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# LAW AND THE CULTURE OF CAPITAL: A CRITICAL PERSPECTIVE ON LABOUR'S RIGHT TO ASSOCIATE IN DEVELOPING SOCIETIES<sup>1</sup>

L.A. Visano\* and Nicholas Adete Bastine\*\*

## ABSTRACT

*Informed by critical theory, this paper focuses on the dialectical interplay between law and economics evident in the practices and policies of the International Labour Organization (ILO). It is argued, first, that governments do not comply with international labour standards because of the inherent weaknesses of the ILO as the source and enforcer of international obligations. Second, the parochial politicization of rights defers to the arrogance of ignorance. Third, developing societies are overwhelmingly preoccupied with socioeconomic development. In exploring the impact of ILO practices on developing societies within the policies of the International Monetary Fund (IMF) and the World Bank (WB), this paper asks the following questions: to what extent does capital form and inform the law in relation to conflicting economic narratives of development and nationhood? How and why does the ILO talk up legal narratives of regulation and contest? How does law hegemonize capital integration? How does law symbolically function to mediate labour relations meanings and manipulate the inaction of civil society? Within the larger structure of "market forces," the commodity of law is a complex form of social communication that diverts attention away from the political impact of predatory economies.*

## Introduction

### *A Critical Approach to Globalization and International Rights*

Globalization is a subject of considerable controversy within contemporary social thought. The corporate global imperatives of regulation and integration ensure the trinity of trade, direct investment and capital market flows as well as the politics of peace. How does globalization balance the pursuit of financial capital with the accommodations to social capital? Within this quintessential problematic, the cultural capital of law molds the interests of social capital in the interests of financial capital. Contemporary global capitalism articulates a neo liberal language of social order within a seemingly benign and ubiquitous backdrop of law while disfiguring the spatio-temporal identities of developing societies. On the one hand,

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international law shapes justice by invoking moral standards that are conveniently calibrated to discipline local state recalcitrance and secure conformity with normative notions of human, labour, political or environmental rights. On the other hand, justice becomes irrelevant to law especially as politics depends on instruments of legal authority to facilitate capital control and accumulation.

The hegemony of capitalism is constructed, renewed and re-enacted in struggles (Gramsci 1971) that often remain hidden. Equality is an anathema to capitalism. International law protects the capitalistic foundations of market reproduction by not only neutralizing opposition but also by expanding the ideological reach of capital (Visano 1998). In short, law contributes to the construction of a culture of contradictions.

Legal discourse and practice resourced by the power of capital reinscribe ideologically appropriate subjects through the “conditions of contingency and contradictoriness” (bhabha 1994:2; Leonard 1995:1). By focussing on the tensive and inextricable relationship between law and economics, this study highlights conceptually the reproduction of global social inequalities. International law is neither subversive nor counter-hegemonic but rather complements the contemporary privilege of corporate capital. That is, economics is the negotiated context that influences law. This paper highlights the dialectical interplay between law and economics, the intersections of complementarities and contradictions. Informed by critical theory, this study offers a multi- or “supra”-disciplinary approach (Bronner and Kellner 1989:41) that combines perspectives drawn from political economy, sociology, cultural theory, philosophy, and history. It is conceptually more fruitful to examine the complex set of mediations that interconnect consciousness and society, culture and economy, state and citizens and, the public and private domains. This dialectical social theory deconstructs the relations among various elements of society—the “mediated totality” (Horkheimer 1972), rather than *a priori* subscribing to the more widely acceptable orthodox deterministic models in economics that explain social development. By interrogating dominant ideological structures that set enunciative boundaries which disarticulate the dynamics of power relations and by analysing the conditions that constitute law-economics connections, this replacement discourse conceptualizes justice as an entitlement rather than a privilege. The following case study of the International Labour Organization (ILO) clarifies the contributions of critical theory in locating law within social, historical, political and economic contexts, conditions and consequences—local and global.

