



The Bernard and Audre
RAPOPORT CENTER
For Human Rights and Justice

Bibliography

Labor, Human Rights and Inequality

This bibliography has been prepared by the Rapoport Center for Human Rights and Justice at the University of Texas School of Law as part of a larger project on the relationship between inequality, human rights and labor.

It aims to identify resources of value for scholars and legal practitioners thinking about the relationship between inequality, human rights and labor. Although the language of human rights has been utilized by labor activists to promote more just and equitable working conditions, there are also potential tensions between the goals and tools of human rights law and labor law.

This bibliography includes primary and secondary texts that speak to the intersection of inequality, human rights and labor, which often conceptualize the relationship between them in diverse ways. The articles that follow are organized into nine thematic areas, including sections focused on the intersection of human rights law and labor law, sections on specific rights as well as on contemporary challenges of globalized production and innovative means of organizing and advocating for workers' rights.

Please be advised that this bibliography is subject to revision, and will be updated periodically to reflect the Rapoport Center's continuing work on the intersection between labor, inequality and human rights. If you are an author with a piece of scholarship that would be appropriate for inclusion in this bibliography, please email the work, along with an abstract, to Kate Taylor (ktaylor@law.utexas.edu) for editorial consideration.

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LABOR, HUMAN RIGHTS AND ECONOMIC INEQUALITY

Labor Rights as Human Rights

Scholarly Texts

Allen, Robin et al., *Employment Law and Human Rights* (Oxford University Press, 2nd edition, 2007).

- Abstract: “The Human Rights Act 1998 is already having a profound effect on the UK legal system. Blackstone's Human Rights Series is a collection of publications providing expert, practical advice for lawyers to meet this challenge, focusing on the implications of the Act in key areas of practice. *Employment Law and Human Rights* provides a comprehensive guide to the impact of the Human Rights Act on UK employment law.”

Alston, Philip et al (eds), *Labour Rights as Human Rights*, P. Alston et al. ed., (Oxford University Press, 2005).

- Summary: “Are efforts to protect workers' rights compatible with the forces of globalization? How can minimum standards designed to protect labor rights be implemented in a world in which national labor law is more and more at the mercy of international forces beyond its control? The contributors to this volume argue that international agreements and institutions are of central importance if labor rights are to be protected in a globalized economy, exploring some of the options that are open to governments, civil society, and the labor movement in the years ahead.”

Alston, Philip and James Heenan, “Shrinking the International Labor Code: An Unintended Consequence of the 1998 ILO Declaration on Fundamental Principles and Rights at Work?” *International Law and Politics*, no.36 (2004).

- Abstract: “The World Commission on the Social Dimensions of Globalization presented its final report in 2004. In addressing the central issue of what future, if any, international labor standards have in an era of competitive globalization, the Commission focuses heavily on the 1998 Declaration on Fundamental Principles and Rights at Work. The authors characterize that Declaration as part of an effort to replace the broader labor rights agenda with a narrow focus on a much more limited corpus of four core labor standards and to move towards an approach that is fundamentally promotional, rather than grounded in firm legal obligations and involving targeted institutional responses to violations of labor rights. They consider three ways in which recent developments undermine the traditional approach: (i) the move from a uniform definition of standards to an ad hoc system; (ii) the privileging of a core set of largely procedural and essentially civil and political labor rights, to the exclusion of vital social rights; and (iii) the use of determinedly soft promotional techniques of implementation. The authors conclude that the World Commission approach reinforces these trends and argue that urgent remedial steps will need to be taken if the ILO is to continue to defend labor rights in the years ahead.”

Antione, Rose-Marie Belle, “Constitutionalizing Labour in the Inter-American System on Human Rights,” *Research Handbook on Transnational Labour Law*, eds. Adelle Blackett and Anne Trebilcock (New York: Edward Elgar, 2015).

- Abstract: “Article 26 of the American Convention on Human Rights requires member states to progressively implement the broad economic, social, and cultural (ESC) rights that are implicit in the Charter of the Organisation of American States (OAS). The Inter-American Court of Human Rights (IACHR) has identified these implicit OAS Charter ESC rights as extending to labour rights, and IACHR jurisprudence has held that ESC rights overlap with civil and political rights as a means to overcome that ESC rights were otherwise non-justiciable. The rights at this intersection include prohibitions on discrimination, as well as access to justice and due process in the labour context. One of the mechanisms that has emerged to assist in concretising ESC rights is the San Salvador Protocol, which includes labour rights and an extensive range of obligations, both positive and negative, immediate and incremental. Some labour rights, such as the right to associate—which has an independent explicit basis in the convention—and the right to work have received robust protection within the Inter-American system, but there has been much greater reluctance to push into areas such as a right to strike and in protecting cuts to salaries and pensions, even when these protections have a basis in normative texts within the system. This reluctance may signal that the progressive entrenchment of ESC rights in the Inter-American system operates only at general and abstract level, with little effect in concrete, individual cases.”

Appelbaum, Richard and Nelson Lichtenstein (eds), *Achieving Workers' Rights in the Global Economy*, (Cornell University Press, 2016).

- Summary: “The world was shocked in April 2013 when more than 1,100 garment workers lost their lives in the collapse of the Rana Plaza factory complex in Dhaka. It was the worst industrial tragedy in the two-hundred-year history of mass apparel manufacture. This so-called accident was, in fact, just waiting to happen, and not merely because of the corruption and exploitation of workers so common in the garment industry. In *Achieving Workers' Rights in the Global Economy*, Richard P. Appelbaum and Nelson Lichtenstein argue that such tragic events, as well as the low wages, poor working conditions, and voicelessness endemic to the vast majority of workers who labor in the export industries of the global South arise from the very nature of world trade and production.

Given their enormous power to squeeze prices and wages, northern brands and retailers today occupy the commanding heights of global capitalism. Retail-dominated supply chains—such as those with Walmart, Apple, and Nike at their heads—generate at least half of all world trade and include hundreds of millions of workers at thousands of contract manufacturers from Shenzhen and Shanghai to Sao Paulo and San Pedro Sula. This book offers an incisive analysis of this pernicious system along with essays that outline a set of practical guides to its radical reform.”

Baker, Dean, *Rigged: How Globalization and the Rules of the Modern Economy Were Structured to Make the Rich Richer* (Center for Economic and Policy Research, 2016).

- Summary: “There has been an enormous upward redistribution of income in the United States in the last four decades. In his most recent book, Baker shows that this upward redistribution was not the result of globalization and the natural workings of the market. Rather it was the result of conscious policies that were designed to put downward pressure on the wages of ordinary workers while protecting and enhancing the incomes of those at the top. Baker explains how rules on trade, patents, copyrights, corporate governance, and macroeconomic policy were rigged to make income flow upward.”

Blackett, Adelle and Anne Trebilcock (eds.) *Research Handbook on Transnational Labour Law* (Edward Elgar, 2015).

- Summary: “Explore[s] the emergence of transnational labour law as a field, along with its contested contours. The expansion of traditional legal methods, such as treaties, is juxtaposed with the proliferation of contemporary alternatives such as indicators, framework agreements and consumer-led initiatives. Key international and regional institutions are studied for their coverage of such classic topics as freedom of association, equality, and sectoral labour standard-setting, as well as for the space they provide for dialogue. The volume underscores transnational labour law’s capacity to build bridges, including on migration, climate change and development.”

Brudney, James, "The Internationalization of Sources of Labor Law" *University of Pennsylvania Journal of International Law*, no. 39(1) (2017).

- Abstract: This article examines in depth an important but underappreciated development in international labor law: how norms promulgated by the International Labor Organization (ILO) have affected the development and implementation of domestic labor laws and practices since the early 1990s. The newly globalized focus of labor law—energized by substantial expansions in international trade and investment—has been recognized by scholars, practitioners, and governments, but it has not previously been explored and analyzed in this systematic way. The article focuses on two central regulatory areas—child labor and freedom of association—and relies on doctrinal and policy developments in these areas, as evidenced by the actions of legislatures, courts, and executive branches in more than 20 countries. In doing so, the article addresses how international labor standards have influenced national labor law and practice in the Americas (excluding the U.S.)—directly through the soft-law route of convention ratification and ILO supervisory monitoring, and indirectly through trade agreement labor provisions that incorporate ILO norms. The resultant changes in domestic laws and practices have been evolutionary rather than transformative, and developments in law outpace those in practice, but within these parameters the changes have been substantial. The article then places this internationalizing trend in the context of two recognized theories that seek to explain the socialization of human rights law.

Compa, Lance, "National and International Labour Rights," *Voices at Work: Continuity and Change in the Common Law World*, eds. Alan Bogg and Tonia Novitz (Oxford University Press, 2014).

- Summary: "This chapter reviews the application of international labour and human rights standards in national labour law systems. A survey of examples from several countries is followed by a case study focused on the United States. The American labour law system is resistant to international influences, but advocates have found creative 'soft law' ways to inject a human rights voice into labour law discourse. Such use of international standards has led to concrete achievement in some workers' struggles. Still, the human rights framework is contested among labour rights advocates, who debate whether it undermines or promotes workers' solidarity and collective action."

Compa, Lance, Labor's New Opening to International Human Rights Standards, *WorkingUSA: The Journal of Labor and Society*, no. 11(1) (2008).

- Abstract: "Most trade unionists were oblivious to international human rights movement in the last half of the twentieth century. For their part, human rights advocates did not include workers' rights on their agenda. But in the late 1990s, labor and human rights advocates came together to reframe workers' collective action as a human rights mission rather than a self-interested syndical action. A new labor-human rights alliance built a wide-ranging discourse of workers' rights as human rights. The expertise and knowledge attributable to human rights actors gave their critique of workers' rights violations in the U.S. a high measure of authoritativeness compared with trade unionists making the same claims. Critics suggest that a human rights frame moves away from a class analysis, de-emphasizing principles of industrial democracy and mass action in favor of individual rights. This article argues that a human rights argument can help win needed labor law reform to protect workers' rights."

Coxson, Christopher R., "The 1998 ILO Declaration on Fundamental Principles and Rights at Work: Promoting Labor Law Reforms Through the ILO as an Alternative to Imposing Coercive Trade Sanctions," *Dickinson Journal of International Law*, no. 17 (1998-1999).

- Summary: "The Comment concludes...that the 1998 ILO Workers' Rights Declaration reestablishes the preeminence of the ILO as the most competent international body for the promulgation, supervision and promotion of international labor standards. Adoption of the Declaration reduces pressures on other international bodies, particularly trade organizations such as the WTO, to adopt trade sanctions as the appropriate means of enhancing workers' rights and improving working conditions. The Declaration provides an important means for promoting workers' rights and labor standards among U.S. trading partners around the world. At the same time, the Declaration's follow-up mechanisms may expose weaknesses in current U.S. labor laws and labor-management practices. Consistent with the Declaration's promotional objectives, the result may be additional pressures on Congress to reform U.S. labor and employment statutes to conform to the principles of the international standards enunciated in the Declaration."

Dannin, Ellen J., *Taking Back the Workers' Law: How to Fight the Assault on Labor Rights* (ILR Press, 2006).

- Summary: In this book, Ellen Dannin argues that the public perception of the National Labor Relations Board actually stems from the effects of judicial decisions. These decisions are seen as rewriting, and limiting the effectiveness of the National Labor Relations Act. She suggests a litigation strategy similar to the one used by the NAACP Legal Defense Fund in the 1930s in order to overturn judicial decisions that have taken away from the NLRA and reduced workers' rights. In her opinion, the restriction of collective bargaining laws in the U.S. means that the U.S. is not fulfilling its international law obligations because freedom to join unions is a fundamental human right. She cites a HRW report title *Unfair Advantage* in order to support this contention.

Fenwick, Colin and Tonia Novitz (eds), *Human Rights at Work: Perspectives on Law and Regulation* (Hart Publishing, 2010).

- Summary: "This collection of essays examines whether this is an appropriate or effective strategy. The book begins by considering the translation of human rights discourse into labour standards, namely how theory might be put into practice. The remainder of the book tests hypotheses posited in the first chapter and is divided into three parts. The first part investigates, through a number of national case studies, how, in practice, workers' rights are treated as human rights in the domestic legal context. These ten chapters cover African, American, Asian, European, and Pacific countries. The second part consists of essays which analyse the operation of regional or international systems for human rights promotion, and their particular relevance to the treatment of workers' rights as human rights. The final part consists of chapters which explore regulatory alternatives to the traditional use of human rights law. The book concludes by considering the merits of various regulatory approaches."

Freedman, Sandra "Equality Law: Labour Law or an Autonomous Field?" in *The Autonomy of Labour Law*, eds. Alan Bogg, Cathryn Costello, ACL Davies, and Jeremias Prassl (Hart Publishing, 2015).

- Synopsis: "To what extent is labour law an autonomous field of study? This book is based upon the papers written by a group of leading international scholars on this theme, delivered at a conference to mark Professor Mark Freedland's retirement from his teaching fellowship in Oxford. The chapters explore the boundaries and connections between labour law and other legal disciplines such as company law, competition law, contract law and public law; labour law and legal methodologies such as reflexive governance and comparative law; and labour law and other disciplines such as ethics, economics and political philosophy. In so doing, it represents a cross-section of the most sophisticated current work at the cutting edge of labour law theory."

Fudge, Judy, "The New Discourse of Labor Rights: From Social to Fundamental Rights?" *Comparative Labour Law & Policy Journal*, no. 29 (2007).

- Abstract: “This paper explores the emergence of the new discourse of labour and social rights in the world of work and focuses in particular on how this discourse is being used in the European Union and the ILO. The new normative language responds to the need to re-institutionalize the employment relationship in light of economic restructuring, the breakdown of the standard employment relationship, and the challenge to traditional forms of collective representation. It also involves a realignment of the relationship between social rights and the market, and a reconceptualization of the juridical nature of social rights. The idea of social rights relating to work is examined from three perspectives - genealogical, conceptual, and normative. Labour and social rights emerged at a particular time and place, and they have a particular relationship to other human rights. This legacy shapes how labour and social rights have been understood. The lineage of labour and social rights starting with T.H. Marshall's influential conception in the aftermath of World War II and ending with the contemporary discourse is sketched in the next part. The emphasis is on illustrating the extent to which the new language of labour and social rights is a response to the new phase of market expansion associated with globalization and neo-liberalism. The third part provides a bridge from the genealogical to the conceptual and normative approaches to understanding labour and social rights by shifting focus to examine elements in the new discourse of labour and social rights, especially the increased prominence of law, and the conventional typology of different kinds of rights. Labour rights are used to illustrate some of the weaknesses of the prevailing typology as an analytic framework. However, instead of offering a new typology of different types of rights, the fourth part offers a taxonomy of the different dimensions of labour and social rights, which concentrates on the juridical nature of social rights in the EU. The final part provides a brief discussion of the normative basis of the new discourse of labour and social rights at the EU and ILO, which invokes the work of Amartya Sen, especially his concept of capability.”

Gross, J. A and Compa, L. A (eds) *Human Rights in Labor and Employment Relations: International and Domestic Perspectives* (ILR Press, 2009).

- Summary: This text presents a range of scholarship on labor rights and human rights. The introduction notes that these two rights were initially seen as distinct but began to merge in the 1990s and with the emergence of NAFTA. The use of human rights language when discussing labor by organizations like Human Rights Watch and Oxfam International in the early 2000s also contributed to this shift.

Kawar, Leila, “Making the Machine Work: Technocratic Engineering of Rights for Domestic Workers at the International Labour Organization,” *Indiana Journal of Global Legal Studies* 483-511, no. 21 (2014).

- Abstract: “In September 2013, the International Labour Organization (ILO) Convention concerning decent work for domestic workers entered into force, thereby bringing domestic workers into the mainstream of labor law. This article explores how the interests of the ILO’s constituents were shaken up and reconfigured to build support for new labor protections amidst the shifting global context of deregulation. I argue that technocratic devices—charts, questionnaires, and paragraph formatting—wielded by ILO

insiders contributed to this development by creating epistemic space for this new category of employees to be recognized and for consensus to be secured on appropriate labor standards for this group. I draw on a pragmatist ethnographic approach to show how the ILO's lawmaking apparatus melded technical law and grassroots activism so as to make domestic worker rights become a legal reality.”

Kolben, Kevin, “Labor Rights as Human Rights,” *Virginia Journal of International Law* 449, no. 50 (2009).

- Summary: The author traces the way labor activists in the United States have begun using international human rights instruments due to the failure of domestic labor laws to protect workers. Human rights organizations and scholars have also paid more attention to labor rights in recent years. In the U.S., this is primarily aimed at reforming domestic labor laws. Additionally, human rights assists with tackling issues of corporate non-compliance with international standards and provides another way of understanding how global supply chains are operating. The author emphasizes that scholars and activists should be more careful in understanding the ideological and conceptual differences between human rights and labor rights in order to more effectively protect workers in the long-term. For example, labor rights are seen as doing a better job of addressing issues of economic justice and workplace democracy than human rights.

Kumar, Vidya, “Rethinking the Convergence of Human Rights and Labour Rights in International Law: Depoliticisation and Excess,” *Law in Transition: Human Rights, Development and Transitional Justice*, eds. Ruth Buchanan and Peer Zumbansen, (Hart Publishing: 2014).

- Summary: “Law has become the vehicle by which countries in the 'developing world', including post-conflict states or states undergoing constitutional transformation, must steer the course of social and economic, legal and political change. Legal mechanisms, in particular, the instruments as well as concepts of human rights, play an increasingly central role in the discourses and practices of both development and transitional justice. These developments can be seen as part of a tendency towards convergence within the wider set of discourses and practices in global governance. While this process of convergence of formerly distinct normative and conceptual fields of theory and practice has been both celebrated and critiqued at the level of theory, the present collection provides, through a series of studies drawn from a variety of contexts in which human rights advocacy and transitional justice initiatives are colliding with development projects, programmes and objectives, a more nuanced and critical account of contemporary developments. The book includes essays by many of the leading experts writing at the intersection of development, rights and transitional justice studies. Notwithstanding the theoretical and practical challenges presented by the complex interaction of these fields, the premise of the book is that it is only through engagement and dialogue among hitherto distinct fields of scholarship and practice that a better understanding of the institutional and normative issues arising in contemporary law and development and transitional justice contexts will be possible.”

Langille, Brian, “Core Labour Standards – the True Story” *European Journal of International Law* 1, no. 16 (2005).

