



# Labor, Inequality & Human Rights

Fall 2017 Colloquium

## SEMINAR MINI CONFERENCE

December 4 & December 11

4-6pm

Location: JON 5.257



The Bernard and Audre

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# Labor, Inequality, and Human Rights

## Fall 2017 Mini-Conference

**Monday December 4, 2017, 4-6**

### **Panel 1 (4-4:50 p.m.): Labor Rights and the Global Movement of Goods**

*Chair: Karen Engle, Minerva House Drysdale Regents Chair in Law and Co-Director, Rapoport Center for Human Rights and Justice*

*Panelists:*

*Joshua Brody, JD Candidate, School of Law*

#### **“Beyond Corporate Social Responsibility: An Examination of Labor Agreements in Bangladesh’s Garment Sector”**

The GDP growth of Bangladesh is driven by the rapidly expanding garment sector, constituting the vast majority of the country’s exports. The garment sector has attracted foreign capital and created jobs that pay above-average wages. This is especially true given the proportion of female garment workers, and the lack of well-paying alternatives. Beyond access to employment, female garment workers are also able to enjoy a degree of social independence. However, laborers remain vulnerable to exploitation due to the competitive pressures on multinational corporations downstream in the global value chain, weak state capacity, poor infrastructure, and a lack of organized labor. Moreover, the relatively higher wages female factory workers earn are in part a result of long, difficult hours. Most women experience work-related health issues due to the physically demanding nature of their work, long hours, and poor factory conditions.

The plight of garment workers entered the global spotlight after the death of 1,134 workers in the collapse of Rana Plaza. Consequently, international companies instituted labor reforms: The Accord on Fire and Building Safety in Bangladesh and the Alliance for Bangladesh Worker Safety. These agreements were designed to reform factory conditions by imposing audits, factory upgrades, and fines, and allowing for worker input.

This paper will analyze the impact of Corporate Social Responsibility in Bangladesh through analyzing the shortcomings of these agreements. This paper argues that CSR has not had significant impacts on labor inequality. Rather, this paper argues that state capacity and labor organizations present a more realistic pathway for better working conditions.

*Cassidy Tennyson, JD Candidate, School of Law*

### **“Profit Redistribution as a Missing Link in Apple, Inc. Human Rights Initiatives”**

Foxconn Technology Group, the largest supplier for Apple, Inc., has faced criticism since 2006 for maintaining inadequate working conditions in its Chinese factories. Non-governmental organizations and media have placed pressure on Apple to address these inadequacies. Additionally, worker unrest has placed pressure on these companies to address the human rights concerns in the supply chain. Apple has since developed corporate social responsibility policies to monitor its supply chain including annual audits of its suppliers and the Supplier Code of Conduct. NGOs have continued to put pressure on Apple to maintain transparency and address the inadequate working conditions within supplier factories. There has also been a push for worker organizing and trade union participation, as Apple has pushed Foxconn into organizing trade union elections; however, Chinese labor law limits the effectiveness of this formal avenue to offer sufficient worker protection.

This paper will examine three different approaches to remedy and improve the working conditions in Foxconn factories including Apple's corporate social responsibility initiatives, non-governmental organization action, and collective bargaining and labor union organizing within the factories. This analysis will explore the pitfalls of each of these frames. Lastly, this analysis will explore profit redistribution as a necessary component to strengthen the existing frameworks. The redistribution of the large profit margin Apple retains could address some of the labor inequalities by providing the suppliers with the financial support necessary to remedy the inadequate working conditions, which are partially exacerbated by the downward pressure on these suppliers.

*Francis Kaifala, LLM Candidate, School of Law*

**“Back to Labour Chapters in Trade Agreements: TTCB and UBI as Solutions to Addressing Inequality”**

One vehicle that has been used to embed terms aimed at improving the condition of workers is labor chapters in preferential trade agreements. Labor standards have often been embedded in PTA's; but they have however been criticised as being weak and ineffective in their effect on workers. Similarly, new scholarly suggestions include the adoption of Universal Basic Income - to create a floor above poverty - and Trans-National Triangular Collective Bargaining (TTCB) to establish a trans-border collective bargaining regime with a view to improve workers' conditions of service and better engage their employers or those with corporate social responsibility within the supply chain.

This paper aims to review the framework for the inclusion of new labour standards into trade agreements and suggest ways by which those standards could be strengthened so as to address and reverse inequality in the labour market. It specifically argues that the attempt at including labour standards in trade agreements have been grossly inadequate to address the current global inequality and postulate that a new framework incorporating the TTCB and Universal Basic Income ought to be adopted to ameliorate workers' conditions. It will evaluate international agreements like the NAFTA (and NAALC) and TPP bringing out their weaknesses; then explain the sweatshop problem and the challenges it poses for effective advocacy and organizing; and then propose and argue for the inclusion of TTCB and UBI in labour chapters in PTA's.