The ILO has created a number of international labour standards to promote social justice and “universal and lasting peace.” Among them is the Freedom of Association and Protection of the Right to Organize Convention, 1948-Convention No. 87. Article 2 of this Convention states that, “workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization” (ILO Report 1994:15; ILO 1997). The

application of the principles of Convention No. 87 to developing societies takes a central stage in this paper as we explore the extent to which developing societies permit workers to form and operate trade unions without state interference. It is argued, first, that governments do not comply with international labour standards because of the inherent weaknesses of the ILO as the source and enforcer of international obligations. Second, the parochial politicization of rights defers to the arrogance of ignorance. Third, developing societies are overwhelmingly preoccupied with socioeconomic development.

In exploring the impact of ILO practices on developing societies within the policies of the International Monetary Fund (IMF) and the World Bank (WB), this paper asks the following questions: to what extent does capital form and inform the law in relation to conflicting economic narratives of development and nationhood? How and why does the ILO talk up legal narratives of regulation and contest? How does law hegemonize capital integration? How does law symbolically function to mediate labour relations meanings and manipulate the inaction of civil society? Within the larger structure of a “market forces,” the commodity of law is a complex form of social communication that diverts attention away from the political impact of predatory economies. This paper builds upon previous studies (Visano 1985, 1998; Visano and Doyle 1988) that argue for the need for law to reclaim its authority and its cultural connections to social justice by deconstructing prevailing distortions of law in an effort to construct a critical framework of law based on justice that is not subsumed by economic and political priorities.

### **Paradoxes, Problems, and Prospects of International Law: The Case of the ILO**

The need to protect workers through the regulation of working conditions dates back to the Industrial Revolution. In 1818, Robert Owen submitted two memorials to the Congress of European Powers meeting at Aix-la-Chapelle (Hewett 1936:16; Follows 1951:1), urging European countries to appoint a labour commission to protect workers from exploitation. Like Owen, Daniel Legrand, another manufacturer, who was horrified by the inhumane treatment of workers in Europe, advocated national and international laws (Thomas 1931:22). It was hitherto argued that the exploitation of workers during the Industrial Revolution was caused by excessive competition among European countries. For instance, if British industrialists alone were to ameliorate working conditions, they would incur relatively higher production costs. But, if there were international regulations, countries would compete in the world market on “equal footing”(Craig 1974:65).

Another impetus for the universal regulation of labour was the quest for industrial peace in nineteen-century Europe. The introduction of technology in factories and the anticipated consequence of unemployment created considerable labour unrest (Wallerstein 1990:14). Economic progress would be achieved with

increased production and industrial peace. The immediate catalyst, however, for the creation of an international body mandated to promulgate binding and enforceable labour standards in all industrialized countries was the Bolshevik revolution of 1917 and a series of uprisings in Germany, Austria-Hungary, Turkey and Bulgaria (Hobsbawm 1995:58). Soviet communism provided an alternative model which threatened the foundations of capitalism and Western democracy (Hobsbawm 1995:200). The Allied Powers moved swiftly to form the ILO to protect capitalism as well as to diffuse the ideological appeal of the Bolshevik Revolution in other parts of Europe and developing countries. As Cox notes: "The ILO was Versailles' answer to Bolshevism" (Imber 1989:46).

The First World War devastated European nations socially, economically, and politically. To rebuild Europe, the Allied Powers were determined to transform extant patriotic sentiments of the trade union movements into programmes of economic reform (Imber 1989:43), which would further promote industrial peace and democracy. Further labour unrest in 1918 and 1919 (Mandel 1963:464) jeopardized post-war harmony. Realizing that democracy could not be achieved without industrial peace, the European Powers met in Paris in 1919 and set up a Commission for International Labour Legislation. Samuel Gompers, the President of the American Federation of Labour (AFL), headed the Commission and promoted the free enterprise and anti-socialist ideologies of the Allied Powers (Foner 1982:517). After World War 1, the AFL and Gompers' Commission called on all workers' organizations to be represented at the 1919 Peace Conference and proposed the establishment of an international labour parliament which would enforce the application of international labour laws (Thomas 1931:53).