- Abstract: “The concept of ‘core labour rights’ has, over the last decade or so, assumed a central role in debates about the role of international labour law in an integrated world economy. Some, including Philip Alston, see this development as a retreat from and a threat to the existing international labour law regime, especially the International Labour Organization’s international labour code. On this view the new concentration upon core rights undermines the existing regime from within by narrowing its focus, weakening the legal status of the core rights, relegating the ‘non-core’ to a second-class status, watering down its ‘enforcement’ mechanisms, and so on. This view, while popular, is available only on a very narrow and conventional understanding of the purpose of international labour law. A better understanding is available which enables us to see core labour rights as conceptually coherent (and not politically arbitrary), morally salient (and not merely part of an empty neo-liberal conspiracy) and pragmatically vital to the achievement of our true goals, including the ‘enforceability’ of the ‘non-core’ (and not an undermining of the whole regime from within). This essay defends this second and positive account of core rights by reacting to Philip Alston’s recent essay in this journal, which is taken as the most comprehensive and aggressive articulation of the ‘anti-core rights’ point of view.”

Leary, Virginia A. “*The Paradox of Workers’ Rights as Human Rights*”, in *Human Rights, Labor Rights and International Trade*, Compa, Lance and Stephen Diamond, eds., (Philadelphia, University of Pennsylvania Press, 1996).

- Summary: The Chapter points out that workers’ rights are also human rights; but little attention is being paid to workers’ rights by the human rights movements across the world. Similarly, those involved in trade union organizing and work on labour rights do not involve human rights movement in its work and defense of workers’ rights. This has therefore created a paradoxical situation in that both the human rights movement and workers’ right movement are inter-linked and working to attain social justice but they hardly collaborate or support each other’s work. The chapter calls for a greater fusion of both movements under the umbrella of social justice for the better attainment of the goals of the both movements within the democratic space.

Mantouvalou, Virginia, “Labour Rights in the European Convention on Human Rights: An Intellectual Justification for an Integrated Approach to Interpretation” *Human Rights Law Review* 52-555, vol. 13(3) (2013).

- Abstract: “Labour rights have been neglected in human rights law. Classified usually as social rights, they have been excluded from key human rights conventions. Recently, the European Court of Human Rights has developed a technique, known as an ‘integrated approach to interpretation’, because it integrates social and labour rights in the European Convention on Human Rights. The first part of this article presents case law and debates on the adoption of this technique, and also discusses the example of Canada, where

similar developments are taking place. It finds controversy in literature, and uncertainty in judicial decision-making. The second part, therefore, develops a normative justification for the integrated approach in interpreting labour rights. This is based on freedom, a key value underlying civil and political rights. Negative accounts of freedom are inadequate, though, for reasons that the article explains. Instead, it analyses positive freedom in light of the theory of capabilities, which leads to the collapse of sharp divisions between groups of rights. A positive account of freedom as capability *requires* the protection of labour rights under the European Convention on Human Rights, and leads to the development of important principles on human rights at work.”

McIntyre, Richard P., *Are Worker Rights Human Rights?* (University of Michigan Press, 2008).

- Summary: Richard McIntyre's book discusses the tensions between individual rights and collective rights in the context of labor unions. He supports the use of grassroots labor organizations to leverage collective bargaining power and enhance human rights protections for workers. Part of what makes this text unique is the fact that McIntyre, an economics professor, engages in a Marxian analysis of labor organizing issues that incorporates human rights and social justice considerations. He suggests moving away from a human rights system that prioritizes personal rights at the cost of collective rights.

Mundlak, Guy, “Human Rights and Labor Rights: Why Don’t the Two Tracks Meet,” *Comparative Labor Law & Policy Journal* 217, no. 34 (2012).

- Summary: Guy Mundlak's article starts by analyzing litigation in Israel concerning the privacy rights of employees. In describing the case of Tali Issakof-Inbar, where a woman's emails were used against her by her employer to counter claims of pregnancy discrimination, he notes the tensions between the human rights organizations and labor rights groups and their differing approaches towards negotiation. Groups of labor organizers prefer negotiation formats that allow for "quid pro quo" and joint workplace governance whereas human rights advocates tend to focus solely on the rights of the workers. Although labor organizations had filed a collective agreement which sought to remedy the situation and alter employer behavior, the courts sided with the civil rights associations who joined the case to advocate for greater extension of employees' privacy rights. Mundlak also traces the history of labor unions and collective bargaining in Israel, noting the decrease in union membership and an increase in regulatory activity that governs workplaces. The use of the human rights framework is described as revealing the way in the law of labor is becoming more individualized. This intersection of human rights and labor is seen as resulting from the notions that 1) working conditions are part of human rights, and 2) both the government and private entities may pose human rights risks. With the decrease in collective bargaining, NGOs entered to assist vulnerable workers. However, the author distinguishes the way in which civil society organizations are driven by different motivations, helping to explain the sometimes competing approaches between human rights groups and trade unions. Civil society organizations have been more likely to advance issues of equality such as anti-discrimination law, civil rights, and social rights, whereas trade unions were crucial to the challenges over

freedom of association laws. Additionally, because many anti-discrimination precedents voided collective agreements, trade unions were more likely to challenge the work of civil society and human rights organizations doing this work. Additionally, areas of conflict are described, such as the increase in the use of class action lawsuits which in some contexts, like anti-discrimination law, may trump collective agreements. The paper concludes by discussing the two movements could cooperate and collaborate more successfully.

Rittich, Kerry, "Between Workers' Rights and Flexibility: Labor Law in an Uncertain World" *St. Louis University Law Review* 567, no. 54 (2010).

- Excerpt: "It is no secret to anyone in the field of labor law that we are at a critical juncture on the question of workplace governance, and that this is a moment of deep transformation with respect to both the context of work and the norms which govern work. For this reason, most of the work of labor and employment scholars falls broadly under the heading, "[T]he new economy and what it means for the law of work." Rather than simply matter of disciplinary preoccupation, however, the upheaval in the field of labor law involves issues of general importance. As the financial crisis takes its toll on the broader economy, it is increasingly clear that for insight into many of the most pressing policy issues on the public agenda, we can hardly do better than to focus on labor markets and the world of work. Work continues to function, in the new economy as in the old, as a dense transfer point at which concerns ranging from social inclusion, stability, equality, and democracy to economic growth and competitiveness, converge, intermingle, and sometimes conflict. For these reasons, appreciating the transformation of work and work norms is central to grasping the changes of pursuing both economic growth along with security and social justice in the contemporary world."

Rittich, Kerry, "Global Labour Policy as Social Policy" *Canadian Labour and Employment Law Journal* 227, no. 14 (2008).

- Abstract: "Focusing on the development and market reform agendas of global economic institutions, this paper explores how the transformation of international governance norms, private law rules and business regulation has affected social objectives, especially those relating to redistributive justice. The author argues that social policy in the global arena has effectively been collapsed into labour market policy, and posits that rising inequality within and between states may be linked to a widely accepted macroeconomic program which gives market forces an enhanced role in social and economic ordering. Characteristic of that program is the OECD's highly influential Jobs Strategy, which in both its 1994 and 2006 versions advocates the pursuit of economic growth by increasing labour market flexibility, curbing employment protections, decentralizing collective bargaining, and ensuring that social expenditures and social insurance are designed to "make work pay." Recent OECD findings, however, cast doubt on the basic premise that policies of labour market flexibility generate either improved economic growth or better employment outcomes. In addition, the Jobs Strategy fails to address three major concerns around work in the new economy: unemployment and under-employment; the rise of precarious work; and the labour market consequences of unpaid work, most of

which continue to be experienced by women. Given the concurrent emphasis on labour market flexibility, the emerging concept of "core labour rights" is unlikely, on its own, to provide an adequate foundation for a reconstructed system of worker protections. In the absence of evidence showing better labour market outcomes in those countries which have implemented the Job Strategy, and given the indications that labour market institutions may also contribute to better economic outcomes, there appears to be no compelling reason to adopt policies that, ultimately, reverse the decommodification of labour and recontractualize the employment relationship.”

Santos, Alvaro, “Three Transnational Discourses of Labor Law in Domestic Reforms,” *University of Pennsylvania Journal of International Economic Law*, no. 32 (2010).

- Current labor law debates, in the United States and elsewhere, reflect entrenched discursive positions that make potential reform seem impossible. This Article identifies and examines the three most influential positions, which it names the “neoliberal,” and the “rights-based” approach. It shows that these discursive positions are truly transnational in character. In contrast with conventional wisdom, which accepts the incompatibility of these positions, this Article creates a conceptual framework that productively combines elements from each to enrich the debates over labor law reform and to foster institutional imagination. Applying this framework, the Article examines the collective bargaining systems of the United States and Mexico comparatively. It illustrates how the Mexican labor law regime could embrace the democratic aspirations of the rights-based position (dominant in the United States) without eliminating labor rules that facilitate collective bargaining. In contrast, the American labor law regime could embrace the aspirations of the social position (dominant in Mexico) to ease workers’ organization and facilitate collective bargaining, without undermining the system. labor law debates, in the United States and elsewhere, reflect entrenched discursive positions that make potential reform seem impossible. This Article identifies and examines the three most influential positions, which it namesation in domestic reform.

Santos, Alvaro, “The Trouble with Identity and Progressive Origins in Defending Labor Law,” in *Critical Legal Perspectives on Global Governance: Liber Amicorum David M. Trubek*, eds. Gráinne de Búrca, Claire Kilpatrick & Joanne Scott (Hart, 2014)

- Summary: In this article, Santos examines two prominent arguments which opponents of labor flexibility have used to defend labor regulation: that labor regulation is closely associated with a nation’s identity, and that it is inherently progressive. Santos focuses on the case of Mexico to show both of these arguments’ appeals and their drawbacks. Challenging Mexico’s historical narrative, Santos shows how social law was, and still is, a transnational phenomenon, not necessarily associated with any one nation’s identity. In addition, Santos examines how, even at the moment of its creation, social law was – and still is- politically indeterminate and thus its inherent association with progressive politics is unwarranted. Finally, Santos argues that the constitutionalisation of social rights does not guarantee progressive results. These insights from Mexico may be relevant to

contemporary debates about social regulation elsewhere. In particular, Santos examines the strong parallels between Mexico and the debate about social regulation in Europe.

Scheper, Christian, "From naming and shaming to knowing and showing": human rights and the power of corporate practice," *The International Journal of Human Rights*, 19, no. 6 (2015) 673.

- "A recent phenomenon in corporate governance discourses is a strong recourse to human rights. Human rights awareness and corporate policies have become part of the credo of 'good' business. This is also taken up in international institutions, such as the United Nations Guiding Principles on Business and Human Rights, which assign a distinct human rights responsibility to transnational enterprises. The article interprets this transformation through the lens of the 'sociology of critique'. It argues that the concept of corporate responsibility for human rights represents a capacity of capitalism to absorb fundamental criticism and incorporate the very values that formed the ground for critique. The article proceeds in three steps: First, I present the corporate responsibility to respect human rights as a reaction to fundamental critique against global corporate giants that emerged as part of a broad 'anti-globalisation' movement in the 1990s. Second, I argue that today multinationals 'know and show' responsibility and make human rights a subject of management strategies and tools. Human rights are being incorporated and translated into corporate policy programmes. This allows companies to disarm most fundamental strands of criticism. Third, I draw conclusions from this perspective on the productive power of business practice and implications for critique."

Weiss, Marley S., "Ruminations on the Past, Present and Future of International Labor Standards: Empowering Law in the Brave New Economic World," *Good Society* no. 16 (2008).

- Abstract: "International labor standards are among the oldest international standards pertaining to the conduct of private, as well as public, economic actors. Far from being settled, however, nearly every aspect of the current international labor standards regime is in flux: the role of labor standards in the international legal, economic, political, and social order, as well as in the parallel domestic orders; the modes by which standards are brought into being; the manner and means of their implementation and enforcement; the degree to which they may be binding solely on nation-state parties, and enforceable only at their behest; and the extent to which private actors, such as employer associations, trade union associations, worker rights non-governmental organizations, and individuals, play roles in the creation and enforcement of international labor norms. Although the substantive content of international labor standards is changing at a far less blistering pace, important alterations in priorities for these standards also gradually are becoming manifest. This article sketches out the historical trajectory of transformation in the manner and means, participants and roles involved in creation, implementation and enforcement of international labor standards, as well as their content. It concludes with some speculative remarks about their future. The future of international labor standards may be more formal standards, covering fewer and fewer countries, companies and workers, posing ever greater obstacles to turning the law on the books into workers' reality in fact. On the other hand, innovative trade union and worker organizations are combining across boundaries to push the limits of transnational labor cooperation,

pooling their economic and political power to improve each other's collective bargaining power. In the longer term, at least some of the workers of the world may unite, combining their shared collective leverage with the moral suasion of international norms, to make a reality of international labor standards.”

Labor, Economic Inequality and Globalization

Scholarly Texts

Antonczyk, Dirk, Bernd Fitzenberger and Katrin Sommfeld, “Rising Wage Inequality, the Decline of Collective Bargaining, and the Gender Wage Gap,” *Labour Economics* 835-847, no. 17:5 (2010).

- Abstract: “This paper investigates the increase in wage inequality, the decline in collective bargaining, and the development of the gender wage gap in West Germany between 2001 and 2006. Based on detailed linked employer-employee data, we show that wage inequality is rising strongly – driven not only by real wage increases at the top of the wage distribution, but also by real wage losses below the median. Coverage by collective wage bargaining plummets by 16.5 (19.1) percentage points for male (female) employees. Despite these changes, the gender wage gap remains almost constant, with some small gains for women at the bottom and at the top of the wage distribution. A sequential decomposition analysis using quantile regression shows that all workplace related effects (firm effects and bargaining effects) and coefficients for personal characteristics contribute strongly to the rise in wage inequality. Among these, the firm coefficients effect dominates, which is almost exclusively driven by wage differences within and between different industries. Labor demand or firm wage policy related effects contribute to an increase in the gender wage gap. Personal characteristics tend to reduce wage inequality for both, males and females, as well as the gender wage gap.”

Blackett, Adelle, “Introduction: Labor Law and Development—Perspectives on Labor Regulation in Africa and the African Diaspora,” *Comparative Labour Law and Policy Journal* 30, no. 2 (2011).

- Abstract: “Our approach is to emphasize North-South relations in the regulation of labor in the new economy; this includes considering the ways in which economic restructuring re-creates conditions of the South in the North. We have been inspired by initiatives such as Third World Approaches to International Law (TWAAIL), the International Network on Transformative Employment and Labor Law (INTELL), and Women in Informal Employment Globalizing and Organizing (WIEGO). Our area of focus is deliberately on Africa and the African diaspora, regions too often overlooked in discussions of globalization and labor law in the global North. To focus on these regions requires researchers to be alive to the importance of earlier forms of radicalized and gendered market construction, including through triangular trade, the enslaved movement of person, and colonialism. It also entails a contemporary approach attuned to the significance of the extractive economy to technological innovation, to the psychological

dimensions of post-colonialism currently a real part of the "globalization of the mind," as well as to peoples' resource-fueled territorial dislocation and labor migratory effects."

Carrington, D & Jones, T. (eds), *Law and Class in America: Trends Since the Cold War* (New York University Press, 2006).

- Summary: This text is a collection of essays by legal scholars on whether class differences have been exacerbated by legal reforms in the U.S. It chronicles issues from the end of the Cold War to the early 2000s, and includes essays on a range of topics, including anti-trust, bankruptcy, tax, and election law. The introduction notes that some of the essays hypothesize potential solutions to the problem of increasing economic inequality.

Dimick, Matthew "Should the Law Do Anything About Inequality," *SUNY Buffalo Legal Studies Research Paper No. 2016-011*, accessed Nov. 10, 2016, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2723476.

- Abstract: "What should be done about rising income and wealth inequality? Should the design and adoption of legal rules take into account their effects on the distribution of income and wealth? Or should the tax-and-transfer system be the exclusive means to address concerns about inequality? A widely-held view argues for the latter: only the tax system, and not the legal system, should be used to redistribute income. While this argument comes in a variety of normative arguments and has support across the political spectrum, there is also a well-known law-and-economics version. This argument, known as the "double-distortion" argument, is simply stated. Legal rules that redistribute income only add to the economic distortions that are already present in the tax system. It would therefore be better for everyone, and especially the poor, to instead adopt an efficient, nonredistributive legal rule, and increase redistribution through the tax system.

This Article challenges the double-distortion argument from a law-and-economics perspective. There are two main arguments, in addition to several other subsidiary points. First, in the abstract, there is no reason to believe that legal rules that have redistributive effects will always reduce efficiency; indeed, they can sometimes increase efficiency. Examples from the regulation of product markets, labor markets, and financial markets underscore this claim. In these cases, legal redistribution is more efficient than redistribution through the tax system. Second, legal rules are likely to be more attractive than taxation precisely in cases where inequality itself or normative concerns about inequality is high. Under the optimal tax policy, higher inequality or greater concern about inequality will justify larger tax distortions. Therefore, a particular legal rule is more likely to be more efficient than the optimal tax policy under these circumstances. The ultimate conclusion is that a mix of legal rules and taxation, rather than taxation exclusively, will be the best way to address economic inequality."

Esbenshade, Jill Louise *Monitoring Sweatshops: Workers, Consumers, and the Global Apparel Industry*, (Temple University Press, 2004).

- Synopsis: “Monitoring Sweatshops offers the first comprehensive assessment of sweatshop monitoring. Within, readers will learn of the government's efforts to persuade retailers and clothing companies to monitor themselves with the use of private monitors. The author shows the different approaches firms have taken, and the range of monitors chosen, from the big accounting companies to local non-profits. Readers will also see how the efforts of the anti-sweatshop movement forced these companies to do the same overseas. When monitoring is understood as the result of the withdrawal of governments from enforcing labor standards as well as the weakening of labor unions, it becomes clear that we are experiencing a shift from a social contract between workers, businesses and government to one that Esbenshade calls the social responsibility contract. considerable attention to the most thorough of the Department of Labor's programs, the one in Los Angeles. Readers are also guided through the maze of alternative approaches to deciding the questions of what should be monitored (and by who) that are being tried in workplaces throughout the world.”

Estreicher, Samuel and Miriam Cherry, *Global Issues in Employment Law*, (West Academic Publishing, 2008).

