaurant manager announced that stealing was going on and, since he did not know who was responsible, he decided to discharge waitresses in alphabetical order until he discovered the responsible person.[7] A number of cases have involved employees discharged for blowing the whistle about company wrongdoing. Many of these

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[5]Aaron, *The Ownership of Jobs: Observations on the American Experience*, Job Equity and Other Studies in Industrial Relations, Monograph and Research Series (Los Angeles: Institute of Indus. Rel., Univ. of Calif., 1982), 30, 50, 71–95.

[6]Monge v. BeeBee Rubber Co., 114 N.H. 130, 316 A.2d 549 (1974).

[7]Agis v. Howard Johnson Co., 371 Mass. 140, 355 N.E.2d 315 (1976).

cases have been widely publicized, and some of them resulted in large jury awards.

The exceptions that the courts have carved out of the at-will doctrine generally fall into three principal categories:

1. *A violation of public policy.* The leading case in this area involved an employer who instructed an employee to give false testimony at a legislative hearing.[8] The employee refused to commit perjury and was discharged. The California court reasoned that the employer's conduct jeopardized the policy of encouraging full and honest testimony.
2. *Breach of an implied or express promise of job security.* These cases impose a contractual just-cause standard based upon representations made in employee handbooks or oral commitments at the time of employment.
3. *Breach of an implied covenant of good faith and fair dealing.* Illustrated by a leading Massachusetts case that held an employer violated the implied covenant of good faith and fair dealing under the terms of a classic terminable-at-will contract when it discharged a salesman of 25 years to avoid paying him a very substantial earned commission.[9] (I will return to a consideration of this covenant in my discussion of proposed remedies.)

These exceptions carved out by the courts have provided relief in several important areas. Nevertheless, the at-will doctrine remains essentially intact. As a result, most at-will employees are still without recourse for unjust termination.

To come directly (even bluntly) to the main point, there is no plausible reason why courts should continue to follow the outdated at-will doctrine, and it should be completely abrogated. Can the courts do so? I strongly suggest they can. The at-will doctrine is common law made by judicial decision and subject to change in the same way. For example, during my years of practice the courts eroded and then replaced another remnant of laissez-faire philosophy—the doctrine of "caveat emptor"—by imposing strict liability on the seller. Indeed, one of the strengths of the common law is its ability to continuously reflect changing circumstances. As Justice Oliver Wendell Holmes put it in an oft-quoted sentence: "The life of the law has not been

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[8]Petermann v. Teamsters Local 396, 174 Cal.App.2d 184, 344 P.2d 25 (1959).
[9]Fortune v. National Cash Register Co., 373 Mass. 96, 364 N.E.2d 1251 (1977).

logic; it has been experience."[10] Now, both logic and experience tell us that the at-will doctrine should be completely rejected.

A wrongfully terminated employee who has served satisfactorily for a substantial period should have access to the courts for reinstatement and to be made whole. The law as presently constituted makes no provision for such a suit, with limited exceptions in the unusual cases noted above. However, I believe a cause of action can be justified on two separate and distinct grounds: (1) as a property right protected by the due process clause of the Constitution, and (2) as a breach of the implied covenant of good faith and fair dealing. While time constraints do not permit an extensive discussion of the pros and cons of this twofold proposal, a brief explanation is in order.

I believe the courts could properly hold that employees have a property right in their job based upon the substantial changes in the status of employees that have occurred in the past century—changes that cannot be reconciled with continuation of the at-will doctrine. In the latter part of the 19th century, employment relationships were merely a reflection of the laissez-faire economic philosophy—a philosophy that considered employers and employees equals for the purpose of establishing terms and conditions of employment. Even in those early days of our industrial development there was substantial inequality of bargaining power between workers and employers. Nevertheless, in *Adair v. United States*, which declared unconstitutional a law barring yellow-dog contracts (with Justice Holmes dissenting), the U.S. Supreme Court succinctly summarized the prevailing economic philosophy at the turn of the 20th century:

> The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee. . . . In all such particulars the employer and the employee have equality of right, and *any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land.*[11] (emphasis added)

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[10]Holmes, The Common Law (1881), 1.
[11]Adair v. United States, 28 S.Ct. 277, 280 (1908).

In that milieu it is hardly surprising to find that commitments between employer and employee were extremely limited; workers received little more than wages and were even expected to assume the risk of on-the-job injuries.[12]

In our time most of these 19th century concepts have been repudiated or modified. Whereas the laissez-faire philosophy viewed labor legislation as anathema, "an arbitrary interference with the liberty of contract," as the *Adair* decision put it, labor legislation (i.e., laws that provide for minimum wages, maximum hours, freedom from discrimination, and health and safety) is now viewed as necessary to protect employees from exploitation by powerful employers and impersonal market forces. The assumption-of-the-risk doctrine has been replaced by workers' compensation laws.