At the insistence of trade union organizations (Report 1983a:2) and in response to the instability of European labour relations at the close of the First World War, the right to associate was included in the Preamble to Part XIII of the Treaty of Versailles (Morse 1969:4). Freedom of association was proclaimed from the outset as the most fundamental principle to be used by ILO in promoting humane and trade union rights, social justice, peace, and development. The League of Nations had for its foremost objective the establishment of universal peace, and such a peace can be established only if based upon the recognition of the principle freedom of association (Thomas 1931).

Freedom of association has also influenced international human rights instruments such as the Charter of the United Nations; the Universal Declaration of Human Rights; the International Covenants on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; and the human rights charters of Europe, Africa, and the Americas (Vasek 1982:458; Thamilmaran 1992:221). As noted by Sir Abubakar Tawawa Balewa, Prime Minister of Nigeria during the first ILO African Regional Conference in Lagos, Nigeria, in 1960: "Freedom of Association is one of the foundations on which we build our free nations" (Johnston 1970:150). In a report prepared to support the adoption of the Freedom of Association Convention in 1948, the International

Labour Office stated that “freedom of industrial association is part of a whole range of fundamental liberties..., all interrelated and complementary to one another, including freedom of assembly, and freedom of expression” (Bertolomei de la Cruz et al. 1996:174).

An overwhelmingly large number of ILO members, 122 of 174 countries, have ratified and incorporated this principle into their respective national laws (ILO Report 1983b:49, 58; ILO Labour Office 1991; UN 1993). Specifically, governments must allow workers and employers to organize themselves into associations in order defend their economic interests. Convention No. 98 enjoins governments to respect workers’ right to associate, bargain collectively, and strike. The right to strike is an intrinsic corollary of the right to organize protected by Convention No. 87. Since its inception, the ILO has operated on the basis of tripartitism (Osieke 1975:80) designed to promote dialogue among employers, workers, and governments in the ILO’s major organs: the General Conference of Members, the “legislature”; the Governing Body (GB); and, the International Labour Office (LO). The universal “parliament” provides a forum for these partners to debate and to adopt labour standards, as well as to elect the Governing Body of the ILO (ILO Report of the Director General 1998:1). The Governing Body (GB) performs this function through tripartite committees such as the Committee on Freedom of Association. The GB, as the executive branch of the ILO, is composed of twenty-eight government delegates from member states, ten of whom are appointed from the highly industrialized nations or states of “chief industrial importance” (CII). A committee of statistical experts appoints the states of CII according to such criteria as industrial production: mining and transport industries, and the proportion of the industrial workers to a nation’s total population to make the selection. The International Labour Office (LO), as the secretariat of the Organization, conducts comparative studies of national labour laws and practices, through consultation with governments’ and the employers’ and workers’ organizations of member states.

As the creator and enforcer of labour standards, the ILO has promulgated 176 Conventions and 182 Recommendations covering a broad spectrum of work related issues, including freedom of association, since 1919 (ILO Report of the Director General 1998:1). A labour standard once classified as a Convention is binding on member states that ratify it (Osieke 1975). The ILO supervises labour conventions by requesting member states to report annually on the status of ratified conventions. In reference to Convention No. 87, reports submitted every two years are reviewed by the Committee of Experts on the Application of Conventions and Recommendations, a group consisting of eminent jurists appointed by the Director-General of the ILO (ILO Labour Office 1991:3-9).

Moreover, member states routinely submit incomplete reports or simply fail to submit any reports. In 1998, for instance, although the ILO requested 1,927 reports from its members, in accordance with article 22 of the ILO Constitution, member governments submitted 1,211 reports, most of them incomplete, which

further exacerbates the implementation work of the Committee of Experts. In turn, the Committee of Experts simply resorts only to further appeals to those negligent countries (ILO Report 1998a:38). Both incomplete reports and non-submission hinder the Organization's effectiveness in supervising international labour standards.