- Summary: This book by Samuel Estreicher is intended to introduce various employment issues in the context of international, transnational, and comparative law issues in employment law courses. According to the publisher, this book emphasizes primary materials such as statutes, proposed guest worker legislation, International Labour Organization conventions, Organization for Economic Cooperation and Development guidelines, company codes of conduct, World Trade Organization rulings, AFL-CIO complaints, European Union directives, and Alien Tort Claims Act decisions. The materials have been carefully edited to facilitate classroom discussion and further student research. The five main areas of interest from the text are: 1) labor and immigration issues; 2) international labor rights and norms; 3) the impact of liberal trade regimes on workers in both developed and developing countries; 4) litigation regarding international labor issues that is based in the U.S.; and, 5) differences in labor laws internationally.

Flanagan, Robert J., *Globalization and Labor Conditions: Working Conditions and Worker Rights in a Global Economy* (Oxford: Oxford University Press, 2006).

- Abstract: “This book explains the effects of three key mechanisms of globalization international trade, international migration, and the activities of multinational companies on working conditions and labor rights around the world. Drawing on analyses of a database on international labor conditions assembled for this project and a growing research literature on globalization and labor conditions, the book reveals how conditions have changed during the late 20th century globalization, and presents and evaluates evidence on links between globalization mechanisms and labor conditions. The book presents and evaluates evidence on how economic growth, international trade, migration and multinational companies influence labor conditions. The analysis and evidence indicate that countries that are open to international trade have superior labor conditions. Moreover, foreign direct investment mainly flows to countries with superior labor

conditions, and wages and working conditions in multinational companies are superior to employment conditions in host-country firms.

The book also reviews the historical effects of international migration on wages (and other working conditions) and discusses the role of modern barriers to international migration. The evidence indicates that each of the mechanisms of globalization is associated with the improvements in working conditions predicted by international trade theory and with improvements in labor rights. In contrast, the evidence does not support the view that increasing economic integration initiates an international race to the bottom that produces sweatshop labor conditions. The book also discusses alternative policies for improving world labor conditions further, including national and international labor standards regulation. The evidence indicates that in contrast with trade, migration, and international capital flows, labor standards regulation has had a negligible role in advancing labor conditions. As an alternative, several policies that create opportunities for targeted worker groups show promise for supplementing the positive effects of globalization on labor conditions.”

Flanagan, Robert J and William B. Gould IV (eds), *International Labor Standards: Globalization, Trade, and Public Policy* (Stanford Law and Politics, 2003).

- Abstract: “In this age of globalization, countries and corporations are under increasing pressure to adopt and follow international labor standards. This book provides the most thorough empirical assessment to date of the impact of international regulation on labor standards and conditions, and critically analyzes the common race-to-the-bottom view that globalization and international competition can only further degrade labor standards. The authors examine current standards and regulations, along with recent proposals to compel developing countries to adopt labor standards. They also consider other mechanisms for advancing labor conditions, such as lowering barriers to migration, increasing foreign aid, and encouraging more rapid economic growth. In addition, the book presents a complete description and appraisal of current voluntary corporate codes of conduct, and concludes with a detailed evaluation of the change in labor conditions in Mexico since the adoption of more open trade policies in 1986”

Rogers, Brishen, “Justice at Work: Minimum Wage Laws and Social Equality,” *Texas Law Review* 1543, vol. 92 (2014).

- Abstract: Are minimum wage laws just? Existing legal academic debate implies that they are not. Drawing on neoclassical labor-market models, various legal scholars have argued that minimum wage laws increase unemployment and cause other inefficiencies, and therefore that direct transfers to the working poor are a superior means of ensuring distributive justice. Accepting for the sake of argument that minimum wage laws have such economic effects, this Article nevertheless defends them on grounds of justice. It builds on well-worn arguments that a just state will not just redistribute resources but will also enable citizens to relate to one another as equals. This ideal of “social equality” is most commonly associated with republican and communitarian theories of justice, but it is also central to major strands of egalitarian liberalism. Minimum wage laws advance

social equality, and do so better than direct transfers, in several ways. They increase workers' wages, which are a primary measure of the social value of work; they alter workplace power relationships by giving workers rights vis-à-vis employers; and they require employers and consumers to internalize costs of higher wages rather than mediating all distribution through the state. In short, minimum wage laws help ensure decent work, work that enhances rather than undermines workers' self respect. Reduced demand for extremely low-wage labor is a cost worth bearing to ensure decent work—and may even be an affirmative social good.

Stone, Katherine, *Globalization and Labor Standards Annotated Bibliography* (Vandeplas publishing, 2014)

- Summary: "The Globalization and Labor Standards (GALS) Annotated Bibliography is a compendium of articles about international labor rights, national and transnational labor standards, and comparative labor law that have been published in law journals. All of the articles in the library are abstracted and cross-referenced by subject. Each article is accompanied by an annotation that describes its contents clearly and concisely. The annotations have been written by Professor Katherine V.W. Stone with the help of her students at the Cornell Law School, the Cornell School of Industrial and Labor Relations, and UCLA School of Law. This volume compiles all of the content in the GALS bibliographic library from 2000 to 2014. The purpose of the book is to preserve the wealth of material developed over the past fifteen years and make it available to libraries and researchers."

Reports

Dabla-Norris, Era et al., *Causes and Consequences of Income Inequality: A Global Perspective*, (International Monetary Fund, 2015).

- Summary: This IMF report focuses on widening income inequality, exploring the widening gap between the rich and the poor, and how this affects growth and sustainability. The report cites evidence from a wide variety of countries that suggests de facto regulations on markets, like mandatory minimum wages and unions, help improve income equality and distribution.

GLOBALIZED PRODUCTION, INEQUALITY AND HUMAN RIGHTS

Global Value Chains and Inequality

Scholarly Texts

Adler-Milstein, Sarah and John M. Kline, *Sewing Hope: How One Factory Challenges the Apparel Industry's Sweatshops* (University of California Press, 2017).

- Summary: “Sewing Hope offers the first account of a bold challenge to apparel-industry sweatshops. The Alta Gracia factory in the Dominican Republic is the anti-sweatshop. It boasts a living wage three times the legal minimum, high health and safety standards, and a legitimate union—all verified by an independent monitor. It is the only apparel factory in the global south to meet these criteria.

The Alta Gracia business model represents an alternative to the industry’s usual race-to-the-bottom model with its inherent poverty wages and unsafe factory conditions. Workers’ stories reveal how adding US\$0.90 to a sweatshirt’s production price can change lives: from getting a life-saving operation to a reunited family; from purchasing children’s school uniforms to taking night classes; from obtaining first-ever bank loans to installing running water. Sewing Hope invites readers into the apparel industry’s sweatshops and the Alta Gracia factory to learn how the anti-sweatshop started, how it overcame challenges, and how the impact of its business model could transform the global industry.”

Blackett, Adelle, “A Global Governance, Legal Pluralism and the Decentred State: A Labor Law Critique of Codes of Corporate Conduct,” *Indiana Journal of Global Legal Studies* 401-447, no. 8 (2001).

- Excerpt: “Through their attention to working conditions as labor rights, labor advocates seek to wrest protections for workers from corporate actors. At the same time, corporate actors, through their own codes of corporate conduct, publicize to consumers that they are acting voluntarily to ensure that workers in their global production chain enjoy certain rights. In both cases, these initiatives purport to contribute to improved regulation of the workplace.

In this Article, I posit that these initiatives are themselves emerging forms of labor regulation. I contend that as self-regulatory initiatives, they can best be understood through the lens of two key discourses: legal pluralism and economic globalization. These discourses cast light upon the specific nature of labor law, the limits to state regulatory action, and the ability of codes of corporate conduct to adapt to the logic of the new international division of labor.”

Compa, Lance & Tequila Brooks. *NAFTA and the NAALC: Twenty Years of Trade-Labour Linkage in the Americas* (Wolters Kluwer Publishers, 2015)

- Abstract: “The 20th anniversary edition of the NAFTA and NAALC monograph in the International Encyclopedia of Laws, Labour Law and Industrial Relations provides an up-to-date retrospective on all of the citizen petitions filed under the NAFTA labour side agreement since 1994. The monograph includes early petitions filed about trade union rights at the Honeywell and Echlin plants in Mexico, the McDonald’s case in Canada and the Washington Apple and DeCoster Egg cases in the United States as well as more recent petitions filed about migrant worker rights under the H-2A and H-2B visa programs in the US. In addition to being the most complete compilation of NAALC cases

in existence today, NAFTA and the NAALC Twenty Years of North American Trade-Labour Linkage outlines the internal mechanics leading to the filing of a 2000 NAALC petition with the Government of Mexico about unequal treatment of migrant workers in the US, and describes changes in the treatment of petitions by US, Mexican and Canadian authorities over the last 20 years. It also contains a chapter that compares the NAALC to the OECD Guidelines for Multi-National Enterprises and highlights recent North American cases filed under the OECD Guidelines including the relatively lesser known 2004 Yucatan Markey Tex-Coco Tex petition which was dual filed under both mechanisms. Finally, the 20th edition introduces a new chapter that compares labour provisions in US and Canadian free trade agreements negotiated since 2000 and discusses recent labour petitions filed under the US-Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) and US free trade agreements with Bahrain and Peru.”

Craig, John D.R. & S. Michael Link. *Globalization and the Future of Labour Law*, (Cambridge University Press, 2006)

- Abstract: How are national and international labour laws responding to the challenge of globalization as it re-shapes the workplaces of the world? This collection of essays by leading legal scholars and lawyers from Europe and the Americas was first published in 2006. It addresses the implications of globalization for the legal regulation of the workplace. It examines the role of international labour standards and the contribution of the International Labour Organization, and assesses the success of the European experiment with continental employment standards. It explores the prospects for hemispheric co-operation on labour standards in the Americas, and deals with the impact of international labour standards on the rights of women and migrant workers. As the nature and organization of work around the world is being decisively transformed, new regional and international institutions are emerging that may provide the platform for new labour standards, and for protecting existing ones.

Engle, Karen et al, “Working Borders: Linking Debates about Insourcing and Outsourcing of Capital and Labor” *Texas Journal of International Law* 691-806, Issue 4 (2005).

- Summary: These proceedings document the 2005 Rapoport Center for Human Rights and Justice inaugural conference. The conference explicitly links these two debates: what is the relationship between the movement of labor (insourcing) and the movement of capital (outsourcing)? What are the effects of various immigration reforms on outsourcing and vice versa? Could or should the movement of capital be targeted to reflect economic needs of the United States in the same way that some parts of immigration law are meant to accomplish national economic goals? Is it easier or more appropriate to restrict the movement of labor than the movement of capital? Why is the discouragement of capital flight seen to pose more of a threat to the "free market" than restrictions on labor mobility?

Gereffi, Gary, “A Global Value Chain Perspective on Industrial Policy and Development in Emerging Markets,” *Duke Journal of Comparative & International Law* 433-458, no. 24 (2014).

- Abstract: “The article focuses on the global value chain (GVC) framework used by international organizations such as the World Bank, the World Trade Organization and the International Labor Organization and the GVC-oriented industrial policy. Topics discussed include the United Nations Conference on Trade and Development, the approach of GVC to structure new donor initiatives and data collection programs based on global trade and development, and the diverse roles of emerging economies in GVCs.”

Gereffi, Gary, “Global Value Chains and International Competition,” *The Antitrust Bulletin* 37-56, no. 56 (2011).

- Abstract: “Globalization has given rise to a new era of international competition that is best understood by looking at the global organization of industries and how countries rise and fall within these industries. The global value chains framework has evolved from its academic origins to become a major paradigm used by a wide range of international organizations, such as the World Bank, the World Trade Organization, the International Labor Organization, and the U.S. Agency for International Development. Global value chains highlight how new patterns of international trade, production, and employment shape the prospects for development and competitiveness, using core concepts like “governance” and “upgrading.” This article illustrates the use of this framework by contrasting the industrial upgrading experiences of China and Mexico, through which China has wrested market share from Mexico in a diverse spectrum of U.S. product markets en route to becoming a dominant global manufacturing power in just a couple of decades. The future of international competition will reflect the consolidation and resilience of global value chains and the determination of emerging economies to continue to upgrade to higher value goods and services within these chains, with a growing emphasis on domestic and regional markets.”

The IGLP Law and Global Production Working Group, “The Role of Law in Global Value Chains: A Research Manifesto,” *London Review of International Law* (2016).

- Abstract: “Most scholars attribute the development and ubiquity of global value chains to economic forces, treating law as an exogenous factor, if at all. By contrast, we assert the centrality of legal regimes and private ordering mechanisms to the creation, structure, geography, distributive effects and governance of Global Value Chains (GVCs), and thereby seek to establish the study of law and GVCs as rich and important terrain for research in its own right.”

Kolben, Kevin, “Dialogic Labor Regulation in the Global Supply Chain,” *Michigan Journal of International Law* no. 36 (2015).

- Abstract: “In May 2006, the government of Jordan was facing a crisis. A small U.S. labor-rights activist group had just released a damning report documenting extensive labor abuses in Jordan’s fledgling garment industry. Adding fuel to the fire, the New York Times published a front-page story about the report with its own field work that corroborated some of the allegations, such as long and abusive working hours, the

confiscation of passports of foreign workers, horrendous living conditions, and sexual harassment. Although garment manufacturing was new to Jordan, after just several years of existence it already constituted an important part of Jordan's total exports, and the country could not afford to lose the industry. Consumers and global activists took note of the report and mobilized to put pressure on companies sourcing from Jordan. The United States government also became involved, because the U.S. market was the primary destination of Jordanian garments and had extensive economic and political ties with the country. What resulted was a two-track strategy pursued by the Jordanian government. On the one hand, Jordan committed to improve its own public institutions of labor law enforcement. On the other, it agreed to implement a novel labor assessment and advising program called Better Work Jordan (BWJ), which operates more or less independently of the Jordanian government and has the participation of many large transnational garment corporations seeking to avoid more exposés of working conditions in their Jordanian supply chains."

Kolben, Kevin, "Transnational Labor Regulation and the Limits of Governance," *Theoretical Inquiries in Law* 403-437, no. 12 (2011).

- Abstract: "Governance theories of regulation can be useful in describing and conceptualizing new forms of transnational labor regulation (TLR) that have emerged in a context of weak state regulatory capacity. This Article argues, however, that the prominent governance models that have been applied to TLR, namely systems theory, responsive regulation, and new governance are not suited to the exigencies of labor regulation in developing states. Accordingly, this Article proposes an alternative integrative approach to transnational labor regulation that draws upon the insights of governance theory, but that is committed to developing state capacity where the state has a comparative advantage over non-state regulation in realizing the goals of TLR."

Locke, Richard, Matthew Amengual and Akshay Mangla, "Virtue Out of Necessity? Compliance, Commitment and the Improvement of Labor Conditions in Global Supply Chains," *Politics & Society* 319-351, no. 37:3 (2009).

- Abstract: "Private, voluntary compliance programs, promoted by global corporations and nongovernmental organizations alike, have produced only modest and uneven improvements in working conditions and labor rights in most global supply chains. Through a detailed study of a major global apparel company and its suppliers, this article argues that this compliance model rests on misguided theoretical and empirical assumptions concerning the power of multinational corporations in global supply chains, the role information (derived from factory audits) plays in shaping the behavior of key actors (e.g., global brands, transnational activist networks, suppliers, purchasing agents, etc.) in these production networks, and the appropriate incentives required to change behavior and promote improvements in labor standards in these emergent centers of global production. The authors argue that it is precisely these faulty assumptions and the way they have come to shape various labor compliance initiatives throughout the world—even more than a lack of commitment, resources, or transparency by global brands and their suppliers to these programs—that explain why this compliance-focused model of

private voluntary regulation has not succeeded. In contrast, this article documents that a more commitment-oriented approach to improving labor standards coexists and, in many of the same factories, complements the traditional compliance model. This commitment-oriented approach, based on joint problem solving, information exchange, and the diffusion of best practices, is often obscured by the debates over traditional compliance programs but exists in myriad factories throughout the world and has led to sustained improvements in working conditions and labor rights at these workplaces.”

Mayer, Frederick, W., & John Pickles, "Re-embedding Governance: Global Apparel Value Chains and Decent Work" *International Labour Review* 150 (2011).

- Abstract: “Much of the global economy is now dominated by global production networks that span countries and continents and connect producers and buyers in global supply chains. This complex and dynamic structure of economic activity has rapidly brought the productive capacity of developing countries on-line, shifting production from the advanced industrialized world to locations in the South, most notably to the newly industrializing countries of China, India and Brazil. It is clear that economic globalization has created a great deal of wealth, but despite rapid economic growth, there is persistent evidence of exploitation of workers at the margins of the new global economy and pressure on labor in more traditional centers of production. Our concern in this paper is with the role of governance institutions in promoting decent work in apparel global value chains and production networks. By governance we refer to those institutions that constrain or enable market actor behavior, both public in the form of governmental policies, rules, and regulations and private in the form of social norms, codes of conduct adopted by businesses, consumer demand for social responsibility, or other non-governmental institutions and social movements.”

Parella, Kishanthi, “Outsourcing Corporate Accountability,” *Washington Law Review* 747-784, no. 89 (2014).

- Abstract: “This Article addresses the problem of preventing human rights violations abroad that result from the globalization of business. It specifically explores the challenge of promoting corporate social responsibility in global value chains. The modern business has changed dramatically and has “gone global” in order to court foreign markets and secure resources, including labor. Familiar household names, such as Nike and Apple, have “outsourced” many of their functions to suppliers overseas. As multinational buyers, they dominate one end of the global value chain. At the opposite end of the value chain are the local managers and owners of the factories and workhouses where tablets are assembled, running shoes are made, and gowns are sown. These facilities are often the sites of serious human rights violations, such as forced labor and child labor.

Rossi, Arianna Amy Luinstra, John Pickles (eds), *Towards Better Work: Understanding Labour in Apparel Global Value Chains*, (International Labor Office with Palgrave Macmillan, 2014).

- “Since the 1970s, multinational brands have increasingly outsourced their manufacturing activities to lower-cost-production locations in developing countries. This has translated into higher labor force participation rates and new empowerment opportunities for previously marginalized groups, but it has also become increasingly clear that workers are often exploited and work in unsafe conditions to keep production costs competitive. This was made dramatically evident by the 2013 garment factory collapse in Bangladesh.

This volume provides solutions oriented approaches for promoting improved working conditions and labor rights in the apparel industry. It analyzes how workers, governments, and business can collaborate to confront key opportunities and challenges. It offers new empirical insights into the garment sector in Asia (Cambodia, India, Lao People's Democratic Republic), Europe (Romania), Africa (Lesotho, Morocco), and the Americas (Haiti, Nicaragua), focusing on wages, worker empowerment, and the institutional situations facilitating or hampering improved working conditions.”