## **Panel 2 (5-5:50): Law and the Global Movement of Labor**

*Chair: Elissa Steglich, Clinical Professor, Immigration Clinic, School of Law*

*Panelists:*

*Marco Acuna, JD Candidate, School of Law*

### **“The United States Promotion of Labor Unfreedom: Rethinking the Ways in Which Our Government can Promote a Healthier Relationship Between Migrant Workers and Employers”**

The current legal regime governing the status of migrant workers in the United States grants legal residency status on the basis of work. Migrant workers can be granted an H-2A and H-2B visas, which give their presence legal status. These two visas extend to a numerous amount of jobs, as the H-2A visas cover workers who work in the agricultural sector, and the H-2B visas cover those who work in other contexts. H-2B visas often cover workers who are employed in hotel maintenance and cleaning work. These visas, however, are tied to one employer, and workers in the United States lose their legal status if their employment relationship with their employer is severed. This power dynamic, along with other factors to be discussed, has led to situations in which workers suffer under various forms of labor unfreedom with little recourse. The attempts to aid migrant workers have also failed to appropriately value the ways in which migrant workers have been exploited. Migrant workers cannot benefit from what help they may receive due to the high standards for abuse created by adjudicators interpreting legislation. By exploring the ways in which workers are exploited – from extreme examples to the more mundane – and analyzing our punishment framework, which rests on the premise of punishing only a few bad apples, this paper seeks to promote a new framework in which workers will be empowered to assert their rights with the help of labor enforcement arms and enjoy a more free association with their employers.

*Leah Rodriguez, JD Candidate, School of Law*

## **“The Production of Precarity: How U.S. Immigration “Status” Affects Work in Central Texas”**

This paper analyzes how United States immigration law exacerbates the precarity of (im)migrants’ work and creates more egregious examples of precarious work than required by the neoliberal economic system alone. Precarious work situations of (im)migrants in the U.S. perpetuate social and economic inequality, labor rights abuses, and human rights abuses. The concept of immigration “status” in the U.S. is more complex than political discourse suggests, and with it comes an equally complex spectrum of worker “status,” or authorization. The conditionality of worker status stunts economic mobility and disrupts the growth of businesses and jobs in the U.S. I argue that the extent to which immigration law is the cause of (im)migrant workers’ precarious work situations explains why changes in labor law and human rights law are insufficient solutions to the issues that precarious work generates.

First, I will discuss the history and use of the term precarity to show why it is the appropriate term for this particular discussion. Secondly, I will explain how work authorization relates to immigration status in the U.S. Next, the bulk of the paper will use case studies, focusing on central Texas, to show why that relationship between worker status and immigration status is so problematic, and the great extent to which it breeds precarity in work. I will briefly address how labor and human rights law—although they are not the solution—can realistically help to mitigate the situation in the interim, while substantive U.S. immigration law reform is not likely at this political moment.

*Mihret Getabicha, JD Candidate, School of Law*

## **“Formalizing Migrant Care Worker Protections for Women: A Comparative Analysis of Human Rights Claims-making”**

The changing nature of the traditionally gendered division of labor within homes, gender roles in society, and a number of other factors have led to a care deficit in many countries. The increasing feminization of migration facilitates the creation of global care chains when women migrants fill some of this deficit by doing care work. Because of the intersectional experiences of women migrants, domestic legislation by States often fails to adequately protect against

labor and human rights abuses that exacerbate inequality. This paper will analyze the distributive effects of international human rights law claim-making by care workers. It will focus on seminal cases from the African, Inter-American, and European human rights systems to determine how the adjudication of human rights cases involving women migrants doing care work, or care workers more broadly, shapes the availability of remedies and sends signals to States about the adequacy of current legal protections. Existing scholarship is beginning to acknowledge the importance of moving beyond solely economic or social reform recommendations and employing legal reform in the context of migrant care work. However, much of the focus remains on migrant domestic work, without differentiating care work, and my comparative regional analysis will probe this gap while assessing the potential and imitations of claims-making within human rights systems.

## **Monday December 11, 2017**

### **Panel 3 (4-5 p.m.): Human Rights and The Future of Work**

*Chair: Daniel Brinks, Associate Professor of Government and Co-Director, Rapoport Center for Human Rights and Justice*

*Panelists:*

*Zachary Ashford, JD Candidate, School of Law*

#### **“Automation in the Workplace”**

The continued development of technology and artificial intelligence places the topic of technology in the workplace in the middle of the conversation surrounding labor rights. As the result of increased technology and the changes that come with this technology, there has been an increase in non-standard forms of employment. The new markets which are dependent on these new forms of employment make up what is known as the gig-economy. The gig-economy is a labor market characterized by the prevalence of short-term contracts or freelance work as opposed to permanent jobs. As a result of these non-standard forms of employment, workers are seeing many of their labor rights being taken away or reduced. Uber is the perfect example of the gig-economy at work.