The ILO enforces applications of international labour law primarily through a complaint mechanism (Donoso Rubio 1998:39). Ratification of a convention that deals with fundamental human rights is not necessary since all ILO states have—by virtue of their membership—accepted certain obligations with respect to freedom of association. Since 1951, the Committee on Freedom of Association (CFA) has examined over 1,800 cases involving the implementation of the freedom of association conventions (ILO Report 1996:1) many of which were filed by employers, workers, governments, or international organizations. In addition to investigating allegations of non-observance in countries that ratified ILO conventions, the CFA also deals with complaints against members who have not ratified ILO's core labour standards, such as the Cote d'Ivoire in 1991 (ILO Report 1998b:31-34). The CFA investigates complaints and recommends appropriate remedies to the Governing Body such as referrals to a Commission of Inquiry. The first Commission of Inquiry was established in 1961, when Ghana filed a complaint alleging Portugal's violation of the Abolition of the Forced Labour Convention in Angola and Mozambique (ILO Report 1961). Likewise, in July 1998, the International Conference of Trade Unions (ICFTU), the Organization of African Trade Union Unity (OATUU), the World Conference of Labour (WCL) and the International Federation of Chemical, Energy, Mine and General Workers' Union (ICEM), filed a complaint against the government of Nigeria alleging abuses of trade union rights (ILO Press Release 1998). The GB's Commission of Inquiry determined the allegation to be unfounded. To avoid further embarrassment that ensued from the publication of the report, the Nigerian government released detained trade unionists in November 1998 (ILO 1999).

Typically the complaint mechanism is cumbersome and costly, requiring the Director-General to communicate the findings to the offending member who is then given three months to respond. The Director-General has the authority to publish reports which indicate the offending country's level of compliance and interest in referring the matter to the International Court of Justice (ICJ). According to Article 29 of ILO's Constitution, the ICJ, whose decision is final, may affirm, vary or reverse any of the findings of the Commission of Inquiry (ILO 1997). If the country further fails to comply with the ICJ, the Governing Body can recommend that the General Conference adopt further measures to ensure compliance such as the publication of both the identity of the country and the allegation. Such sanctions may influence the image of the defaulting country within the ILO community but do little to alter the offending government's attitude towards its workers.

In brief, the ILO remains very reluctant to expel any of its members for

refusing to respect the principles of Convention No. 87, or any international labour standard that a member state has ratified. The Constitution permits the suspension of a member's voting rights but only for arrears in contributions to the ILO by two years or more. Both the General Conference and the Governing Body refuses to expel any member who consistently violates international labour conventions (ILO Report 1998c; ILO Index 2000).

Generally, labour standards adopted by the ILO do not have the force of law unless enacted by the constituted legislative authority of each state (Follows 1951:24). The ILO has always maintained that since participating nations are most familiar with their respective labour relations, the ILO should remain a convention-drafting institution (Follows 1951). But, more compellingly European countries have been steadfast in refusing to compromise their sovereignties and laissez-faire economic policies. Traditionally, Western states have argued that the ILO labour standards should serve only as a moral guide. Thus, the international labour standards do not have "all the characteristics of international law" and do not become "national law *ipso jure*" in member states (Bartolomei del Cruz et al. 1996:22).

### **The Impunity of Politics and the Arrogance of Ignorance**

In addition to the significant limits of law, the ILO's interest in economic and not political rights further exacerbates the enforcement of international labour standards. ILO member states, particularly the developing countries, require their trade unions to support the economic development and industrialization policies of their governments. Not only are workers forbidden to make economic demands on the government, but opposition to government economic policies often result in repressive measures. Governments justify arrest and incarceration by appealing to a logic of national security, which then transforms economic struggles into convenient political confrontations.