In summary, economic individualism reigned supreme in the 19th century and employees were expected to fend for themselves. In the 20th century a vast array of labor legislation has as its principal purpose the protection of employees. Is it not entirely incongruous to pass laws that protect employees from the superior bargaining power of employers and then continue an outdated judicial doctrine that permits the arbitrary dismissal of those employees? Whether you are an arbitrator or advocate, Republican or Democrat, represent management or labor, don't we all agree that the failure to provide redress for unjust dismissal is contrary to the values we share?

The time has come for the courts to recognize that a different relationship now exists between employer and employee—a relationship which entitles jobs to constitutional protection.[13] I am reinforced in this conclusion by the observations of a respected jurist with broad experience in the field of labor law, Joseph R. Grodin, a former justice of the California Supreme Court, who made the point eloquently that ". . . the recognition of constitutional values in the workplace . . . is good law, good public policy, and good morality."[14]

That brings me to the initial judicial remedy which I think appropriate, namely, that a property interest be recognized in

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[12]*Supra* note 1, at 1824–1828.

[13]Peck, *Unjust Discharges From Employment: A Necessary Change in the Law*, 40 OHIO ST. L.J. 1 (1979).

[14]Grodin, Constitutional Values in the Private Sector Workplace, an unpublished paper at the Fifth Annual Benjamin Aaron Lecture Series, University of California, Los Angeles, January 23, 1991, at 5.

continued employment within the meaning of the due process clause of the Fourteenth Amendment[15] and analogous state constitutional provisions. After all, what material possessions that the law recognizes as property have greater value to an employee than his or her job? Taking away someone's job can destroy that human being just as much as taking away that person's liberty, sometimes more.

If an employee's vested pension were wrongfully terminated, no court would deny that employee a fair hearing and an appropriate remedy. That employee has a much more substantial investment in the job itself and, if the job is wrongfully terminated, I submit that the employee is entitled to no less consideration from our courts. While court decisions on the issue of job tenure as a property interest under the Fourteenth Amendment are not readily reconciled, the reasoning that supports a property interest is much more persuasive.[16]

As a threshold requirement in any alleged due process violation it is necessary to establish that the contested acts constitute governmental action rather than private party conduct—a requirement generally referred to as "state action." As previously noted, wrongful termination is a common law doctrine—a rule made by the court and enforced by the court. Such court action is equivalent to state action. As Professor Laurence Tribe put it in his authoritative text on constitutional law: "The general proposition that common law is state action—that is, that the state acts when its courts create and enforce common law rules—is hardly controversial. . . ."[17] Therefore, it may be persuasively argued that court enforcement of the common law at-will doctrine constitutes state action.

The landmark case of *Shelley v. Kraemer*[18] lends further support to the concept of court action as state action. The *Shelley* case held that court action enforcing restrictive covenants amounted to state action in violation of the Fourteenth Amendment. In *Shelley* the Court also ruled that the state acts within the scope of the Fourteenth Amendment not only when its judicial officers

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[15]"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

[16]Peck, *supra* note 13, at 26–35.

[17]Tribe, American Constitutional Law (Mineola, NY: Foundation Press, 1988), section 18–6.

[18]334 U.S. 1 (1948).

deny procedural due process or equal protection, but also when enforcing a common law rule denying substantive rights guaranteed by the Fourteenth Amendment. Court enforcement of its at-will doctrine denies these procedural and substantive due process rights, namely, the property right of employees in their jobs. Therefore, in my view the state-action ruling of *Shelley v. Kraemer* should also apply to court enforcement of the at-will doctrine.

The second and remaining basis for a cause of action is the implied covenant of good faith and fair dealing that offers a much more direct ground for challenging the at-will doctrine.[19] In layman's language this covenant means that in every contract there is an implied agreement that neither party will do anything that will have the effect of destroying or injuring the right of the other party to receive the benefits of the contract. The implied-covenant reasoning is applicable to contracts terminable at will because both employer and employee enter the employment relationship with an unstated presumption that the employee will not be discharged so long as the employee's services are performed in a satisfactory manner. Each party has a vested interest in continuing the employment relationship. To the employee, termination means loss of all the rights and benefits that accrue with length of service. To the employer, termination means the added costs of recruiting and training a new employee.

Thus far, application of the implied covenant of good faith has been restricted to the most flagrant cases of unjust dismissal—for example, in *Fortune*,[20] where a salesman was terminated to avoid paying him a large commission, and in *Monge*,[21] where a female employee was discharged for refusing to go out with her foreman. I believe the following reasoning in *Monge* is just as applicable to the more mundane cases of wrongful termination:

> [I]n all employment contracts, whether at will or for a definite term, the employer's interest in running his business as he sees fit must be balanced against the interest of the employee in maintaining his employment, and the public's interest in maintaining a proper balance between the two. . . . We hold that a termination by the employer of a contract of employment at will which is motivated by

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[19]*Supra* note 1, at 1836–1839.
[20]*Supra* note 9.
[21]*Supra* note 6.