Uber classifies its employees as independent contractors rather than employees. Among other things, this classification strips their employees of the federal right to organize a union. This paper will analyze the viability of legislation extending labor rights to workers currently excluded from protection in the gig-economy. To achieve this, this paper will begin by analyzing how the gig-economy, and Uber specifically, has been challenged and regulated in the United States. Next, this paper will analyze how other countries have attempted to regulate this topic. Finally, the paper will conclude with the implications that are set for a global standard in regulating the gig-economy and increasing labor rights for workers.

*Nikolas Reschen, MPP Candidate, LBJ School of Public Affairs*

**“A European Unemployment Benefit Scheme or a Universal Basic Income: Which framework to enforce and protect Labor and Human Rights in the European Union?”**

The potential drastic implications invoked by automation have sparked a heavy debate about the appropriate remedy to counter job-loss tendencies and a persisting rise in financial inequality coming with it. A proposal in this debate is the introduction of an Universal Basic Income, which is supposed to serve as an unbureaucratic mechanism to improve the bargaining position of workers and reduce the threat of falling into poverty for the unemployed.

This paper will provide a comparative study in the European Union between the benefits of a UBI and a mechanism primarily acknowledged to counter asymmetric financial shocks in monetary unions: The European Unemployment Benefit Scheme (EUBS). Similar to the UBI, the mechanism may also be introduced as a means to redistribute capital across current EU members while not causing potential threats like massive inflation, decreasing labor force participation or exploding government spending.

The paper will provide evidence that a certain degree of timely limitation of benefits, financial penalties for non-participation in the labor force and targeted social transfers do a better job in improving the situation of workers in the European Union. Aside from being politically more feasible in times of low economic growth, the EUBS has the potential to make use of the heterogeneity



of the Union's economies and therefore provide financial means to reach the goal of improving the situation of the workers.

*Matt Worthington, MPA Candidate, LBJ School of Public Affairs*

**“The Future of Unemployment: How GiveDirectly’s Basic Universal Income Experiment can Incorporate Lessons Learned from the Broader Human Rights Movement”**

In recent years, significant technological advances in artificial intelligence have inspired discussions around basic universal income as a policy mechanism to reduce anticipated displacement of low-wage workers. At the center of this discussion is a Silicon Valley not-for-profit called GiveDirectly, who claims to be the world's "largest basic income experiment in history." Their work in Kenya--and recently expanded to Uganda, Rwanda, and Houston--has gained considerable media attention given GiveDirectly's intent to alleviate global inequality and mitigate a future world without work.

This paper answers three major questions. First, where does GiveDirectly's approach to a basic universal income fit on the spectrum of theories related to basic income? Second, what are the strengths and weaknesses behind GiveDirectly's approach to universal basic income? To account for its merits, publicly released raw survey data from their 12-year Kenya Project is evaluated. To understand its weaknesses, I consider GiveDirectly among the global movement working to reduce global inequality and weigh GiveDirectly against common criticisms lobbied at efforts to reduce global inequality. Lastly, I analyze the limitations and opportunities of GiveDirectly's work. Specifically, how are their findings limited by their pilots and what opportunities should be considered to substantiate findings?

This paper argues that basic universal income, while uncertain as the only solution to future unemployment, is in desperate need of analysis and seeks to intervene by evaluating the largest basic income experiment in the world, explaining their context, opportunities to strengthen their approach, and fully substantiate their findings.

*Amanda McKee, MGPS Candidate, LBJ School of Public Affairs*

**“Labor and Human Rights within Latin American Informal Economies: Probable or Impossible?”**

Today, an estimated four billion people around the world live outside of the law, and therefore do not have access to many basic human rights protections. Participation in informal economies continues to perpetuate this issue, attracting the poor and impoverished, as well as migrants, who are typically unable to succeed economically within the bounds of the legality of formal economies. Without the security and protection provided by such legality, workers in informal sectors are denied basic rights to development, property, political participation, protection, and economic human rights.

This paper will examine the impact of informal sector participation on labor and human rights in Latin America, specifically examining impacts in Peru and Argentina. Both case studies will provide evidence that a correlation exists between institutional strength and the size of participation in informal sectors of the economy- a lack of good governance exacerbates the problem of extralegal sectors of the economy, thereby perpetuating the cycle of poverty that drives many workers into informal sectors in the first place.