Member states have long maintained that varying ideological orientations shape the application of ILO principles. For the non-Western member states of the ILO (Galenson 1981), the political characteristics of ratifying countries should be taken into consideration. In many cases, national laws forbid trade union federations and strikes, de facto or de jure, because they are deemed to be contrary to the established political economy (Bartolomei de la Cruz 1996:34-35). Interestingly, the ILO accommodates by articulating contradictory principles stating, on the one hand, that "in exercising the rights provided in this Convention workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land" and on the other hand, "[t]he law of the land shall not be such as to impair, nor shall it be so applied to impair, the guarantees provided for in this Convention" (ILO Official Bulletin 1969). With the latter provision, the ILO expects member countries to adhere to the principles of the convention, preventing national laws, whether capitalist,

socialist, communist, or a military dictatorship, from encroaching on the universal rights of workers (Pouyat 1982:301).

The ILO, however, does not supervise its labour standards effectively and lacks the political will to sanction non-compliance. Consider the case involving the government of the Comoros and its trade unions. In February 1997, the Organization of Africa Trade Union Unity (OATUU) alleged that the government of Comoros infringed on the right to organize freely. The OATUU charged that the government “arbitrary incarcerated” Ibouroi Ali Tabibou and Ahmed Adbou Halida, two officials of the Union of Autonomous Trade Unions of Workers of the Comoros, for organizing a trade union meeting inside a private building, and that the government interrupted the said meetings by force, in violation of Convention No. 87 (Report 1997a:197). The government simply argued that “state security in the Comoros was under threat at the time when the trade union organizations, following unsuccessful negotiations with the Government, launched a strike” (Report 1997a:197). The two unionists were “summoned and questioned because of the threat against state security” (Report 1997a:200). Although the CFA disagreed with the government’s explanations, it simply elected to admonish the government. The Committee stated:

The Committee, considering that the arrest or questioning, even for short periods, of trade union officials for reasons related to their trade union activities and the interruption by force of trade union meetings are *obstacles to the exercise of trade union rights*, requests the government to *refrain from such action* in the future and to take steps for appropriate instructions to be given to prevent the dangers posed to trade union activities by such arrests, questioning and interruption of trade union meetings (Report 1997a:206; *emphases added*).

The government’s “state security” argument and the diplomatic language in which the recommendation of the Committee was couched suggest the ILO’s reluctance to interfere in matters of a local political jurisdiction.

Likewise, the ILO has not expelled Myanmar for consistently refusing to observe principles of international labour standards that it had ratified on March 1955 (ILO Index 2000). In 1993, for example, the International Conference of Trade Unions (ICFTU) complained to the ILO about Myanmar’s non-observance of the labour standards. As a result, the GB established a Commission of Inquiry to assess the complaint, but the Myanmar government refused to cooperate by not allowing the Commission to visit the country. The Commission concluded that Myanmar was in violation and recommended that the Governing Body request the Government of Myanmar to take actions to remedy the situation “without delay.” The Commission also requested that Myanmar keep the ILO informed of the progress, if any, that it had made in giving effect to the Commission’s recommendations (ILO Index 2000). But, the Myanmar government continued to ignore the ILO’s request. Also, on 20 June 1996, 25 workers’ delegates to the ILO General

Conference presented a complaint against the Government of Myanmar. In March 1997, the Governing Body set up a Commission of Inquiry to examine the merits of the allegation. Again, the Myanmar government refused to cooperate with the investigation. As a result, in June 1999, the ILO reported:

the Committee recalled the long history of the case and the series of actions taken by the ILO supervisory bodies...It considered that the explanations provided by the Government did not respond to the detailed and well-established findings and recommendations of the Commission of Inquiry and the Committee of Experts. It noted with deep concern the findings of the Commission of Inquiry that there was convincing information available that forced and compulsory labour on a very large scale still occurred in Myanmar. The Committee *regretted* that the Government had not allowed the Commission of Inquiry to visit the country to verify the situation for itself...It *regretted* that the Government had shown no inclination to cooperate with the ILO in this respect. It called upon the Governing Body, the Committee of Experts and the Office to continue taking all possible measures to secure the observance by Myanmar of the recommendations of the Commission of Inquiry, which confirmed and expanded the Committee of Expert's own previous conclusions (ILO Report 1999:6; *emphases added*).