Sobel-Read, Kevin B., “Global Value Chains: A Framework for Analysis,” *Transnational Legal Theory* 364-407 (2015).

- Abstract: “Today, more than two-thirds of all transnational trade is conducted by multinational corporations and a full half of that trade—one-third of all transnational trade—is between corporate subsidiaries. These figures reflect the unfolding transformation of traditionally labelled ‘corporate supply chains’ into what are now termed ‘global value chains’. Global value chains have inspired keen, and at times contested, attention from a range of academic, business and policy perspectives. Legal scholars, however, have remained largely outside these debates. This article is the first to fully integrate into legal scholarship the fundamental insights of the robust, multidisciplinary body of academic literature on global value chains. It is seminal in tying together the ongoing paradigm shifts taking place in the global political economy with their relevant legal phenomena, while also opening up opportunities for legal scholars to engage in normative interventions across multiple legal disciplines.”

Human Rights in Global Supply Chains

Scholarly Texts

Berliner, Daniel, Anne Regan Greenleaf, Milli Lake, Margaret Levi and Jennifer Noveck, *Labour Standards in International Supply Chains* (Edward Elgar, 2015).

- From blurb: “The authors examine developments in labor standards in global supply chains over the past thirty years, analyzing factors that create challenges and opportunities for improving working conditions. They illustrate the complex dynamics within and among key groups, including brands, suppliers, governments, workers and consumers. Using extended examples from China, Honduras, Bangladesh and the United States, as well as new quantitative evidence, the authors analyze stakeholders and mechanisms that create or obstruct opportunities for improving labor rights. They evaluate key clusters of actors and their interests in order to comprehensively map the complex interactions and relationships that make up global supply chains. Original data

and analyses, including four in-depth case studies, present a systematic evaluation of the points of leverage for changing labor standards in sectors including apparel, footwear, and electronics. This exciting new contribution to a burgeoning field of study will benefit scholars of labor rights and human rights, as well as students with an interest in labor and working conditions. It also presents critical information for political scientists, NGOs, and practitioners looking to effect change in working conditions and learn more about key players in the global economy.”

Brudney, James J., “Decent Labour Standards in Corporate Supply Chains: The Immokalee Workers Model,” *Temporary Labour Migration in the Global Era: The Regulatory Challenges*, eds. Owens and Howe (Hart Publishing, 2016).

- Summary: “Following a brief but cogent analysis of the shortcomings, and ultimate failure, of the two dominant paradigms for social responsibility today — national government enforcement of ILO standards, on the one hand, and private codes of social responsibility monitored for corporations by third party auditing organizations, on the other — Prof. Brudney takes a detailed look at the roots, mechanisms, and results of the CIW’s Fair Food Program... Professor Brudney’s chapter is an excellent piece of research and analysis and should be required reading for everyone from decision-makers in corporate board rooms to students of social change — and perhaps most of all, to consumers looking to better understand the complex landscape of corporate social responsibility and the claims made by brands hoping to attract consumers looking for ethically-sourced goods.”

Brudney, James J., “Envisioning Enforcement of Freedom of Association Standards in Corporate Codes: A Journey for Sinbad or Sisyphus?” *Comparative Labor Law and Policy Journal*, vol. 33, 2012.

- Abstract: “Since the 1970’s, multinational corporations (MNCs) in large numbers have adopted codes of conduct declaring their commitment to workers’ rights. These codes, however, do not require adherence to specific labor regulations or standards in a global setting. The MNC record on voluntary compliance has been discouraging, especially in labor-intensive industries like apparel, shoes, and toys, where a global supply chain of contractors effectively controls labor conditions. The persistent gap between aspiration and achievement regarding corporate codes has led to disagreement over their meaning and value. MNCs hope to be judged on the basis of the self-regulatory systems they have established. They believe that codes and accompanying monitoring practices will generate economically profitable good will and also give rise to a legal safe harbor from regulators who must allocate scarce resources among delinquent actors. In light of these ambitious corporate assumptions, it is worth asking whether the application of codes should be subject to outside challenge, and potential improvement, on behalf of putative beneficiaries. This article examines the possibilities for enforcing corporate codes against the MNCs that draft and promulgate them. It first provides an overview of freedom of association (FOA) provisions that appear in more than 25 codes posted on corporate websites. The overview reveals divergent approaches regarding inter alia how much depth and force the FOA commitment contains; whether the same FOA commitment

applies to a company's own employees and its corporate suppliers; and whether the commitment is accompanied by a disclaimer. The article then discusses in depth certain key shortcomings to the codes as self-regulatory operations. It identifies both external and internal obstacles to successful monitoring, including monitoring by independent entities. The article recognizes that private rights of action may carry countervailing costs, but it contends they may also be an essential complement if corporate codes are to promote freedom of association in effective terms. Finally, the article identifies and briefly analyzes eight potential causes of action to enforce corporate code provisions related to freedom of association. It explores a range of state and federal claims that could be asserted under U.S. law by employees, consumers, or investors. Although there are various obstacles to surviving motions to dismiss, several approaches appear to hold promise. This set of preliminary analyses is meant to encourage greater focus on the need for protection beyond voluntary corporate efforts, and also to deepen the conversation as to which corporate code audiences are best situated to pursue such protection in the courts."

Connor, Tim and Fiona Haines, "Networked Regulation as a Solution to Human Rights Abuse in Global Supply Chains? The Case of Trade Union Rights Violations by Indonesian Sports Shoe Manufacturers" *Theoretical Criminology*, vol 17, no 2, 197-214 (2013).

- Abstract: "This article analyses the capacity of global networks of civil society actors to supplement effectively weak state regulation in reducing human rights abuse by multinational companies (MNCs). The effectiveness of non-government organizations as part of a network of control finds support both in the radical criminological literature as well as those explicitly advocating for a networked regulatory approach. This case study of the Indonesian sport shoe industry demonstrates that networked regulation has had a positive short- to medium-term impact on respect for trade union rights among some manufacturers producing for western MNCs. However, inconsistent approaches by the MNCs and ongoing resistance by manufacturers has made this influence difficult to sustain. Critically, the Indonesian state apparatus emerges as a powerful and primarily—but far from completely—complicit set of actors: applying criminal sanctions for trade union rights violations but failing to enforce them, and influencing networked regulation in complex, contingent ways. This case study suggests both that advocates and practitioners of networked regulation need to find more effective ways to respond to the corporate drive to maximize profit and that networked regulation's long-term usefulness will likely depend on the extent to which it draws from and operates to strengthen progressive regulatory elements within Asian states"

Cummins, Justin D. "Invigorating Labor: A Human Rights Approach in the United States," *Emory International Law Review* 1, no. 19 (2005)

- Abstract: "This Article fashions a bold extension of the newly formulated strategy. In short, international human rights law should be employed to address conduct occurring inside the United States to remedy, for example, the extremely abusive treatment of workers by companies operating here. This approach flows from the close connection

between domestic labor rights, domestic civil rights, and international human rights as well as the widespread recognition that the National Labor Relations Act ("NLRA") utterly fails to provide adequate labor protections.”

Frey, Diane F., & Gillian MacNaughton, “A Human Rights Lens on Full Employment and Decent Work in the 2030 Sustainable Development Agenda” *Journal of Workplace Rights*, 1-13 (2016)

- Abstract: On September 25, 2015, the United Nations General Assembly adopted the Sustainable Development Goals (SDGs) as the blueprint for a global partnership for peace, development, and human rights for the period 2016 to 2030. The 2030 agenda follows on the heels of the Millennium Development Goals (MDGs), adopted in 2001, which set the international development agenda for the period 2001 to 2015. This article uses a human rights lens to demonstrate that the MDGs and the SDGs have not addressed full employment and decent work in a manner that is consistent with the Decent Work Agenda of the International Labour Organization and international human rights legal obligations of the UN member countries. It concludes that the new 2030 development agenda sadly aligns with market-based economic growth strategies rather than the realization of the human rights to full employment and decent work for all.

Locke, Richard M., *The Promise and Limits of Private Power: Promoting Labor Standards in a Global Economy*, (Cambridge University Press, 2013).

- Synopsis: “This book examines and evaluates various private initiatives to enforce fair labor standards within global supply chains. Using unique data (internal audit reports, and access to more than 120 supply chain factories and 700 interviews in 14 countries) from several major global brands, including NIKE, HP, and the International Labor Organization's Factory Improvement Programme in Vietnam, this book examines both the promise and the limitations of different approaches to actually improve working conditions, wages, and working hours for the millions of workers employed in today's global supply chains. Through a careful, empirically grounded analysis of these programs, this book illustrates the mix of private and public regulation needed to address these complex issues in a global economy.”

McCann, Deirdre & Judy Fudge, “Unacceptable Forms of Work: A Multidimensional Model” *International Labour Review* (2016).

- Abstract: “Unacceptable forms of work (UFW) have been identified as an Area of Critical Importance for the ILO as it approaches its centenary. Yet there is presently no comprehensive elaboration of the dimensions, causes or manifestations of UFW. This article reports on a research project that has proposed such a framework. The article first investigates and reconceptualises a set of key discourses on contemporary work to identify their contribution to an analytically rigorous conception of UFW. It then outlines

a novel Multidimensional Model that has been designed for use by local policy actors in identifying and targeting UFW in countries across a range of income levels.”

Rodriguez-Garavito, Cesar A., “Global Governance and Labor Rights: Codes of Conduct and Anti-Sweatshop Struggles in Global Apparel Factories in Mexico and Guatemala,” *Politics & Society* 203-233, no. 33 (2005)

- Abstract: “Monitoring systems have recently arisen to verify compliance with corporate codes of conduct for labor. This article places codes in the context of broader debates on global governance and argues for an empowered participatory approach to international labor standards focusing on enabling rights. Based on ethnographic research in Mexico and Guatemala on the implementation of codes in the apparel sector and their use in cross-border organizing campaigns, it explores the effect of monitoring on worker empowerment and working conditions in global factories. The analysis highlights institutional designs and political strategies capable of contributing to the protection of international labor rights.”

Ruggie, John Gerard, *Just Business: Multinational Corporation and Human Rights*, (W.W. Norton & Company, 2013).

- Synopsis: “One of the most vexing human rights issues of our time has been how to protect the rights of individuals and communities worldwide in an age of globalization and multinational business. Indeed, from Indonesian sweatshops to oil-based violence in Nigeria, the challenges of regulating harmful corporate practices in some of the world’s most difficult regions long seemed insurmountable. Human rights groups and businesses were locked in a stalemate, unable to find common ground. In 2005, the United Nations appointed John Gerard Ruggie to the modest task of clarifying the main issues. Six years later, he had accomplished much more than that. Ruggie had developed his now-famous “Guiding Principles on Business and Human Rights,” which provided a road map for ensuring responsible global corporate practices. The principles were unanimously endorsed by the UN and embraced and implemented by other international bodies, businesses, governments, workers’ organizations, and human rights groups, keying a revolution in corporate social responsibility.

Just Business tells the powerful story of how these landmark “Ruggie Rules” came to exist. Ruggie demonstrates how, to solve a seemingly unsolvable problem, he had to abandon many widespread and long-held understandings about the relationships between businesses, governments, rights, and law, and develop fresh ways of viewing the issues. He also takes us through the journey of assembling the right type of team, of witnessing the severity of the problem firsthand, and of pressing through the many obstacles such a daunting endeavor faced.”

Wiegla, Chris, Kendyl Salcito, & Burton H. Singer, “Corporate Human Rights Commitments and the Psychology of Business Acceptance of Human Rights Duties: A Multi-Industry Analysis” *International Journal of Human Rights*, 19, no. 6 (2015).

- Abstract: “Between 2012 and 2013, we analysed and coded the human rights policies of the largest corporations in six of the world's most globalised industries: finance, mining, oil and gas, food and beverage, apparel and agribusiness. Using the language of the UN Guiding Principles on Business and Human Rights as benchmarks, we developed a scoring mechanism to evaluate the level of responsibility companies had accepted to (1) respect human rights, (2) conduct human rights due diligence, and (3) provide remedies for human rights violations associated with their activities. Statistical analysis using both standard regression and ordinal logistic regression revealed that companies domiciled in the United States score poorly, nearly on par with sub-Saharan Africa, while companies based in Europe and Commonwealth countries demonstrate the highest adoption rate of human rights duties. Additionally, extractive industries produce, overall, the strongest human rights policies, while apparel companies are laggards. Furthermore, membership in socially responsible industry groups may not correlate with higher human rights scores. These findings are analysed in the context of the external influences that align most closely with shifts in corporate policies. The article considers explanations for the disparities, which have policy implications for home states and industry associations.”

Reports

Fudge, Judy & Deirdre McCann, *"Unacceptable Forms of Work: A Global and Comparative Study"* International Labor Organization (2015)

- Summary: Unacceptable forms of work (UFW) have been identified by the International Labour Organization (ILO) as work in conditions that deny fundamental principles and rights at work, put at risk the lives, health, freedom, human dignity and security of workers or keep households in conditions of poverty. The report takes as the central purpose of identifying UFW to devise targeted social and economic policies that aim to eliminate or transform jobs that are entirely unacceptable. The aim is therefore to construct a robust conception of UFW that can be operationalized for research and policy intervention. Among the relevant discourses, further, the study has a particular focus on renditions of unacceptability in legal and regulatory spheres and therefore regulatory concepts, mechanisms, and outcomes.

International Labour Organization, *"Report IV: Decent Work in Global Supply Chains,"* (2016).

- Summary: Because of growing reliance on global supply chains, and its negative effects on working conditions, the International Labour Office placed a discussion of decent work conditions in the context of global supply chains on the agenda on the 105th session. The conference addressed trade and investment trends, upgrading for decent work, governance in global supply chains.

Shift, “Respecting Human Rights Through Global Supply Chains, Workshop Report No. 2,” (2012), <http://www.shiftproject.org/resources/publications/respecting-human-rights-global-supply-chains/>.

- Summary: This report is a summary from a workshop co-hosted by Shift and the Corporate Social Responsibility Initiative of Harvard’s Kennedy School of Government. Aimed at supporting implementation of the UN Guiding Principles of Business and Human Rights, the workshop was organized around five central themes: Identifying risks in supply chains, incentivizing sustainable change, applying approaches to high-risk contexts, aligning within and across business enterprises, and mechanizing grievances.

United Nations Global Compact, “A Guide to Traceability: A Practical Approach to Advance Sustainability in Global Supply Chains,” (2014), https://www.unglobalcompact.org/docs/issues_doc/supply_chain/Traceability/Guide_to_Traceability.pdf.

- Abstract: “The purpose of this guide is to provide an overview of the importance of traceability for sustainability purposes, outline the global opportunities and challenges it represents and summarize practical steps for implementing traceability programmes within companies. Research for this guide revealed that traceability is a tremendously impactful tool for advancing sustainability objectives, but it still has a long way to go before it is an integral part of sustainable supply chain management and is used widely by companies. At present, only a very small percentage of commodities are traceable on sustainability attributes. Traceability must be a collaborative effort. This guide aims to show companies and stakeholders the benefits of working together to implement a common approach to traceability across commodities.”

KEY RECOGNIZED LABOR HUMAN RIGHTS

Freedom of Association and Rights of Collective Bargaining

ILO Convention

International Labour Organization, *Freedom of Association and Protection of the Right to Organise Convention* (C087, 1948), accessed Nov. 10, 2016, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100_instrument_id:312232.

- Summary: The articles of this Convention outline the rights of workers and employers to organize effectively, draft rules and constitutions, organize administrative functions, and elect representatives.

Scholarly Texts

Brudney, James J. “Book Review: To Strike or not to Strike” *Wisconsin Law Review* 65 (1997) 65-89.

- Excerpt: “In addition to its tragic motif, the book is also a war story. A strike may be analogized to a limited, conventional war in the pre-nuclear age. The workers’ army must march forward and win battles. It also must be well supplied, it needs a positive fighting

spirit, and it must try to maintain public interest and support over the long haul. Getman gives us a strong flavor of how it feels to be waging this war from the inside, including a lively sense of not being in control of the events themselves.”

Brudney, James J. “Collateral Conflict: Employer Claims of RICO Extortion Against Union Comprehensive Campaigns,” *Southern California Law Review*, 83, no. 4, (2010): 731.

- Abstract: “Over the past twenty-five years, unions have turned increasingly to strategies outside the traditional framework of the National Labor Relations Act (“NLRA”). Frustrated by an ineffective NLRA legal regime and the demise of the economic strike, organized labor has pursued coordinated approaches in order to generate extended economic pressure on private employers who seek to avoid recognizing unions or to resist bargaining collective agreements. Coordinated campaign tactics include publicity efforts aimed at attracting media attention and consumer interest; regulatory reviews initiated to focus on a company’s possible health, safety, environmental, or zoning violations; and investigations of a company’s financial status through use of pension funds or other shareholder resources. Unions relying on these comprehensive campaign or corporate campaign strategies have enjoyed some success which in turn has contributed to a modest rise in private sector union density, the first such increase for decades.

Management responses to comprehensive campaigns often involve filing lawsuits against unions and workers. Employer civil actions may invoke state defamation law, federal labor law prohibiting secondary boycotts, or federal antitrust law. But the most high-profile and dramatic form of employer retaliation in court is lawsuits alleging a pattern of unlawfully extortionate activities under the Racketeer Influenced and Corrupt Organizations Act (“RICO”).”

Brudney, James J. “Neutrality Agreements and Card Check Recognition: Prospects for Changing Labor Relations Paradigms,” *American Constitution Society Issue Brief*,” (2007).

- Excerpt: “At the heart of the National Labor Relations Act (‘NLRA’ or ‘Act’) is § 7, guaranteeing workers the right to band together for collective bargaining ‘through representatives of their own choosing.’ this employee choice, including the right to refrain from unionizing, has long been analogized to voting in political elections. the resonance of the comparison between industrial and political democracy has helped make elections supervised by the National Labor Relations Board (‘NLRB’) the dominant explanatory structure, or paradigm, for the exercise of employee choice under the NLRA.”

Compa, Lance A., *Unfair Advantage: Workers’ Freedom of Association in the United States Under International Human Rights Standards* (ILR Press, 2004).