The paper will also examine and analyze proposed policy solutions to address this growing phenomenon. The vast heterogeneity of informal sector activities makes it difficult to create uniform solutions to protecting the labor and human rights of workers in this sector, however, through the collective efforts of both state and international actors, it may be possible to “provide those who seek such protection a means to afford, and incentive to freely choose, existence within the law.”

## **Panel 4 (5:10 – 6 p.m.): “Exceptional” Spaces and Labor**

*Chair: Kate Taylor, Postgraduate Fellow, Rapoport Center for Human Rights and Justice*

*Panelists:*

*Aleksej Demjanski, MGPS-MA Candidate, LBJ School of Public Affairs and CREEES*

### **“From Poland and Macedonia with Love for Foreign Direct Investment and Special Economic Zones”**

This research contests the established narrative regarding the success of government policies on foreign direct investment (FDI) and special economic zones (SEZ) in Eastern Europe after the collapse of state-socialism in the 1990s. Through a comparative case study analysis of Poland and Macedonia this work explores why governments in Central and Eastern Europe implement economic policies focused on attracting FDI and creating SEZs despite clear evidence of limited success in fostering economic growth and employment. Governments in Poland and Macedonia have spent large sums of their national budgets to attract FDI and grant foreign companies massive tax benefits if they invest in SEZs. However, these policies failed to deliver on much needed economic growth and employment and instead created minimum wage short-term contractual jobs that keep workers in a precarious cycle of employment and limit their labor rights. This paper examines three explanations for the pursuit and implementation of these policies: (1) governments belief in the conventional wisdom regarding FDI and SEZs; (2) governments manipulation of FDI and SEZ policies for clientelist purposes; and (3) the acceptance by governments of FDI and SEZ policies being forced on them by international organizations like the IMF and World Bank. This research finds that a combination of these explanations leads governments across Central and Eastern Europe to implement policies in favor of FDI and SEZs despite limited returns on investment and persistent worker rights violations.

*Noor Wadi, JD Candidate, School of Law*

**“West Bank Industrial Zones: Addressing Inequality and Exploitation under Occupation”**

For decades, “industrial zones” have served as the economic engine of the Israeli settlements in the Occupied Palestinian Territories (OPT). These zones remain under-analyzed in the scholarship on the Palestinian struggle, yet they are a significant tool with which Israel further entrenches its occupation of Palestine. My research aims to supplement the shortage of information on industrial zones in the OPT.

Using a case study of litigation arising in the Nitzanei Shalom industrial zone, my research analyzes the Israeli government practice of legalizing worker exploitation by requiring the application of an obsolete 1967 Jordanian labor law to Palestinian workers. My paper and presentation examine this law in comparison to the inapplicable labor laws of the Palestinian Authority as well as Israeli labor law under which Palestinians must seek relief. My research will discuss the work of Israeli labor lawyers, petitioning Israeli courts to apply Israeli labor law to the Palestinian employees of Israeli companies.

I will conclude arguing that this framework of labor rights advocacy, while necessary to prevent further harm to Palestinian workers, cannot adequately remedy the inequality and human rights abuses created by industrial zones. Placed within the context of an ongoing military occupation, this labor rights framework remains crucially limited in two ways. First, it is constricted by the rulings of courts that have a vested political interest in the occupation. Second, it is limited by the lack of legal enforcement of any court rulings favorable to the workers.

*David Engleman, JD Candidate, School of Law*

**“Labor Law at the Factory with Fences: How Solidarity can Improve Conditions for Incarcerated Workers and Low-Wage Employees”**

In the era of mass incarceration, insufficient attention has been paid to the legal infrastructure of prison labor in the United States. While private corporations extract profits and the government reduces costs through the exploitation of a captive labor force, incarcerated workers and low-wage employees on the outside are pit against one another in a race to the bottom. This article explores

the justifications, laws, and dynamics of prison labor in the United States with particular attention paid to solidarity between incarcerated workers and low-wage employees on the outside. Part I examines the various penological justifications for putting prisoners to work (or offering work to them): retribution, rehabilitation, reentry, restitution, and prison administration. Part II analyzes the evolution and current composition of the legal landscape of prison labor in the United States, with particular attention paid to federal constitutional law, the Fair Labor Standards Act, and various federal and state statutory schemes governing prison labor. Part III considers several obstacles to a transformative solidarity between incarcerated workers and low-wage employees: union opposition to the interests of incarcerated workers, racial politics, and a hierarchy of the degree to which certain populations are entitled to work. Part IV evaluates the potential for success of solutions to the problem of labor law's relatively limited coverage of incarcerated workers through the models of international human rights law, alternative national approaches, and prison abolition.