> bad faith or malice . . . constitutes a breach of the employment contract. . . . [S]uch a rule affords the employee a certain stability of employment and does not interfere with the employer's normal exercise of his right to discharge, which is necessary to permit him to operate his business efficiently and profitably.[22]

The requirement of good faith is well established in the law of commercial contracts—a requirement frequently imposed by courts with regard to both procedural and substantive issues.[23] The Uniform Commercial Code imposes an express obligation of good faith in Section 1–203 that provides: "Every contract or duty within this Act imposes a duty of good faith in its performance or enforcement." The relevance of this commercial law principle to employment at will is stated with exceptional clarity in the following excerpt from the 1980 Harvard Law Review:

> In the context of commercial contracts, courts often imply terms requiring that a contract's duration be for some reasonable period or that it be terminated only in good faith. (Citation omitted). In this way, courts fill gaps left by the contracting process, and avoid harsh, unexpected results by approximating the accommodation that the parties would have reached had they actually bargained over the unsettled term. The at-will rule, however, by assuming that the parties are fully aware of the risks of wrongful discharge and are freely able to negotiate, creates the illusion that the employer and employee have already worked out the problems of job security in their mutual best interests before any dispute arises. It seems paradoxical that courts should take these assumptions for granted in the employment context, but adopt a more flexible position when dealing with commercial contracts.[24]

In summary, since a good-faith requirement is given broad application in commercial contracts, why should it not be given the same application in employment-at-will agreements? How can we possibly justify requiring good faith in business contracts and omitting it from employment contracts?

Legislative Action

While I steadfastly maintain that a cause of action for wrongful termination is fully justified as a matter of right, that alternative may not be the most practical for the following reasons:

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[22]*Id.*, at 551.

[23]Summers, *"Good Faith" in General Contract Law and the Sales Provisions of the Uniform Commercial Code*, 54 VA. L. REV. 195 (1968).

[24]*Protecting At-Will Employees Against Wrongful Discharge: The Duty to Terminate Only in Good Faith*, 93 HARV. L. REV. 1832–1833 (1980).

(1) Court dockets are already overburdened, and we probably do not have the judges necessary to process the expected volume of claims.
(2) A lawsuit is time consuming and expensive, and most rank and file employees cannot afford to retain an attorney.
(3) The amounts involved in most of these claims do not warrant a contingent-fee arrangement.
(4) Courts lack the administrative machinery necessary to implement a uniform policy.

Therefore, legislation appears to offer a more realistic solution. Legislation aimed at correcting serious inequities that impact individual employees who lack the bargaining power to protect their own interests is not a novel idea.

The major purpose of 20th century labor laws has been to protect employees from socially unacceptable treatment by market forces over which they have no control.[25] Thus, the principal purpose of the National Labor Relations Act (NLRA) of 1935 was to permit employees to establish rights through collective bargaining—rights that would then be enforced through grievance and arbitration procedures. At the time it was enacted, the NLRA appeared to provide an answer to the dilemma of at-will employees. However, after over a half century of experience we know it is effective only for a small part of the labor force—approximately 16 percent at the present time.

Once it became apparent that collective bargaining would not provide a remedy for the unequal bargaining power of most employees, Congress passed the following additional legislation prescribing certain rights of employees and minimum terms and conditions of employment:

1963 Equal Pay Act
1964 Title VII of the Civil Rights Act
1967 Age Discrimination in Employment Act
1970 Occupational Safety and Health Act
1974 Employee Retirement Income Security Act
1988 Plant Closing Notification Act
1988 Employee Polygraph Protection Act
1990 Americans with Disabilities Act

This last law provides some 43 million Americans with physical or mental disabilities protection against discriminatory employ-

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[25]Summers, *Labor Law as the Century Turns: A Changing of the Guard*, 67 NEB. L. REV. 7 (1988).

ment practices. In short, we have a well-established public policy of using legislation to provide certain minimums of socially acceptable standards of employment.

The need to augment existing policy with legislation that would protect employees against unfair dismissal is long overdue. It is noteworthy that the AFL-CIO Executive Council has endorsed the concept of federal and state wrongful discharge legislation "that safeguards workers against discharges without cause."[26] To date, most efforts at legislation have been unsuccessful. During the past decade bills have been drafted in such states as California, Michigan, and New Jersey to provide just-cause protection to unorganized workers. Oddly enough, in July 1987 Montana was the first state to enact a comprehensive law protecting at-will employees from wrongful discharge without good cause, as that term is defined in the Montana statute. Currently, the National Conference of Commissioners on Uniform State Laws is in the process of drafting a Uniform Employment Termination Act for enactment by state legislatures. Professor St. Antoine is the principal draftsman of that statute, and Arvid Anderson, a past president of the National Academy of Arbitrators, is also participating in the drafting process.