- Summary: This Human Rights Watch book outlines the way in which labor rights in the U.S. are interconnected with international human rights standards. According to a 2004 introduction, the book was intended to break down assumptions that labor rights and

human rights were separate, distinct, and unconnected. Upon its initial publication in 2000, the book had a profound effect on labor activists and led to the drafting of new Congressional legislation and a Voice@Work campaign by the AFL-CIO. HRW's methodology includes the use of case studies involving a broad range of labor sectors and in different areas of the U.S. The book looks at the efforts of U.S. workers to engage in collective bargaining, join unions, and strike.

Compa, Lance “Do International Freedom of Association Standards Apply to Public Sector Labor Relations in the States?” *Human Rights Review* 373, no. 13 (2012).

- Abstract: “After November 2010 elections in the United States, human rights aspects of labor policy suddenly emerged at sub-federal levels. Elections in many states brought a sharp turn to conservative Republican rule. In this new climate, conflicts over workers’ rights took shape not at the ozone layer of high international policy, but at the oozing landfill level of local labor politics.

Governors and legislatures in Wisconsin, Ohio, Florida, Michigan, and other states moved to strip public employees of collective bargaining rights, blaming their wages and benefits for budget shortfalls. A vindictive North Carolina legislature made it unlawful for public school teachers voluntarily to contribute to their union’s legislative action fund through paycheck deductions (in January 2012 a state court issued an injunction blocking the North Carolina law, saying that singling out trade unions for such a prohibition violated the state constitution’s guarantee of freedom of association).

The labor rights crisis provoked by state-level anti-union measures led to heightened awareness of international labor standards. In Wisconsin and Ohio in particular, and to a smaller degree in other states, Republicans’ anti-union moves galvanized trade unionists and their supporters into marches, occupations, and other forms of mass protest with slogans such as “workers’ rights are human rights” and “collective bargaining is a human right.” In Ohio, the labor movement and its allies overturned the anti-collective bargaining law in a public referendum. In Wisconsin, the law’s passage led to a movement to recall the Republican governor.”

Compa, Lance, “Free Speech and Freedom of Association: Finding the Balance” *International Trade Union Confederation position paper* (June 2013), accessed Nov. 10 2016, http://www.ituc-csi.org/IMG/pdf/free_speech_and_freedom_of_association_final.pdf
<http://digitalcommons.ilr.cornell.edu/intl/265/>

- Abstract: “The fundamental right to freedom of association guarantees that workers are able to form and join trade unions free from any interference from employers and governments. This basic principle has been applied consistently by the International Labour Organisation (ILO) for over 60 years. However, the International Organisation of Employers (IOE) is now attempting to undermine that principle by arguing, in the name of freedom of expression, that anti-union campaigns meant to discourage workers from forming or joining a union are consistent with international standards. They even go so far as to argue that anti-union campaigns may be an obligation of employers.

To accomplish this, the IOE relies heavily on a contorted interpretation of a 2010 decision by the ILO's Committee on Freedom of Association (CFA) concerning Delta Airlines' campaign to encourage workers to "shred" their union election ballots. Only by claiming that the Delta decision represents a radical departure from precedent can the IOE now argue the existence of an international right to wage anti-union campaigns worldwide. Indeed, the IOE had previously conceded that U.S.-style antiunion campaigns violate the right to freedom of association as established by the ILO.

The International Trade Union Confederation (ITUC) recognizes that employers and workers have a right to express themselves; however, that right is not unlimited. The limit must be drawn where interference with the right to association begins. The vitriolic anti-union campaigns waged by U.S.-based employers cross that line. The fact that aggressive anti-union campaigns are considered legal under the domestic labour law of a country does not override international standards. Indeed, labour laws like those found in the U.S. are outliers among nations, permitting anti-union speech that is illegal (and unthinkable) elsewhere when workers seek to form and join trade unions."

Compa, Lance and James A. Gross, *Human Rights in Labor and Employment Relations: International and Domestic Perspectives* (2009).

- Abstract: "This volume is intended to collect the best current scholarship in the new and growing field of labor rights and human rights. We hope it will serve as a resource for researchers and practitioners as well as for teachers and students in university-level labor and human rights courses. The animating idea for the volume is the proposition that workers' rights are human rights. But we recognize that this must be more than a slogan. Promoting labor rights as human rights requires drawing on theoretical work in labor studies and in human rights scholarship and developing closely reasoned arguments based on what is happening in the real world. Citing labor clauses in the Universal Declaration of Human Rights is one thing; relating them to the real world where workers seek to exercise their rights is something else. The contributors to this volume provide a firm theoretical foundation grounded in the reality of labor activism and advocacy in a market-driven global economy."

Compa, Lance "The Wagner Model and International Freedom of Association Standards" in *Autonomie Collective et Droit du Travail: Mélanges en l'Honneur du Professeur Pierre Verge*, Dominic Roux, ed., pp.427-461, Presses de l'Université Laval (2015)

- Abstract: "In this essay, I want to examine a question implicit in some of Pierre Verge's work: is the 'Wagner model' that underpins both the U.S. and Canadian labour law systems consistent with international norms on freedom of association?"

Estlund, Cynthia L. "Free Speech and Due Process in the Workplace," *Indiana Law Journal*, 71, no. 1, (1995): 101-151.

- Excerpt: “Imagine a society whose citizens had free speech rights but no due process rights. The government could imprison citizens or banish them for any reason, or no reason at all, without notice or a hearing or proof of the charges; but it could not punish citizens based on their criticism of the government or other protected speech. The citizen who believed she had in fact been punished for speaking against the government could go to court and, if she could prove it, secure relief. How free would speech be in such a system? Would the citizens feel free to challenge the regime without fear of retaliation?”

Estlund, Cynthia L. “Labor, Property, and Sovereignty after *Lechmere*,” *Stanford Law Review* 46, no. 2, (1994): 305-359.

- Abstract: “In 1992, the Supreme Court held in *Lechmere, Inc. v. NLRB* that an employer may lawfully prohibit union organizers from soliciting on private property unless the organizers faced “unique obstacles” to communication by other means. Cynthia L. Estlund argues that *Lechmere* represents an overbroad conception of property owners’ “right to exclude,” by allowing employers to exclude organizers for “good,” “bad,” or no reasons at all, and that this broad employer right is supported neither by the NLRA nor, ironically, by state property law in many instances. Professor Estlund notes that the Court has long recognized the right of employees to discuss workplace issues at the workplace, subject only to limitations necessary to protect the employer’s substantial business interests. She extracts from this doctrine a “good reasons” principle that should govern the access rights of all labor speakers. She then discusses how Congress, the courts, and the National Labor Relations Board might implement her proposal, in whole or in part.”

Tzouvala, Ntina, “Continuity and Rupture in Restraining the Right to Strike” in Honor Brabazon, ed., *Neoliberal Legality: Understanding the Role of Law in the Neoliberal Project* (New York: Edward Elgar, 2016).

- Excerpt: “This chapter consists of three parts. First, I am going to provide an account of neoliberalism thought on trade unions, strikes, and their legitimate regulation through law. Here, it is explained how the confrontation between ordo-liberals and the American ‘branch’ of neoliberalism concluded with the decisive victory of the latter, who were openly averse toward the trade unions and their legal protections. Second, I will try to show how Greek legislation on the right to strike as implemented during the last five years of intense austerity constitutes an impressively faithful application and, importantly, a further deepening of the neoliberal understanding of the right to strike. Third, I will attempt to theorise the function of law vis-a-via industrial disputes in the era of neoliberalism.”

Reports

Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, United Nations General Assembly, A/71/385 (14 September 2016)
http://www.un.org/ga/search/view_doc.asp?symbol=A/71/385&referer=/english/&Lang=E.

- Summary: “The present report examines the exercise and enjoyment of the rights to freedom of peaceful assembly and of association in the workplace, with a focus on the

most marginalized portions of the world's labour force, including global supply chain workers, informal workers, migrant workers, domestic workers and others.”

Human Rights Watch, *Unfair Advantage: Workers Freedom of Association in the United States under International Human Rights Standards*, 2000, accessed Nov. 10, 2016 <http://www.hrw.org/legacy/reports/2000/uslabor/>.

- Excerpt: “This report occasionally touches on rights of association outside the context of trade unionism. One example is the right of workers to seek legal assistance for work-related problems. Most of Human Rights Watch’s investigation, however, deals with workers’ attempts to form unions and bargain with their employers. Forming and joining a union is a natural response of workers seeking to improve their working conditions. It is also a natural expression of the human right, indeed the human need, of association in a common purpose where the only alternative offered by an impersonal market is quitting a job.”

Elimination of Forced or Compulsory Labor

ILO Convention

International Labour Organization, *Forced Labour Convention*, (C29, 1930), accessed Oct. 1, 2016, <http://www.refworld.org/docid/3ddb621f2a.html>.

- Summary: This Convention commits parties to abolishing the use of forced labor, defined as any labor that is not voluntary or conducted under threat of penalty. Some exceptions are listed, including, compulsory military service, normal civic obligations, work or service that is the result of a conviction in a court of law, emergency measures, and minor communal service.

Scholarly Texts

Allain, Jean, *Slavery in International Law: Of Human Exploitation and Trafficking* (Martinus Nijhoff Publishers, 2013).

- Summary: "With the advent, in the twenty-first century, of the trafficking conventions and the criminalisation of enslavement before the International Criminal Court, the need to establish the black-letter law dealing with human exploitation has become acute. Slavery in International Law sets out the applicable law of human exploitation in the various sub-areas of international law, including general international law, human rights law, humanitarian law, labour law and the law of the sea; so as to create an overall understanding of what constitutes, in law, slavery and lesser types of human exploitation including: forced labour and servitudes such as debt bondage or servile marriage, as set out in the established definition of ‘trafficking in persons’."

Caraway, Nancie “Human Rights and Existing Contradictions in Asia-Pacific Human Trafficking Politics and Discourse,” *Tulane Journal of International and Comparative Law* 14 (2005): 295.

- Summary: The author provides a basic introduction to the topic of trafficking in persons within the U.S. It starts by tracing the history of trafficking in persons in the U.S. starting from the 1600s. It then defines modern trafficking and explains some of the incentives that motivate traffickers, including underlying issues of gender discrimination and organized crimes. Afterwards, the article provides individual stories and details the methodology used by traffickers. Lastly, the article concludes with a basic introduction to the legal framework used in the U.S. to combat trafficking in persons and forced prostitution, starting from the thirteenth amendment and early Supreme Court cases to the more recent Trafficking Victims Protection Act (TVPA) enacted in 2000. A few paragraphs at the end of the article discuss existing international legal efforts to curb discrimination against women and combat trafficking, such as CEDAW and the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

George, Erika R. and Scarlet R. Smith, "In Good Company: How Corporate Social Responsibility Can Protect Rights and Aid Efforts to End Child Sex Trafficking and Modern Slavery," *New York University Journal of International Law and Politics* 46 (2013): 55.

- Summary: This article suggests that the private sector's cooperation with law enforcement could improve the implementation of policies for catching and prosecuting traffickers. The authors also consider proactive states that could be taken by the private business sector to support law enforcement efforts. Both the supply-side and demand-side of child trafficking are assessed in addition to commentary on the tourism sector. Corporate social responsibility is touted as a means of both potentially obtaining greater financial rewards for businesses while simultaneously help to protect children's human rights.

Hathaway, James C. "The Human Rights Quagmire of Human Trafficking" *Virginia Journal of International Law* 49 (2008): 1.

- Summary: The author here discusses the various factors limiting the effectiveness of the Trafficking Protocol to the UN Convention against Organized Crime (2000). Hathaway contends that although critiques of the Trafficking Protocol are limited, core tensions exist between human rights goals and the contemporary fight against human trafficking. For example, the attempt to align the slavery paradigm with trafficking are unhelpful since only about 3% of modern slaves fit the Trafficking Protocol definition of "trafficked person." Numerous issues border control also become relevant when smuggled persons are mistakenly identified as trafficked persons. States also sometimes use the Protocol as a pretense to intensify border control. The author even questions the ethical responsibility of advocates that have so strongly brought into the framework presented by the Protocol.

Inglis, Shelley Case "Expanding International and National Protections Against Trafficking for Forced Labor Using a Human Rights Framework," *Buff. Hum. Rts. L. Rev.* 7 (2001): 55-104.

- Summary: In this law review article, the author outlines international legal norms, existing protections and recommendations for reform, and proposed solutions from governmental, inter-governmental, and non-governmental transnational parties regarding trafficking. The article argues for an improved definition of trafficking and supports the dialogue created by The Protocol to the Transnational Organized Crime Convention. However, after this article's publication, the Protocol established a new definition of "trafficking," updating the previous definition provided by the 1949 Convention for the Suppression of Traffic in Persons and of the Exploitation of Others. Thus, many of the legal and policy recommendations made in this article may have already been implemented.

Langille, Brian "The Curious Incident of the ILO, Myanmar and Forced Labour," *Research Handbook on Transnational Labour Law*, eds. Adelle Blackett and Anne Trebilcock (New York: Edward Elgar, 2015).

- Abstract: "Myanmar/Forced Labour is the most famous and fully litigated case in ILO legal history. Though Myanmar itself is rife with complexity, the facts and law in this case were straightforward: the country had a well-documented history of forced labour abuses on a massive scale, organized and directed by the authoritarian military regime despite ratification in 1955 of the ILO's most important Convention prohibiting forced labour, Convention No. 29. The Commission found 'a widespread and systematic' violation and invoked Article 33 of the ILO Constitution. But a hint that the case involved something more interesting is that it was, astonishingly, the first and only case since the ILO's founding in 1919 in which the ILO legal machinery was ever fully deployed. This hard-to-digest fact cannot be explained away by believing that there was hitherto universal compliance in the 185 member States in relation to almost several hundred Conventions. What looked like the 'most normal and easiest' of cases turns out to be a remarkable exception: it allows an examination of some commonplace ideas about broader ILO law, and suggests that 'doing nothing' can itself constitute a 'curious incident.' And although Article 33 was invoked, there were no real ILO sanctions: even in the case of a politically easy target, a 'pariah' state committing what the Commission of Inquiry regarded as a 'crime against humanity,' the ILO did not ultimately utilize the standard model of law enforcement set out in the ILO Constitution. It is thus hard to imagine a case in which it would be. The ILO is an institution which is based upon a 'gamble on persuasion,' and the Article 33 'bluff' has now been called."

Limoncelli, Stephanie A. "The trouble with trafficking: Conceptualizing women's sexual labor and economic human rights," *Women's Studies International Forum* 32 (2009): 261–269.

- Summary: This article the ways in which the feminist movement's multiple theories and approaches to understanding women's involvement in sex work. The author considers ways of expanding the "sex work" approach to understanding trafficking and the sex trade by considering the economic rights and security of women. A political economy analysis is used to consider trafficking in the context of globalization as well.

Payne, Valerie "On the Road to Victory in America's War on Human Trafficking: Landmarks,

Landmines, and the Need for Centralized Strategy,” *Regent University Law Review* 21 (2009): 161-193.

- Summary: This note provides a historical overview of the battle against trafficking within the United States. The authors suggest that an annual strategy publication could help with providing a strategic and comprehensive framework that could better structure the involvement of State and non-State actors fighting against trafficking while aligning national goals.

Ratner, Blake D. et al., “Fishing for justice: Human rights, development, and fisheries sector reform,” *Global Environmental Change* 27 (2014): 120-130.

- Abstract: “[This article contains] a review of case law and other documentation of human rights issues in fishing communities highlights forced evictions, detention without trial, child labour, forced labour and unsafe working conditions, and violence and personal security, including gender-based violence, as key areas of concern. We argue that human rights violations undermine current attempts to reform the fisheries sector in developing countries by increasing the vulnerability and marginalization of certain groups. Citing cases from India, the Philippines, Cambodia, and South Africa, we show how human rights advocacy can be an effective element of support for development in fisheries. Finally, we outline how fisheries reform can better address human rights issues as an essential complement to the equitable allocation of fishing rights, contributing to improved resource management and human wellbeing.”

Abolition of Child Labor

ILO Convention

International Labour Organization, *Minimum Age Convention*, (C138, 1973), accessed on Nov. 10, 2016,
http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C138.

- Summary: This Convention mandates that the minimum labor age should be 15 years old, with minor exceptions for insufficiently developed economies. For work that could likely jeopardize health, safety, or morals, the minimum age is 18.

International Labour Organization, *Worst Forms of Child Labour Convention*, (C182, 2000), accessed Nov. 10, 2016,
http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182.

- Summary: The Convention defines the worst forms of child labor to include, slavery, compulsory labor, forced recruitment of children to be utilized in armed conflict, child prostitution and pornography, and the production of transport of drugs. The Convention also outlines the importance of education in eradicating child labor.

Scholarly Texts

Arat, Zehra F. “Analyzing Child Labor as a Human Rights Issue: Its Causes, Aggravating Policies, and Alternative Proposals,” *Human Rights Quarterly* 24 (2002): 177–204.

- Summary: In this 2002 article, Zehra Arat highlights the fact that ILO and UN provisions intended to protect children often fail because children sometimes never have the opportunity to experience childhood due to forced labor. Arat notes that efforts to combat child labor often use both moral and economic reasoning when discussing the consequences of child labor. However, most advanced countries tend to utilize consumer boycotts, trade sanctions, or import restrictions to eliminate child labor. Arat then tries to estimate the number of children engaged in child labor by looking at various studies before looking at who the main beneficiaries are. Parents themselves are often guilty of benefiting from bonded labor. The failure of governments to enforce their own domestic legislation often exacerbates the issue, and Arat highlights this several times throughout the article. Moreover, Arat tries to draw a connection between the right to education, human rights, and poverty. The author also points to international financial institutions as aggravating child labor issues by ignoring human rights, highlighting the failures of the structural adjustment programs of the IMF and World Bank. A considerable amount of time is spent discussing economic policies and the article concludes with suggesting comprehensive solutions to child labor that are not overly reliant on economic sanctions.

Silk, James J. and Meron Makonnen, “Ending Child Labor: A Role for International Human Rights Law,” *Saint Louis University Public Law Review* 359, no. 22 (2003).

- Summary: The authors wrestle with the issue of strong international legal norms surrounding the prohibition of forced child labor that have weak enforcement mechanisms. They point to advocacy from private mechanisms, such as consumer boycotts, lawsuits, shareholder actions, and independent monitoring as possible solutions to this issue. The article starts with outlining ILO statistics on international child labor and reviewing relevant international human rights law provisions. The Convention on the Rights of the Child is used as an example of international law that has clear language prohibiting child labor, but the resulting Committee on the Rights of the Child has no power to enforce its reporting requirements or regulations. The authors believe that using the anti-discrimination human rights law tackles the issue more fundamentally as well, since the children of rich citizens are rarely subject to forced labor.