Instead of expelling Myanmar, the ILO General Conference passed a resolution to deny state technical assistance to the Government of Myanmar until such time as it has implemented the recommendations of the Commission (ILO Report 1999; ILO 2000). This sanction was meaningless because the ILO had not been engaged in any technical cooperation with Myanmar since 1996 (ILO Report 1999). An equally vacuous penalty was the ILO's refusal to invite the Myanmar government to ILO meetings, symposia and seminars other than the ILO General Conference, which did not have any serious impact on Myanmar.

The list of labour violations and ineffective ILO penalties is endless. Consider the following: Peru arrested four trade unionists in November 1977 for striking (Committee on Freedom of Association Report 1977:517-544); the Croatian government's intervention in the country's trade union's election in March 1998 (Committee on Freedom of Association Report 1998:15-47); the dissolution of the Ghana Trade Union Congress by the Progress Party government in 1971 (Legislative Series 1971); Panama's refusal to recognize the National Federation of Associations and Organizations of Public Servants (Committee on Freedom of Association Report 1998b:1967); the Chilean government's confiscation of trade union assets (Committee on Freedom of Association Report 1998c:245); Cuba refusal to grant legal personality to the Confederation of Democratic Workers of Cuba (Committee on Freedom of Association Report 1997c:1804), to name only a few cases.

The ILO has consistently argued that trade unions should not be controlled by government appointees; they should be independent of the government

and should not be absorbed into “party machines” or governments should not transform trade unions into workers’ wing of the ruling party. The ILO’s involvements with Guinea, Tanzania, Tunisia, Egypt, Algeria, Ivory Coast, Senegal, Kenya (Bauer 1998:4), and Ghana (Davies 1966) emphasize the need for trade unions to remain politically independent of governmental interference. Trade union-government relations “should not be of such a nature as to compromise the continuance of trade union movement or its social and economic function in the event of political change within the country” (ILO Report 1953:451). In response, Julius Nyerere of Tanzania, for example, chastised trade union activities as destructive and described strikes as “evil things”, equal to ‘the law of the jungle.’”(Shivji 1986:227). Such political indictments exacerbate the ability of ILO to enforce international labour rights in that country. Many developing societies share, for example, President Fidel Castro’s non-compliance with what he perceives as the ILO’s liberal assumptions which are incompatible with Cuba’s socialist ideology (Report 1997c:1804).

The ILO needs to reexamine the role of labour conventions to determine whether they should continue to serve as moral guides only. Clearly, the above cases demonstrates that international labour laws are difficult to apply in different political environments, and especially so, when member states use political exigencies to circumvent the application of standards. The integrity of the ILO is questioned whenever it is ill prepared to penalize those offending members who are indebted or who contribute financially to the organization. It is not surprising, therefore, that ILO’s member states ignore the Organization’s recommendations with considerable impunity.

### **The Hegemony of Economic Servitude: IMF, WB, and Western Corporate Power**

In addition to the limits of law and the banal accommodation to national politics, international law has been jeopardized by economics. Although the global community regards freedom of association as a right that must not be subordinated to development or investment (ILO Report 1995:74), developing countries are concerned with the costs associated with the implementation of ILO standards. Moreover, financial institutions like the International Monetary Fund (IMF) and the World Bank to whom developing societies are indebted have designed a framework for development that supports adjustment and reform programs which include such priorities as trade liberalization and effective social spending (Fischer 2001). The IMF claims to promote international monetary cooperation; facilitate the expansion and balanced growth of international trade; promote exchange stability; assist in the establishment of a multilateral system of payments; and make its general resources temporarily available to members who are experiencing balance of payments difficulties under adequate safeguards; and shorten the duration and lessen the degree of disequilibrium in the international

balances of payments of members (IMF 2001a). Credits and loans are extended to member countries with balance of payments problems to support policies of adjustment and reform. The World Bank Group (WB) (also created at the 1944 Bretton Woods Conference) makes loans or guarantees credit to finance projects such as roads, dams, power plants, and schools. The Bank also makes loans to restructure economic systems by funding “structural adjustment programs” (SAPs) to assist in economic development (World Bank 2001).