In sharp contrast to the absence of legislation protecting private sector employees from unjust dismissal, most federal and state employees may be discharged only for cause and, in some instances, have constitutional protection against unjust dismissal because state action is involved. For example, federal civil service employees are protected under the Civil Service Reform Act of 1978 which provides that an employee may be removed "only for such cause as will promote the efficiency of the service."[27] Even more substantial protection against unjust dismissal is accorded senior foreign service members under the Foreign Service Act of 1980 which precludes removal "until the member has been granted a hearing before the Foreign Service Grievance Board and the cause for separation established at such hearing."[28] Is there any justifiable reason why private sector employees vulnerable to unjust dismissal should be denied similar recourse?

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[26]*Statement of the Employment-at-Will Doctrine, AFL-CIO Executive Council*, 34 DAILY LAB. REP. E-8 (Feb. 23, 1987).

[27]5 U.S.C. §7513.

[28]22 U.S.C. §4010.

I firmly believe that federal legislation should be adopted prescribing minimum procedural and substantive standards in wrongful termination cases that would apply in the absence of a more comprehensive state law. Of course, such legislation would exclude permanent layoffs for business or economic purposes. State laws should be encouraged in order to provide necessary diversity and experimentation. I am mindful that many difficult issues must be resolved before state and federal statutes can be adopted, but we have people in this audience today who have spent long hours working on solutions to these issues.

Any discussion of the need for a wrongful termination statute would be unrealistic without recognizing the major obstacle to such legislation. Most partisan groups with legislative clout oppose this legislation based upon their perception that a statute would be contrary to their interests. But the time has come for our elected representatives to make a choice between partisan interests and the requirements of human dignity in a democratic society. Furthermore, in terms of our national interest, it is noteworthy that "foreign experience suggests that expanded job security rights will also promote productivity and a more cooperative work environment."[29]

The cynics may say or think: Well, Howard, isn't this all rather self-serving? Aren't you really interested in expanding arbitration opportunities for yourself and your colleagues? To them I would respond, first of all, there are several forums in which such cases could be heard and arbitration is just one of them. More importantly, many arbitrators have been outspoken on this subject because they are keenly aware of occasions when employers, acting with the utmost good faith, have relied upon erroneous facts or improper reasons in arriving at a decision to discharge an employee.

Conclusion

I have chosen to make employment-at-will the subject of my presidential address because the issue of employees vulnerable to wrongful termination has increased in magnitude as the organized part of the work force has declined. In the two decades following passage of the NLRA, there was reason to believe that collective bargaining would provide a solution for a majority of

[29]HARV. L. REV., *supra* note 24, at 1836.

employees. At least for the present, that belief no longer seems warranted. An alternative must be provided.

Former President Jimmy Carter has been justly criticized for certain events that occurred during his administration while a number of his accomplishments have been ignored. One of them was the elevation of human rights to an issue of international importance throughout his administration, a cause he has championed even to the present time. Quite clearly, the overwhelming majority of Americans endorse President Carter's position on human rights. But what human right in our society is more important than the right to continued employment? And what can be more devastating to human dignity than the unjustified loss of employment?

President George Bush advanced a similar theme in his inaugural address when he declared: "America is never wholly herself unless she is engaged in high moral principle." He stated that our national purpose is "to make *kinder* the face of the nation and *gentler* the face of the world."[30] I respectfully suggest that a federal statute providing minimum procedural and substantive standards in wrongful termination cases and encouraging states to adopt more comprehensive laws is one appropriate way to implement the President's goal of a "kinder and gentler" society.

Permit me to close on a personal note. When nominating committee chair, Jim Sherman, asked whether I would accept the nomination for president, I had the same kind of mixed emotions as occurred very early in my career when Ben Aaron asked if I would serve on a committee to draft the first collective bargaining ordinance for Los Angeles County. It was an important assignment that would be time consuming and it paid nothing—in short, a Ben Aaron pro bono specialty. I asked a mutual friend whether he thought I should accept the assignment. Without batting an eye, he replied, "For the privilege of working with Ben Aaron, you should pay him." So I accepted Ben's invitation and it was, indeed, a rare privilege.

When Jim Sherman called to inform me I was nominated, it was not necessary to ask the advice of a friend. I knew the job paid nothing and that it would take a lot of time. I also knew that I was being granted a unique privilege—the privilege of working with the finest group of people I have ever known in carrying out the objectives of this Academy. Thank you for granting me that privilege.

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[30]*Vital Speeches of the Day*, V. 55 (1989) at 259.