International and domestic civil society groups are seen as a useful tool for enforcing legal norms and monitoring government behavior when the state is unable to prevent child labor. Although NGO and other private initiatives do not have legal force, the authors believe these initiatives have coercive power. The parallel example drawn by the authors is the development of consumer protocols for investment in South Africa to end apartheid.

Weston, B. H (ed), *Child Labor and Human Rights: Making Children Matter* (Lynne Rienner Publishers, 2005).

- Summary: "Inspired by work on human rights and child labor at the University of Iowa, these 17 articles clarify the problem of child labor in terms of its history and significance as a multidimensional problem, the standards-based response of the world community, including confronting transnational and local barriers and moving toward progressive change in terms of language, perception and policy. The collection includes case studies from Tanzania, the Philippines, and Brazil and a consensus essay giving guiding principles and a call to action.

In the introduction by Burns Weston, he documents how the issue of child labor was not addressed in the language of human rights until the 1989 UN Convention on the Rights of the Child. The ILO discussed forced labor or compulsory labor, but not "human rights." Additionally, five propositions are provided: 1) child labor is harmful to children due to its exploitative and hazardous nature, and it is harmful to "human civility and welfare worldwide"; 2) ethically and morally speaking, it should be abolished; 3) it manifests in unique ways and requires multifaceted approaches and techniques to eradicate it; 4) those techniques must commit to rejecting the notion that child labor is "business as usual,"; and, 5) on ongoing and long-term commitment is required to eradicate child labor."

A longer review by the Chair of the Dept. of International Relations at Florida International University may be found here: <http://www.h-net.org/reviews/showrev.php?id=13732>.

Elimination of Discrimination in Respect of Employment and Occupation

ILO Convention

International Labour Organization, *Discrimination (Employment and Occupation) Convention*, (C111, 1958), accessed Nov. 10, 2016, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111.

- Summary: "Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof." The Convention defines discrimination as "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation." Each member of the Convention is tasked to seek employer and worker organization cooperation, enact legislation to promote these policies, and ensure observance with appropriate training.

International Labour Organization, *Equal Remuneration Convention* (C100, 1951), accessed Nov. 10, 2016, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100.

- Summary: The Convention asserts that “each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.”

PRECARITY AND HUMAN RIGHTS

Scholarly Texts

Albin, Einat, “Human Rights and the Multiple Dimensions of Precarious Work,” 34 *Comparative Labor Law & Policy Journal* 193, no. 34 (2012).

- Summary: The author claims that human rights often add a layer of precariousness to workers' situations because of the tensions between labor law and human rights law. Human rights is seen as a potential substitute for labor law in certain contexts. Additionally, discussing the macro level and sectoral level is seen as more beneficial for understanding human rights in labor. The Israeli construction sector forms the basis of analysis for this article.

Albin, Einat, “Precarious Work and Human Rights,” *Comparative Labor Law & Policy Journal* 1, no. 34 (2012).

- Summary: This piece is the introduction to a collection of articles called *Precarious Work and Human Rights*. It notes how the larger collection looks at the ways in which human rights may be better equipped to regulate labor than traditional labor regulation for protecting workers. Additionally, the introduction discusses the basis for the May 2011 conference with the Minerva Center for Human Rights at the Hebrew University of Jerusalem on the same topic. A broad literature review is presented discussing the various factors that impact precarity and how international legislation has traditionally tackled the issue.

Fudge, Judy, “Precarious Migrant Status and Precarious Employment: The Paradox of International Rights for Migrant Workers,” *Comparative Labor Law & Policy Journal* 95, no. 34 (2012).

- Summary: This article considers the issue of how international human rights instruments that are intended to protect migrant workers may influence how immigration laws generate precarity. It is divided into three parts: 1) an overview of precarious work is provided; 2) a Canadian workers program is analyzed to show the broader connections between migrant status and precarity; and, 3) the final part discusses the three international human rights instruments designed to protect migrant workers.

Fudge, Judy and Rosemary Owens (eds.) *Precarious Work, Women and the New Economy: The Challenges to Legal Norms* (Hart, 2004)

- Globalisation, the shift from manufacturing to services as a source of employment, and the spread of information-based systems and technologies have given birth to a new economy, which emphasises flexibility in the labour market and in employment relations. These changes have led to the erosion of the standard (industrial) employment relationship and an increase in precarious work - work which is poorly paid and insecure. Women perform a disproportionate amount of precarious work. This collection of original essays by leading scholars on labour law and women's work explores the relationship between precarious work and gender, and evaluates the extent to which the growth and spread of precarious work challenges traditional norms of labour law and conventional forms of legal regulation. The book provides a comparative perspective by furnishing case studies from Australia, Canada, the Netherlands, Quebec, Sweden, the UK, and the US, as well as the international and supranational context through essays that focus on the IMF, the ILO, and the EU. Common themes and concepts thread throughout the essays, which grapple with the legal and public policy challenges posed by women's precarious work.

Mantouvalou, Virginia, "Human Rights for Precarious Workers: The Legislative Precariousness of Domestic Labor," *Comparative Labor Law & Policy Journal* 133, no. 34 (2012).

- Summary: The authors here seek to determine the role of human rights in the protection of precarious workers. This article focuses mainly on legislative precariousness. When analyzing how the European human rights system addresses this issue, it became evident that social rights may in fact further precariousness. Human rights and labor rights in relation to migrant domestic work in Europe is also discussed.

Rodgers, Lisa, *Labour Law, Vulnerability and the Regulation of Precarious Work* (Edward Elgar, 2016)

- Blurb: "The shifting nature of employment practice towards the use of more precarious work forms has caused a crisis in classical labour law and engendered a new wave of regulation. This timely book deftly uses this crisis as an opportunity to explore the notion of precariousness or vulnerability in employment relationships. Arguing that the idea of vulnerability has been under-theorised in the labour law literature, Lisa Rodgers illustrates how this extends to the design of regulation for precarious work. The book's logical structure situates vulnerability in its developmental context before moving on to examine the goals of the regulation of labour law for vulnerability, its current status in the law and case studies of vulnerability such as temporary agency work and domestic work. These threads are astutely drawn together to show the need for a shift in focus towards workers as 'vulnerable subjects' in all their complexity in order to better inform labour law policy and practice more generally. Constructively critical, *Labour Law, Vulnerability and the Regulation of Precarious Work* will prove invaluable to students and scholars of labour and employment law at local, EU and international levels. With its challenge to orthodox thinking and proposals for the improvement of the regulation of labour law, labour law institutions will also find this book of great interest and value."

Standing, Guy, *The Precariat: The New Dangerous Class* (Bloomsbury Academic, 2011)

- From cover: “First published in 2011 *The Precariat* is the hugely influential first account of an emerging class of people facing insecurity, moving in and out of precarious work that gives little meaning to their lives. Standing warns that the growth of the precariat is producing instabilities in society. Its internal divisions have led to the villainization of migrants and other vulnerable groups and some are susceptible to the dangers of political extremism. Standing argues for a new politics which puts the fears and aspirations of the precariat at the heart of a progressive strategy of redistribution and income security. The precariat is an increasingly global phenomenon, highly visible in the ongoing migrant crisis and protest movements around the world”.

Standing, Guy, *A Precariat Charter: From Denizens to Citizens* (Bloomsbury Academic, 2014)

- Blurb: “Guy Standing's immensely influential 2011 book introduced the Precariat as an emerging mass class, characterized by inequality and insecurity. Standing outlined the increasingly global nature of the Precariat as a social phenomenon, especially in the light of the social unrest characterized by the Occupy movements. He outlined the political risks they might pose, and at what might be done to diminish inequality and allow such workers to find a more stable labour identity. His concept and his conclusions have been widely taken up by thinkers from Noam Chomsky to Zygmunt Bauman, by political activists and by policy-makers. This new book takes the debate a stage further, looking in more detail at the kind of progressive politics that might form the vision of a Good Society in which such inequality, and the instability it produces, is reduced. *A Precariat Charter* discusses how rights - political, civil, social and economic - have been denied to the Precariat, and argues for the importance of redefining our social contract around notions of associational freedom, agency and the commons”.

MIGRANT LABOR AND HUMAN RIGHTS

Scholarly Texts

Anderson, Bridget “A Very Private Business Exploring the Demand for Migrant Domestic Workers,” *European Journal of Women's Studies* 247–264, no. 14 (2007).

- Summary: This article discusses the way in which migration has been seen as a possible solution to the UK's shortages of the general labor and skills needed for care work. Although the labor of migrant women performing care work, in terms of domestic labor, is undoubtedly important, immigration laws tend to allow for only temporary visas, unlike other care professions such as trained nurses. The authors suggest that the informality of domestic care sometimes makes it difficult to measure the economic effect benefits to States of such labor. The intersections of race, immigration status, and nationality are seen as intersecting in ways that give migrant laborers a particular place in UK domestic labor markets. The author relies on data from two research studies for her analysis. The first is a four-country pilot study on the demand for domestic and sex labor, and the second looks at the impact of increased economic and social rights after the

enlargement of the EU.

Basok, Tanya and Emily Carasco, "Advancing the Rights of Non-Citizens in Canada: A Human Rights Approach to Migrant Rights," *Human Rights Quarterly* 342, no. 32 (2010).

- Summary: This article focuses on how international human rights law may be used to protect the rights of non-citizen migrant workers in Canada, focusing on judicial agency. It highlights the complexities of understanding how human rights norms should be enforced by states to protect non-citizens. In the case of seasonal agricultural migrant workers in Canada, the authors contend that local actors like trade unions and domestic judges should be considered important actors in extending international human rights protections.

Basok, Tanya and Nicola Piper, "Management Versus Rights: Women's Migration and Global Governance in Latin America and the Caribbean," *Feminist Economics* 35, no. 18 (2012).

- Abstract: "The global governance of labor migration reflects two major trends: one supports neoliberal migration management priorities and another addresses human rights, with the latter subordinated to the former. This subordination of human rights to other, market-related, priorities parallels global governance priorities in general. While some international organizations address the need for protection of migrant rights, their specific on-the-ground programs do not match the rhetoric. This study demonstrates this disconnection on the basis of an analysis of interviews with representatives of global governance institutions and international nongovernmental organizations conducted between 2007 and 2010 in the Latin American and Caribbean region and at the headquarters of relevant international organizations in Geneva. Furthermore, the study argues that because the discourse on migrant women's rights and their labor exploitation is framed predominantly in the context of trafficking, little headway is made in advancing migrant women's labor and social rights."

Berg, Laurie, *Migrant Rights at Work: Law's precariousness at the intersection of immigration and labour* (Routledge, 2015)

- Summary: Public debates about the terms of membership and inclusion have intensified as developed economies increasingly rely on temporary migrant labour. While most agree that temporary migrant workers are entitled to the general protection of employment laws, temporary migrants have, by definition, restricted rights to residence, full social protections and often to occupational and geographic mobility. This book raises important ethical questions about the differential treatment of temporary and unauthorised migrant workers, and permanent residents, and where the line should be drawn between exploitation and legitimate employment. Taking the regulatory reforms of Australia as a key case study, Laurie Berg explores how the influence of immigration law extends beyond its functions in regulating admission to and exclusion from a country. Berg examines the ways in which immigration law and enforcement reconfigure the relationships between migrant workers and employers, producing uncertain and coercive

working conditions. In presenting an analytical approach to issues of temporary labour migration, the book develops a unique theoretical framework, contending that the concept of precariousness is a more fruitful way than equality or vulnerability to evaluate and address issues of temporary migrant labour.

Bidinger, Sarah “Syrian Refugees and the Right to Work: Developing Temporary Protection in Turkey,” *Boston University International Law Journal* 223, no. 33 (2015).

- Summary: This article wrestles with the issue of how migrants may be protected by international human rights country if a country does not prescribe to certain important covenants and treaties. For example, Turkey raised limitations during its signing of the 1951 Convention and Protocol Relating to the Status of Refugees. This limitation reduces the rights of non-European refugees. Thus, Syrian refugees do not receive significant protections and their ability to work is severely limited. The authors contend that Turkey should develop legal protections for Syrian refugees working in within the country and enhance its current protection framework.

Costello, Cathryn “Migrants and Forced Labour: A Labour Law Response,” *The Autonomy of Labour Law*, eds. Alan Bogg, Cathryn Costello, ACL Davies, and Jeremias Prassl (Hart Publishing, 2015).

- Summary: The author seeks to illustrate how immigration law, the immigration process and labour market structures may interact to create vulnerability to forced labour, drawing on empirical studies in the UK. Costello examines the binary between ‘free’ and ‘unfree’ labour in political economy, and the notion of a continuum from free labour to the ultimate form of unfreedom, slavery. The chapter also examines how the migration process and immigration law create fertile conditions for forced labour, and also considers how those with secure migration status, namely EU citizens in the UK, are also vulnerable to forced labour. In light of this analysis, Costello critiques the current legal responses to forced labour, illustrating and comparing the approaches taken by UK domestic law, the 2014 Protocol to the ILO Convention on Forced Labour, as well as the approach taken by human rights law. The author finds that a more progressive (ie orthodox labour law) interpretation of human rights law on forced labour is appropriate and necessary - which insulate labour rights from migration status, regulate labour intermediaries, and develops better collective and institutional protections for labour rights.

Costello, Cathryn and Mark Freedland (eds), *Migrants at Work: Immigration and Vulnerability in Labour Law* (Oxford, 2014).

- Abstract: “This collection has its origins in the recognition that there is a highly significant and under-considered intersection and interaction between migration law and labour law. It is the culmination of a collaborative project on ‘Migrants at Work’ funded by the John Fell Fund, the Society of Legal Scholars and the Research Centre at St John’s College, Oxford. The collection aims to shed light on the interactions between

immigration, migration law, and labour law, in particular how migration status has a bearing on labour relations and the world of work. Contributors to the volume identify the many ways that migration law, as currently designed, divides the objectives of labour law, privileging employers' interests in the supply of labour over worker-protective concerns. In addition, migration law creates a particular form of status, which affects labour relations, thereby dividing the subjects of labour law. While several contributions focus on the UK, other countries examined include Australia, Ireland, Israel, Italy, Germany, Sweden, and the US. References are also made to discrete practices in Brazil, France, Greece, New Zealand, Mexico, Poland, and South Africa. The collection identifies how migration law as currently configured jeopardizes some of the values and institutions of labour law."

Gordon, Jennifer, "Transnational Labor Citizenship" *Southern California Law Review*, 80 (2007) 561-578

- Abstract: In a year in which the United States has been both riveted and riven by the debate over immigration policy, this Article offers a radical new proposal for how to structure cross-border migration. Over a million new immigrants arrive in the United States each year. The majority are undocumented, a fact brought home by the massive numbers of migrants who took to the streets to protest proposed changes in U.S. immigration policy this spring. It is in the workplace that the impact of large numbers of newcomers is most keenly felt. But the labor movement, the civil society institution charged with addressing the degradation of low-wage work, has been deeply conflicted over how to respond. On the one hand, with undocumented immigrants representing up to half the workforce in some industries, unions recognize that they must organize the undocumented in order to enforce basic workplace standards for all workers. On the other, unions fear being plowed under by the competition that those "outsiders" represent, and they continually (but futilely) seek to restrict the future flow. In a world of porous borders, the fortress model of labor citizenship divides workers against each other, with devastating results for American workers and migrants alike.

This Article proposes a way out of the dilemma. In it, I develop the idea of transnational labor citizenship, a new approach to structuring cross-border labor migration that draws on, but goes beyond, current theories of transnational political citizenship. Transnational labor citizenship would open the fortress of labor and of the nation-state to a constant flow of new migrants, through a model that links permission to enter the country to membership in a network of cross-border worker organizations rather than to employment by a particular enterprise. In exchange for authorization to work, migrant worker members would commit to the core value of labor citizenship: solidarity with other workers in the United States, expressed as a commitment to refuse work under conditions that violate the law or labor agreements. Inspired by experiments already underway in the United States, Mexico, and Canada, the transnational labor citizenship proposal would create structures that respond at once to the desires of migrants for jobs and to the democratic aspiration of preserving decent work in this country.

Gordon, Jennifer, "Regulating the Human Supply Chain" *Iowa Law Review* 102 (2017)

- Over the past decade, the United States has experienced a stunning 65% decline in undocumented immigration. While politicians seem unaware of this change, firms that once relied on local undocumented workers as a low-wage labor force feel it acutely. Such companies have increasingly applied to sponsor temporary migrants from abroad (sometimes called “guest workers”) to fill empty jobs. In 2015, the number of migrant workers entering the United States on visas was nearly double that of undocumented arrivals — almost the inverse of just 10 years earlier. Yet notice of this dramatic shift, and examination of its implications for U.S. law and the regulation of employment in particular, has been absent from legal scholarship. This Article fills that gap, arguing that employers’ recruitment of would-be migrants from other countries, unlike their use of undocumented workers already in the United States, creates a transnational network of labor intermediaries — the “human supply chain” — whose operation undermines the rule of law in the workplace, benefitting U.S. companies by reducing labor costs while creating distributional harms for U.S. workers, and placing temporary migrant workers in situations of severe subordination. It identifies the human supply chain as a key structure of the global economy, a close analog to the more familiar product supply chains through which U.S. companies manufacture products abroad. The Article highlights a stark governance deficit with regard to human supply chains, analyzing the causes and harmful effects of an effectively unregulated world market for human labor. Drawing on the author’s original research into innovative public, private, and hybrid approaches to the governance of human supply chains, the Article sets out and evaluates a range of potential interventions, ultimately proposing a new supply chain liability that realigns risk and responsibility for the harms that attend the global recruitment of low-wage workers.

Lewis, Hannah et al., “Hyper-precarious Lives: Migrants, Work and Forced Labour in the Global North,” *Progress in Human Geography* 580–600, no. 39 (2015).

- Abstract: “[T]his paper unpacks the contested inter-connections between neoliberal work and welfare regimes, asylum and immigration controls, and the exploitation of migrant workers. The concept of precarity is explored as a way of understanding intensifying and insecure post-Fordist work in late capitalism. Migrants are centrally implicated in highly precarious work experiences at the bottom end of labour markets in Global North countries, including becoming trapped in forced labour. Building on existing research on the working experiences of migrants in the Global North, the main part of the article considers three questions. First, what is precarity and how does the concept relate to working lives? Second, how might we understand the causes of extreme forms of migrant labour exploitation in precarious lifeworlds? Third, how can we adequately theorize these particular experiences using the conceptual tools of forced labour, slavery, unfreedom and precarity? We use the concept of ‘hyper-precarity’ alongside notions of a ‘continuum of unfreedom’ as a way of furthering human geographical inquiry into the intersections between various terrains of social action and conceptual debate concerning migrants’ precarious working experiences.”