SAP as an IMF and WB approved economic growth strategy involves currency devaluation, the removal from or reduction of state involvement in the working of the economy, the elimination of subsidies in an attempt to reduce expenditures, and trade liberalization to transform an implementing country’s policy (Riddle 1990:53-68). According to neo-classical economic theory, these changes will create the most efficient world system. Although conditionalities have been attached to IMF financing since the mid-1950s, the scope of the IMF has expanded considerably since the early 1980s. By the 1990s almost all programs included elements of structural conditionality. The expansion of structural conditionalities is reflected in the increasing numbers of performance criteria, structural benchmarks, and prior actions. One solution to the perception of micromanagement is to rely increasingly on results-based conditionality, making IMF’s financing conditional on the achievement of specified outcomes—such as bank recapitalization, improved tax enforcement, and foreign exchange market liberalization (IMF 2001b). Joseph Stiglitz, former chief economist of the World Bank, notes that each nation’s economy is analysed, then the World Bank hands every minister the same four-step programme: (a) privatisation designed to strip industrial assets; (b) capital market liberalisation whereby investment capital flows in and out, but the money often simply flows out to Western corporations. Cash comes in for speculation in real estate and currency, then flees at the first whiff of trouble; (c) the IMF riot, that is, when a nation is, “down and out,” the IMF squeezes the last drop of blood out of them; and (d) free trade—as in the nineteenth century, Europeans and Americans today are kicking down barriers in Asia, Latin American, and Africa while barricading their own markets against the Third World (Palast 2001).

In tandem with the devastating impact of SAPs, the IMF and WB argue that the application of ILO labour standards imposes a cost-commitment on governments and employers. These costs range from the administrative expenses of instituting a supervisory mechanism to control the profit loss to firms that are required to establish safe working conditions, as well as labour costs that are incompatible with the austerity of structural adjustment programmes, which are intended to promote economic growth in client countries (Cordova 1996:316-317). Economists (Donoso Rubio 1998:220-221) believe that ILO labour standards are too inflexible; flexibility and diversity in the application of conventions are necessary for economic development. The IMF also requires countries to eliminate tariffs and provide incentives for multinational corporations—such as

reduced labor protections. SAP required changes in labor laws, such as eliminating collective bargaining laws and lowering wages in order to provide conditions favorable to attracting foreign investors. The IMF's mantra of "labor flexibility" permits corporations to fire at whim and move where wages are cheapest. According to the 1995 UN Trade and Development Report, employers are using this extra "flexibility" in labor laws to punish workers, rather than create jobs (Global Exchange 2001). Notwithstanding the pretensions of "free trade," corporations have so heavily influenced global trade negotiations especially by advocating the weakening of labor laws and supporting a global economy of sweatshops and the devastation of industrial relations. Governments balance labour rights against appeals to national security to justify unfair standards while consistently seeking strategic multinational investments by making their respective resources attractive to capital.

For developing societies, however, the IMF and the WB have created a system of modern day colonialism that directs the global economy on a path of greater inequality. SAPs ensure debt repayment by requiring countries to cut spending on education and health; eliminate basic foods and transportation subsidies; devalue national currencies to make exports cheaper; privatize national assets; and freeze wages. These policies increase poverty, reduce countries' ability to develop strong domestic economies and allow multinational corporations to exploit workers. At the expense of sustainable development, the IMF forces countries from the Global South to prioritize export production over the development of a diversified domestic economy. Debt is crushing most poor countries' ability to develop as they spend huge amounts of their resources servicing odious debts rather than serving the needs of their populations. SAP keeps countries on schedule with debt payments, with programs promoting export-led development at the expense of social needs. International development is export-driven rather than concerned with such priorities as food security, sustainability, and democratic participation.