Li, William D H, “Developmental State, Human Rights and Migrant Workers,” *Development and Society* 139, no. 40 (2011).

- Excerpt: “The aim of this paper is to focus on the issue of the labor rights of migrant workers in Taiwan. First, a general profile of the unskilled migrant workers in Taiwan will be provided. This will be followed by a brief review of previous studies on migrant workers, in which it will be argued that the current research on migrant workers in Taiwan has mainly focused on domestic caretaker and gender issues. While some studies have looked at overseas investment by Taiwanese businesses and related labor relations, little attention has been paid to the structure of the relations set by the state in which the human rights issues of the migrant workers have been framed in Taiwan. It is argued in this paper that the social relations of migrant workers are key to the human rights issues which have been shaped by the developmental state. The productive relations of the migrant workers have been derived from the empirical research that shows how the conditions facing migrant workers have been shaped by the structure of economic relations in which migrant workers have been perceived as material resources under the fixed nature of employment relations. Unlike those workers who are free to move within the market, these migrant workers can not move in this way and should certainly remain loyal to one employer in accordance with the state rules that have been drawn up for migrant workers.”

Noll, Gregor, “Why Human Rights Fail to Protect Undocumented Migrants,” *European Journal of Migration and Law* 241, no. 12 (2010).

- Summary: The author differentiates the political community from the household by creating a new political theory about undocumented migration. He relies on both the Convention of the Rights of the Child and the Migrant Workers Convention to develop this theory. His motivation behind writing the article was due to the limited 'universality' of human rights with regard to undocumented migrants. He spends some time in the article focusing on issues of jurisdiction in implementing international human rights law.

Piore, Michael J., *Birds of Passage: Migrant Labor and Industrial Societies* (Cambridge: Cambridge University Press, 1979), 1-29.

- Abstract: “Birds of Passage presents an unorthodox analysis of migration from rural areas to urban industrial societies. It argues that such migrations are a continuing feature of industrial societies and that they are generated by forces inherent in the nature of industrial economies. It explains why conventional economic theory finds such migrations so difficult to comprehend, and challenges a set of older assumptions that supported the view that these migrations were beneficial to both sending and receiving societies. Professor Piore seriously questions whether migration actually relieves population pressure and rural unemployment, and whether it develops skills necessary for the emergence of an industrial labour force in the home country. Furthermore, he criticizes the notion that in the long run migrant labour complements native labour. On the basis of this critique, he develops an alternative theory of the nature of the migration process.”

Ruhs, Martin, *The Price of Rights: Regulating International Labor Migration* (Princeton: Princeton University Press, 2014), 1-25.

- Summary: “Many low-income countries and development organizations are calling for greater liberalization of labor immigration policies in high-income countries. At the same time, human rights organizations and migrant rights advocates demand more equal rights for migrant workers. *The Price of Rights* shows why you cannot always have both.

Examining labor immigration policies in over forty countries, as well as policy drivers in major migrant-receiving and migrant-sending states, Martin Ruhs finds that there are trade-offs in the policies of high-income countries between openness to admitting migrant workers and some of the rights granted to migrants after admission. Insisting on greater equality of rights for migrant workers can come at the price of more restrictive admission policies, especially for lower-skilled workers. Ruhs advocates the liberalization of international labor migration through temporary migration programs that protect a universal set of core rights and account for the interests of nation-states by restricting a few specific rights that create net costs for receiving countries.

The Price of Rights analyzes how high-income countries restrict the rights of migrant workers as part of their labor immigration policies and discusses the implications for global debates about regulating labor migration and protecting migrants. It comprehensively looks at the tensions between human rights and citizenship rights, the agency and interests of migrants and states, and the determinants and ethics of labor immigration policy.”

Satterthwaite, Margaret, “Women Migrants’ Rights under International Human Rights Law,” *Feminist Review* vol. 77 (2004).

- Summary: This short article in the *Feminist Review* discusses the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It originally entered into force in 2003. The authors discuss how certain provisions limit the effectiveness of the convention, and argues that the use of the discrimination paradigm in human rights law with regard to human rights is less effective than the paradigm of intersectionality.

Shierup, Carl-Urik, et. al. *Migration, Precarity, & Global Governance*, (Oxford University Press, 2015)

- Abstract: For too long the movement of labour and the labour movement have been studied in splendid isolation. This volume addresses their intersection. Karl Polanyi's intuition that history moves through a double movement of disembedding under market rule followed by re-embedding under societal control underlies the overall argument. In different, but complementary, ways the book's fifteen chapters address globalization, international migration, and the precarization of work and citizenship along with diverse social movement responses beyond 'North' and 'South.'

Wise, Raúl Delgado, Humberto, Márquez Covarrubias and Ruben Puentes, “Reframing the Debate on Migration, Development and Human Rights,” *Population, Space and Place* 430-443, no. 19 (2013).

- Abstract: “The relationship between migration, development, and human rights is a topic of growing interest among international organisations, academics, and civil society organisations. To varying degrees, international organisations such as the World Bank and the International Organization for Migration see remittances as an essential tool in the development of migrant-sending, underdeveloped countries. They also envisage international migration management as a core element in the design and implementation of migration policies that are apparently beneficial for all parties. We argue that this perspective, which has dominated the academic and policy agendas, is essentially one-sided, de-contextualised, reductionist, and misleading. It overlooks the realm of neoliberal globalisation and unequal development in which contemporary migration is embedded. It also disregards human and labour rights as central and intrinsic elements of coherent migration and development policies, as well as the exploitation, social exclusion, human insecurity, and criminalisation suffered by international migrants. In addition, it masks most of the fundamental contributions made by migrants to the destination countries and ignores the costs of migration for the countries of origin; costs that go far beyond the overemphasised ‘positive’ impact of remittances. The purpose of this article is to provide some key elements for reframing the debate on migration, development, and human rights with particular emphasis on the promotion of a comprehensive, inclusive, and human-centred alternative agenda.”

Wishnie, Michael J. “Immigrant Workers and the Domestic Enforcement of International Labor Rights,” *U. PA Journal of Labor and Employment Law* 529–557 (2002).

- Summary: In a paper presented at the 54th Annual Conference on Labor Law at NYU, Michael Wishnie, Associate Professor of Clinical Law at NYU School of Law, presents two strategies for domestic advocates for laborers in the United States. First, he believes the Alien Tort Claims Act (ATCA) could serve as a fertile source for federal litigation on behalf of workers in the U.S. Second, he recommends taking more advantage of the labor-side agreement to the North American Free Trade Agreement (NAFTA) called the North American Agreement for Labor Cooperation (NAALC). He cites Human Rights Watch for the proposition that the U.S. often violates international labor law and notes that the ATCA has been used more frequently in recent times for transnational human rights litigation. He also delineates the difference between forced labor and involuntary servitude, describing how threats against non-citizens to perform labor could allow for ATCA claims.

INFORMAL WORK AND HUMAN RIGHTS

Scholarly Texts

Carré, Françoise et al (eds.) *Nonstandard Work: The Nature and Challenges of Changing Employment Arrangements* (Cornell University Press, 2000).

- Summary: This book seeks to understand how the nature of work has changed in the late 20th century. The book was intended for policy makers, practitioners, academics and researchers and it considers the decline of the standard, formal nature of employment arrangements. Each chapter is written by a different author and the book is divided into four sections that involve: 1) presenting an overview emergence of nonstandard jobs and the changing nature of 'standard' labor; 2) understanding the emergence of this pattern and the causes for the change in standard employment opportunities; 3) analyzing the effects of informal work arrangements on the career, earning potential, and benefits of employees; and, 4) the potential use of innovative initiatives and institutions to counteract the negative effects of nonstandard work.

Narayan, Uma, "Workers in the Informal Sector: Special Challenges for Economic Human Rights" *Feminist Economics*, 101-116, 13:1 (2007)

- Abstract (for the broader collaboration): "The notion of rights is a powerful one, but the channels through which they have been promoted and enforced since World War II have militated against the more radical promise of rights. These explorations examine the question of economic rights with an international focus. The contributions touch on such diverse topics as the international peasant federation called La Vi'a Campesina, heterodox and social economic analyses, and the informal sector. The authors address the question of human rights with respect to the conditions that delimit and enforce these rights, the connections between macroeconomics and human rights, social movements that strive to protect these rights, and the different theoretical approaches to incorporating rights into an academic framework. Though each contribution's methodology and focus are different, the composite takes an important step in evaluating this very critical question of economic rights that greatly affects individual lives, social conditions, economic policies, and the study of economics".

Routh, Supriya and Vando Borghi (eds), *Workers and the Global Informal Economy: Interdisciplinary Perspectives* (Routledge, 2016)

- Summary: This edited volume "explores varying definitions of informality in the backdrop of neo-liberal market logic, exploring how it manifests itself in different regions around the world, and its relationship with formal work. This volume demonstrates how neo-liberalism has been instrumental in accelerating informality and has resulted in the increasingly precarious position of the informal worker. Using different methodological approaches and regional focuses, this book considers key questions such as whether workers exercise choice over their work; how constrained such choices are; how social norms shape such choices; how work affects their well-being and agency; and what role culture plays in the determination of informality."

Reports

Non-Standard Employment Around the World: Understanding Challenges, Shaping Prospects, (International Labour Organization, 2016).

- Excerpt: “Non-standard forms of employment (hereinafter “non-standard employment”, or “NSE”) have become a contemporary feature of labour markets around the world. Their overall importance has increased over the past few decades in both industrialized and developing countries, as their use has become more widespread across economic sectors and occupations.

NSE comprises four different employment arrangements (see figure below) that deviate from the “standard employment relationship”, understood as work that is full time, indefinite, as well as part of a subordinate relationship between an employee and an employer.

For some, working in NSE is an explicit choice and has positive outcomes. However, for most workers, employment in NSE is associated with insecurity. NSE can also pose challenges for enterprises, the overall performance of labour markets and economies as well as societies at large.

Supporting decent work for all requires an in-depth understanding of NSE and its implications. This report details trends and consequences of NSE and draws on international labour standards and national experience to advance policy recommendations that help to ensure protection of workers, sustainable enterprises and well-functioning labour markets.”

SEX WORK AND HUMAN RIGHTS

Scholarly Texts

Berg, Heather "Working for Love, Loving for Work: Discourses of Labor in Feminist Sex-Work Activism" *Feminist Studies*, 40(3) 693 - 721 (2014)

Abstract: "In the late 1970s, Carol Leigh (a.k.a. Scarlet Harlot) coined the term "sex work" as a means to best describe the labor she and other workers in commercial sex industries performed. Leigh hoped the term would unite workers, provide an alternative to stigmatized language, and "acknowledge the work we do rather than define us by our status". Thirty years later, the term "sex work" is widely used, particularly in progressive scholarship, worker-directed activism, and worker narratives. In many respects, Leigh's hopes seem to have been realized: groundbreaking anthologies and activist undertakings inclusive of workers in various sex industries have been organized under the umbrella of "sex work," and the term remains the standard in value-neutral language. Indeed, its usage may be too value-neutral, the work that emerges from much sex-work activist writing is not the same work of anti-capitalist critique. Instead, it is the work of free exchange between equals, the dignity of a living earned, and a heady blend of both self-sacrifice and fulfilling escape from the drudgery of a nine-to-five job. It is sometimes work that is barely work at all, but instead a performance of the innate self for which the lucky just happen to be paid."

Decker, Michele R et al., “Human rights violations against sex workers: burden and effect on HIV,” *The Lancet* 186–199, no. 385 (2015).

- Summary: The authors analyzed hundreds of studies on the human rights implications of sex work and HIV-prevention. The criminalization of sex work is perceived as aggravating human rights abuses more than other policies surrounding sex work. The authors conclude by noting that a rights-based HIV responses for sex workers is crucial to protecting the human rights of sex workers.

Hernandez-Truyol, Berta E. & Jane E. Larson, “Sexual Labor and Human Rights,” *Columbia Human Rights Law Review* 391, no. 37 (2005).

- Summary: This article considers the friction between the right to work and modern slavery dichotomies for understanding sexual labor. The authors contend that the labor paradigm is more appropriate for understanding prostitution. They also argue for the decriminalization of prostitution and reconsideration of the ideas of consent and coercion.

Larson, Jane E. “Prostitution, Labor, and Human Rights,” *U.C. Davis Law Review* 673, no. 37 (2003).

- Summary: This piece is from a lecture at UC Davis School of Law and reviews the history of abolitionist and autonomy approaches to understanding prostitution in international law. The history of Western classical liberal theory of abolition is discussed. Even after the end of slavery, the author notes how feminists began using the language of slavery abolition to challenge instances of contract bondage and discrimination. The author notes how labor rights are fundamental human rights, and this stance may challenge the paradigm of bondage when considering prostitution.

Loff, Bebe et al., “Prostitution, Public Health, and Human-Rights Law,” *The Lancet*, no. 356 (2000).

- Summary: This Lancet article from 2000 considers the way the criminalization of sex work makes prostitutes more vulnerable to contracting HIV. It advocates for a reconsideration of international law that fails to account for issues of consent in sex work and hampers public health efforts.

Musto, Jennifer, et al., “Prostitution and Sex Work,” *International Encyclopedia of the Social & Behavioral Sciences*, 279–285, accessed Nov. 10, 2016, <http://www.sciencedirect.com/science/article/pii/B9780080970868861255>.

- Summary: The authors consider how prostitution and sex work are part of global commercial markets in the twenty-first century. The authors consider how sex work operates as a form of labor, and how it has changed over time through various technological innovations. They also note the different approaches used by governments to regulate prostitution either through criminalization or liberalization, and how such regulation may stigmatize sex workers.

Reports

Amnesty International, *Draft policy on Sex Work*, 32nd International Council Meeting 2015 ICM circular, July 2015

- Summary: This document contains a resolution on a draft policy on respecting, protecting and fulfilling the human rights of sex workers for consideration at the ICM. The document also provides a draft policy and a summary of related Amnesty International research on this issue. The draft policy has been informed by the findings of a two year consultation and compiled based on the discussions and input of an internal working group on the issue. The research summary details the headline findings of four research projects requested by the CA/DF 2014 and conducted by the IS (with support from relevant Sections). This document is proposed to inform discussion and debate during the International Council Meeting 2015 of a potential policy on respecting, protecting and fulfilling the human rights of sex workers.

DOMESTIC WORK AND HUMAN RIGHTS

Scholarly Texts

Anderson, Bridget, “Nations, Migration and Domestic Labor: The case of the UK,” *Women’s Studies International Forum* 5–12, no. 46 (2014).

- Abstract: “[T]his paper explores the ways in which migration policies on domestic work not only produce a subordinated workforce, but reflect and construct ideas about family, work, and Britishness, with a particular focus on two visa types: domestic worker accompanying an employer and au pair visas.”

Doorey, David J., “In Defense of Transnational Domestic Labor Regulation,” *Vanderbilt Journal of Transnational Law* 953, no. 43 (2010).

- Summary: This article discusses transnational domestic labor regulation as a potential strategy for improving working conditions in foreign countries. This article supports the strategy but also emphasizes that it must focus on worker empowerment in order to succeed.

Fredman, Sandra, “Home from Home: Migrant Domestic Workers and the ILO Convention on Domestic Workers” Costello, Cathryn and Mark Freedland (eds), *Migrants at Work: Immigration and Vulnerability in Labour Law* (Oxford, 2014)

- This chapter examines the International Labour Organization’s Convention No 189 concerning decent work for domestic workers (2011). It notes how the position of domestic workers within the employing family defies the public–private divide, upon which labour law is traditionally premised, noting the particular difficulties faced by live-in domestic workers. Domestic work poses acute dilemmas for feminists. The chapter critically assesses the provisions of the ILO Convention, comparing it with other sources

of regulation of domestic work, particularly those in South Africa and Brazil. It notes the important role in South Africa of the Domestic Workers and Allied Trade Union and the necessity of a campaigning political role, given union membership is extremely low.

Fudge, Judy, “Feminist Reflections on the Scope of Labour Law: Domestic Work, Social Reproduction and Jurisdiction” *Feminist Legal Studies*, 1-23, 22(1). (2014)

- Abstract: “Drawing on feminist labour law and political economy literature, I argue that it is crucial to interrogate the personal and territorial scope of labour. After discussing the “commodification” of care, global care chains, and body work, I claim that the territorial scope of labour law must be expanded beyond that nation state to include transnational processes. I use the idea of social reproduction both to illustrate and to examine some of the recurring regulatory dilemmas that plague labour markets. I argue that unpaid care and domestic work performed in the household, typically by women, troubles the personal scope of labour law. I use the example of this specific type of personal service relation to illustrate my claim that the jurisdiction of labour law is historical and contingent, rather than conceptual and universal. I conclude by identifying some of the implications of redrawing the territorial and personal scope of labour law in light of feminist understandings of social reproduction.”

Gorbán, Débora & Ania Tizziani, “Inferiorization and Deference: The Construction of Social Hierarchies in the Context of Paid Domestic Labor,” *Women’s Studies International Forum* 54–62, no. 46 (2014).

- Summary: “[I]n Argentina, domestic work is one of the main occupations for women from low-income sectors. As in other Latin American societies, it is one of the most paradigmatic forms of contact between the different social classes. As such, this labor relationship has been analyzed in numerous studies as a critical location for the reproduction of social differences and inequality. The interpersonal relationships between employers and workers mobilize categorization criteria and stereotyped images that reveal wider dynamics regarding the construction of social hierarchies. On the basis of a qualitative study, the objective of this article is to analyze, in the city of Buenos Aires, the processes of constructing social hierarchies that are implied by this particular labor relationship. This analysis seeks to reveal the operations through which employers construct a stereotype of social inferiority for domestic workers through which they legitimize their dominant position in the labor relationship, and to examine the tensions and ambiguities of this.”

Silvey, Rachel, “Transnational Domestication: State Power and Indonesian Migrant Women in Saudi Arabia,” *Political Geography* 245–264, no. 23 (2004).

- Abstract: “Recent efforts to elaborate a feminist geopolitics have centered on challenging and expanding classical spatializations of “the political”. Building on this growing body of work, this article explores the gender politics of state power as refracted in struggles over women’s transnational migration and domestic labor. Specifically, it analyzes the

Indonesian and Saudi states' involvement in shaping the migration and working conditions of Indonesian domestic servants employed in Saudi Arabia. It examines key aspects of both states' direct and indirect influences on the feminization of the migrant labor force, the limitations of their policies for protecting overseas migrant women, and the political strategies that activists are employing to broaden the states' spaces and scales of jurisdiction. It points up gender-specific limits to the internationalization of state labor regulation, as well as possibilities that NGOs have identified for improving the protection of migrant workers in this transnational context. It thus identifies some particular ways in which contestations around women's transnational labor migration and gendered constructions of domestic labor are interlinked with the changing geographies of state power."

Reports

Women in Informal Employment Globalizing and Organizing & HomeNet South Asia, Delhi *Declaration of Home-Based Workers* (2015).

- Summary: "On February 8th and 9th, 2015, nearly 100 home-based worker representatives and supporters from 24 countries took part in a first-of-its kind global meeting in New Delhi, India, to draft and adopt the Delhi Declaration of Home-based Workers. The group also devised a five-year Action Plan to improve conditions for millions of home-based workers around the globe. The two-day event was organized by Women in Informal Employment Globalizing and Organizing (WIEGO) and HomeNet South Asia (HNSA) to provide a platform for home-based workers, who are primarily economically and socially disadvantaged women, to build solidarity, share experiences and learnings and move toward unified action with the Declaration and five-year Plan... The 60 organizations present also devised a five-year action plan to ensure implementation of the Declaration in the regions present, including Latin America, Africa, Eastern Europe, South Asia and Southeast Asia."

DOMESTIC AND TRANSNATIONAL LABOR ORGANIZING

Scholarly Texts

Adler, Lee H., Tapia, Maite, Turner Lowell (eds.), *Mobilizing against Inequality Unions, Immigrant Workers, and the Crisis of Capitalism*, Frank W. Pierce Memorial Lectureship and Conference Series (ILR Press, 2014).

- Summary: "Among the many challenges that global liberalization has posed for trade unions, the growth of precarious immigrant workforces lacking any collective representation stands out as both a major threat to solidarity and an organizing opportunity. Believing that collective action is critical in the struggle to lift the low wages and working conditions of immigrant workers, the contributors to *Mobilizing against Inequality* set out to study union strategies toward immigrant workers in four countries: Germany, France, the United Kingdom, and United States. Their research revealed both formidable challenges and inspiring examples of immigrant mobilization that often took shape as innovative social counter-movements Using case studies from a carwash

organizing campaign in the United States, a sans papiers movement in France, Justice for Cleaners in the United Kingdom, and integration approaches by the Metalworkers Union in Germany, among others, the authors look at the strategies of unions toward immigrants from a comparative perspective. Although organizers face a different set of obstacles in each country, this book points to common strategies that offer promise for a more dynamic model of unionism in the global North. The editors have also created a companion website for the book, which features literature reviews, full case studies, updates, and links to related publications.”

Andrias, Kate, “The New Labor Law” *Yale Law Journal* no. 126(1) (2016).

- Labor law is failing. Disfigured by courts, attacked by employers, and rendered inapt by a global and fissured economy, many of labor law’s kind global meeting in New Delhi, India, to draft and adopt the Delhian law that governs collective organization and bargaining among workers has little to offer those it purports to protect. Several scholars have suggested ways to breathe new life into the old regime, yet their proposals don’t solve the basic problem. Labor law developed for the New Deal does not provide solutions to today’s inequities. But all hope is not lost. From the remnants of the old regime, the potential for a new labor law is emerging. In this Article, I describe and defend the nascent regime, which embraces a form of social bargaining long thought unattainable in the United States. The new labor law rejects the old regime’s commitment to the employer-employee dyad and to a system of private ordering. Instead, it locates decisions about basic standards of employment at the sectoral level and positions unions as political actors empowered to advance the interests of workers generally. This new labor law, though nascent and uncertain, has the potential to salvage and secure one of labor law’s most fundamental commitments—to help achieve greater equality, both economic and political—in the context of the twenty-first century economy.

Berliner, Daniel et al., “Building Capacity, Building Rights? State Capacity and Labor Rights in Developing Countries,” *World Development* 127–139, no. 72 (2015).

- Summary: The authors analyze the relationship between state capacity and the protection of labor rights in 85 developing countries and 34 “supply chain relevant” countries. Using mathematical time-series cross-section models, the authors found that administrative capacity positively impacted whether states provided labor protections. However, they also discovered that this was true only in countries where political will exists, or where the political representation of labor is strong. The start with a literature review of the meaning of state capacity before moving on to explaining their empirical approach. The literature review notes that even states with strong labor laws, like Bangladesh, often lack enforcement mechanisms to prevent international human rights abuses.

Blackett, Adelle and Anne Trebilcock, “Conceptualizing Transnational Labour Law” in Adelle Blackett and Anne Trebilcock, eds., *Research Handbook on Transnational Labour Law* (New York: Edward Elgar, 2015), Ch 1.

- Excerpt: “This book, including this introductory chapter, is structured to interrogate each of the components of TLL [transnational labour law]: its characterization as law, its relationship to ‘labour’ and ‘labour law’ and its ‘transnational’ character. Each component raises points of convergence and disjuncture with the past. For although the TLL has risen in response to the period of globalization, this handbook suggests that its roots lie in earlier moments, like 1919, when concerned actors sought to address the challenges inherent to the affirmation that ‘the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries.’ TLL builds on the multiple, and largely mutually reinforcing, accounts of its past, but also loosens the grip both of a unitary, centralizing framing of the ‘sovereign nation state,’ however tripartite its conception, as the sole responsible actor; and of an accompanying exclusively statist understanding of law.”

Bronfenbrenner, Kate (ed), *Global Unions: Challenging Transnational Capital Through Cross-Border Campaigns* (ILR Press/Cornell University Press, 2007).

- Summary “This collection emerges from a landmark conference where unionists, academics, and representatives of nongovernmental organizations from the Global South and the Global North met to devise strategies for labor to use when confronting the most powerful corporations such as Wal-Mart and Exxon Mobil. The workplaces discussed here include agriculture (bananas), maritime labor (dock workers), manufacturing (apparel, automobiles, medical supplies), food processing, and services (school bus drivers). Kate Bronfenbrenner's introduction sets the stage, followed by contributions describing specific examples from Asia, Latin America, and Europe. Bronfenbrenner's conclusion focuses on the key lessons for strengthening union power in relation to global capital.”

Drache, D & L. A. Jacobs (eds.), *Linking Global Trade and Human Rights: New Policy Space in Hard Economic Times*, (Cambridge University Press, 2014).

- Summary: “The concept of policy space is critical to understanding the impact of globalization on public policy in the twenty-first century. For the purposes of this book, a policy space is an arena where national governments have the freedom and capacity to design and implement public policies of their own choosing. In market economies, policy spaces reflect the insight that certain realms of public life should be governed by collective decision making designed to advance the public interest whereas in other realms markets reign. The spatial metaphor expresses, in other words, the claim that there are certain sites where government action has legitimacy. Ultimately, national policy spaces matter because they provide opportunities for governments to be innovative in the development of public policy on these sites, especially in terms of advancing social justice goals. The unifying theme of this book is that there are major reconfigurations of social and economic policy spaces for national governments on the international landscape during the hard economic times that follow global financial crises. After the 2008 financial crisis, state action extended into new areas and was being deployed in new and innovative ways from the Cash for Clunkers program in the US to successful anti-

poverty programs in Brazil. In India the national Rural Employment Scheme to guarantee a minimum number of paid hours annually to hundreds of millions of its poorest is the largest social welfare scheme in the world.”

Hadwiger, Felix, “Global Framework Agreements: Achieving Decent Work in Global Supply Chains,” *International Journal of Labour Research*, no. 7. (2015).

- Excerpt: “One of the key characteristics of the modern global economy is the increasing fragmentation of production. This has led to a growing importance of global supply chains (GSCs), which affects the global and regional structure of employment, working conditions and workers’ rights. Multinational enterprises (MNEs) attempt through a plethora of corporate social responsibility (CSR) initiatives to fend off public criticism about working conditions at suppliers and subcontractors. However, management-driven CSR programmes lack the comprehensive involvement of workers and are not designed to develop sustainable labour relation systems. On the contrary, global framework agreements (GFAs) – concluded between MNEs and global union federations (GUFs) – are based on a new dimension in labour relations: in GFAs, companies consent to respect workers’ rights and to promote decent work globally within their subsidiaries and along their global supply chain. For trade unions the conclusion of GFAs is based on negotiations and is intrinsically linked to forging solidarity links and facilitating unionization as well as linkages between trade union networks. This report conducts a content analysis of the 54 most recent GFAs and an evaluation of 29 case studies on the implementation of GFAs to identify effective good-practice examples of GFAs promoting decent work in global supply chains by developing labour relations on a global scale.”

Hauf, Felix, *Beyond Decent Work: The Cultural Political Economy of Labor Struggles in Indonesia* (CampusVerlag, 2016).

- Summary: *Beyond Decent Work* explores the history of the Indonesian labor movement, using three contemporary case studies to shed light on the development of Indonesia's labor struggles and trade union strategies. Drawing on extensive and recent qualitative fieldwork, Felix Hauf argues that the economic idea of "decent work" plays a central role in current trade union strategies at the expense of more radical--or traditional working-class--strategies of industrial action, even though the latter have been more effective in fulfilling workers' demands for higher wages and better working conditions. Hauf's analysis offers unique insight into the labor dynamics of Indonesia and Southeast Asia more broadly, revealing how genuinely democratic and independent unions--confronted with rival unions controlled by businesses, Indonesian subcontractors, multinational corporations, and the Indonesian state--struggle to create an economy outside the confines of neoliberal capitalism.

Horwitt, Sanford D., *Let Them Call Me Rebel: Saul Alinsky, His Life and Legacy* (Vintage Books

Publishing, 1992).

- Summary: This book is a biography chronicles the career of Saul Alinsky, a labor activist, from his time organizing in Chicago to working as an activist in social justice movements in the 1960s. Alinsky attended the University of Chicago as an undergraduate and he first gained national attention with his publication of the book *Reveille for Radicals*, which discussed his efforts organizing in Chicago's industrial slums. Additionally, he is described as pioneering the use of stockholdings by public organizations to promote socially responsible policies. Many students and activists during the 1960s sought his support.

Kang, Susan L., *Human Rights and Labor Solidarity: Trade Unions in the Global Economy* (University of Pennsylvania Press, 2012).

- Summary: In this book, Susan Kang analyzes cases outside of the U.S. with regard to the tensions between international norms of trade union rights and concerns about economic competitiveness. She argues that the cases analyzed suggest that state behavior can be influenced by transnational normative negotiations. A few specific variables seen as influencing the extent of an international institution's influence include partisan coalitions, state legalization of the obligations of trade union rights, and the level of development. Her methodology includes "process tracing" through comparative historical analysis.

McCallum, Jamie K., *Global Unions, Local Power* (ILR Press, 2013).

- Summary: "News about labor unions is usually pessimistic, focusing on declining membership and failed campaigns. But there are encouraging signs that the labor movement is evolving its strategies to benefit workers in rapidly changing global economic conditions. *Global Unions, Local Power* tells the story of the most successful and aggressive campaign ever waged by workers across national borders. It begins in the United States in 2007 as SEIU struggled to organize private security guards at G4S, a global security services company that is the second largest employer in the world. Failing in its bid, SEIU changed course and sought allies in other countries in which G4S operated. Its efforts resulted in wage gains, benefits increases, new union formations, and an end to management reprisals in many countries throughout the Global South, though close attention is focused on developments in South Africa and India.

In this book, Jamie K. McCallum looks beyond these achievements to probe the meaning of some of the less visible aspects of the campaign. Based on more than two years of fieldwork in nine countries and historical research into labor movement trends since the late 1960s, McCallum's findings reveal several paradoxes. Although global unionism is typically concerned with creating parity and universal standards across borders, local context can both undermine and empower the intentions of global actors, creating varied and uneven results. At the same time, despite being generally regarded as weaker than their European counterparts, U.S. unions are in the process of remaking the global labor movement in their own image. McCallum suggests that changes in political economy

have encouraged unions to develop new ways to organize workers. He calls these "governance struggles," strategies that seek not to win worker rights but to make new rules of engagement with capital in order to establish a different terrain on which to organize."

Rodgers, G et al. (eds.), *The International Labour Organization and the Quest for Social Justice*, (ILR Press/Cornell University Press, 2009).

- Summary: "This book tells the story of the International Labour Organization, founded in 1919 in the belief that universal and lasting peace goes hand in hand with social justice. Since then the ILO has contributed to the protection of the vulnerable, the fight against unemployment, the promotion of human rights, the development of democratic institutions and the improvement of the working lives of women and men everywhere. In its history the ILO has sometimes thrived, sometimes suffered setbacks, but always survived to pursue its goals through the political and economic upheavals of the last 90 years. The authors have between them many years of experience of working in and studying the ILO. They explore some of the main ideas that the ILO has developed and championed, and tell how they were applied, and to what effect, at different times and in different parts of the world. There are chapters on rights at work, the quality of employment, income protection, employment and poverty reduction, a fair globalization and today's overriding goal of decent work for all. The book ends with reflections on the challenges ahead in a world where the present economic crisis underlines the urgency of global action for social justice."

Rogers, Brishen "Law and the Global Sweatshop Problem" *Achieving Workers' Rights in the Global Economy*, eds. Richard Appelbaum and Nelson Lichtenstein (Cornell University Press, 2016).

- The global sweatshop problem is in part a creature of law. National and international legal regimes encourage sweatshop production in two ways: by weaving investors and brands' interests into the basic structure of economic globalization, and by limiting workers' powers of concerted action both within and across national borders. As a result, solving the global sweatshop problem will likely require legal reforms — in particular, reforms to promote and instantiate a new form of collective bargaining that I call "transnational triangular collective bargaining" or "TTCB." In TTCB, workers' organizations would link together across national borders and negotiate binding agreements both with workers' immediate employers and with the multinational brands that purchase their products. Crucially, TTCB would often benefit brands as well as workers by reducing brands' reputational risk, stabilizing their sourcing relationships, and enabling high-performance production strategies. In other words, TTCB could be the foundation of a new, more stable, and more fair global production system.

Rothstein, Robert L., *Global Bargaining: UNCTAD and the Quest for a New International Economic Order* (Princeton University Press, 1979).

- Summary: The author analyzes North-South relationships through the framework of the international bargaining system. Bargaining is one of the better ways of solving North-South Conflicts according to the first chapter. Additionally, interdependence may increase the need to rely on cooperative bargaining. Three themes are discussed in the first chapter. The first is the issue of decision making under uncertainty. The second is the failure of parties to consider the possibility of creating conditions where individual commodity agreements could work. This may result from the geographic or political proximity of states. Additionally, the strong, emotional resistance of developing countries to further intervention may be disabling because it may prohibit useful program implementation that challenges corrupt, or other problematic domestic issues.

Seidman, Gay W., *Beyond the Boycott: Labor Rights, Human rights, and Transnational Activism* (Russell Sage Foundation, 2007).

- Summary: In this book, labor sociologist Gay Seidman uses three case studies to reveal how corporate or extraterritorial interests shape domestic labor laws in ways that leave workers vulnerable. She also discusses the way in which international human rights activism has, in more recent times, overshadowed traditional labor organizing at the national level. The case studies look at forms of "stateless" forms of labor advocacy and protection and how they succeeded. Ultimately, despite the various successes of boycotts, Seidman views the State as a crucial tool for the protection of workers' rights.

Stone, Katherine & Scott L. Cummings, "Labor Activism in Local Politics: From CBAs to CBAS" *The Idea of Labour Law*, eds. Guy Davidov & Brian Languille (Oxford University Press, 2011)

- Abstract: "Activism by labor and community coalitions at the local level is redefining labor law in the United States. Despite a drastic decline in union density and power in the United States, labor and community alliances have emerged at the local level that seek to influence labor conditions outside of the traditional collective bargaining framework. Unions and their community allies in some cities have had success in securing living wages, job training, local hiring preferences, workplace safety protections, health insurance benefits, and even job security for local workers. These achievements have been built on a new legal foundation: local government law. Labor-community alliances have leveraged different facets of local government power – contracting, land use, and general regulatory power – to achieve labor objectives through local ordinances and negotiated community benefit agreements. This chapter describes some of the ways in which these new labor-community alliances have exercised power at the local level. It pays particular attention to Los Angeles where local labor activism has achieved a series of remarkable successes through the robust use of local governmental levers. The authors then address the question of whether, and to what extent, local labor initiatives can provide an adequate substitute for, or enhancement of, labor power at the national level."

Wheeler, Hoyt N., *The Future of the American Labor Movement* (Cambridge University Press,

2002).

- Summary: This book presents alternative labor strategies to revive the American labor movement. It surveys existing union strategies and outlines the history of unionism in the past. He spends some time discussing the variety of historical union styles, ranging from pure and simple unionism to cooperationist unionism and militant radical unionism. There is also a discussion of regional efforts to engage in trade union advocacy in Europe.

Wad, Peter, "Getting International Labour Rights Right at a Foreign Controlled Company in Malaysia: A Global Labour Network Perspective," *Geoforum*, no. 44 (2013).

- Abstract: "[This] article addresses international campaigning for labour rights and global labour networking against illegitimate labour practices of global corporations. Theoretically, the article offers an analytical framework to explain and strategize labour empowerment and disempowerment in Global Production Networks. The problem is approached by reviewing how the issue of labour agency is addressed in literature about Global Value Chains, Global Production Networks and Labour Geography. Given the limited progress in theorizing cross-border labour agency, two new approaches within the industrial relations research tradition – Strategic Union Corporate Analysis and Strategic Choice Framework – are linked to economic geography perspectives, with a view to offering a more integrated Global Labour Network (GLN) approach. The framework is then applied to analyze and explain the outcome and impact of a Danish–Malaysian campaign in support of a worker collective in a Danish controlled joint venture in Malaysia struggling for union recognition and collective bargaining agreement. The article concludes that the GLN approach integrates the achievements of the labour agency literatures by focusing on explaining changes in strategic labour power from the dynamic interface of strategic opportunities and labour capacity. Moreover, it is argued that semi-comprehensive international campaigns of labour NGOs may add critical but insufficient support to labour agency in developing countries with highly legalistic and politically infused industrial relations systems. Finally, international labour NGO networks will not be sustainable if they are not integrated with and supported by national and global union networks that match the power of global corporate networks."