### **Freedoms of International Law and Controls of Corporate Capital: Cultures of Destruction and Deception**

Although SAP has achieved some results, the program has had a negative impact on the rights of workers. The loss of wages, unemployment, deflationary wage policies, and high rates of inflation caused serious erosion in the purchasing power of employees (Cordova 1996). In practice SAP remains inimical to the enforcement of international labour standards. Regrettably, the ILO does not have the same enforcement power as corporate capital. As foreign corporations increase their multinational strength, unions are struggling to build bridges across borders and organize globally. Activists from Seattle, Quebec to Genoa highlight the importance of free labor as an essential component of any "fair trade" agreements (Global Exchange 2001b).

The inclination of trade unions in ILO member countries to complain about violation of workers' rights by their governments depends on the following: the ILO's capacity to successfully use moral suasion against governments, the trade union's attitude to the ILO, and the availability of other juridical avenues of appeal regarding recursions against freedom of association (Panitch and Swartz 1993:49-50). For effective promotion of social justice, therefore, the ILO should re-examine its "toothless bull-dog" image, especially, in this age of globalization. If the ILO wants to be taken more seriously, it has to develop a system akin to that of the United Nation's International Court of Justice, where abusers of workers' fundamental human rights, will be prosecuted, and if convicted, be made to pay compensation to victimized workers and their families. Issues relating to human right abuses fall within the competence of the International Court of Justice. In addition, the ILO may amend its Constitution to expressly include an expulsion clause to allow it to expel member states which continue to abuse workers' rights or fundamental labour rights from the Organization. These sanctions may serve as deterrents to ILO members who default on their international obligations. In the absence of any drastic punitive measures, however, the promotion of universal social justice, a goal which the Organization was created to pursue, will continue to remain lost in its own rhetoric.

Rawlings military dictatorship in Ghana, for example, implemented SAP's austerity with relative ease given the lack of opposition. Ghana's near-bankrupt economy shifted from a "social revolution" to economic liberalization in 1983 in response to the IMF and the WB conditionalities. Austerity measures of the SAP package included the reduction of labour costs. The government deployed Ghanaian workers (Ayee 1997:48), firing about 45,000 of 320,000 civil servants and the Ghana Education Service within a three year period. That is, the government implemented SAP by using para-military and security forces to silence the dissenting voices of the labour movement (Digest 1996:152). For Ghana, liberal democratic principles of freedom of association were an anathema for the successful implementation of the IMF and WB programmes.

Despite the IMF and WB chatter on the need of developing societies to democratize their political systems in order to qualify for assistance, these U.S.-based financial agencies have no problem relying, let alone supporting repressive governments that deny workers' rights while favouring corporate exploitation. Note also that the IMF, WB, World Trade Organization, G8 are not democratically represented in the formulation, implementation, and evaluation of global social and economic policies. Corporations are not accountable to public needs nor are they open to public scrutiny. The IMF is funded with taxpayer money, yet its select group of central bankers and finance ministry staff operate from behind a veil of secrecy when deciding economic policies. Capitalism disadvantages developing societies through the twin social mechanisms of law and transnational corporations. International law is not just the language of the powerful nor a convenient mythology but an ingredient of the pervasive commodity exchanges. In the pub-

lic sphere of globalization, law protects the powerful. The “objective” frame of reference for the ILO is the law, but the range of law from the “moral” creation of standards to enforcement practices is linked to ideological influences and hegemonic projects that secure and protect the legitimacy of continued accumulation of profit for the transnational corporations. This paper locates the law and its subsequent responses, therefore, in the social organization of dependency relations. Instead of mediating inequalities, law militates against equality. The discourse of labour laws fits within historical configurations of power which produce symbols that are manipulated and deployed as resources to serve the needs of corporate constituencies. By failing to implicate, let alone indict, such dynamic features as history and political economy, international law trivializes universal labour rights. The ongoing global chatter, illusions and fascination with law distracts from a needed public debate regarding the political economy. An inquiry into the text of international law without the context of political economy becomes a poor pretext for the pursuit of partisan interests. As a moral construct that produces and reproduces power relations, law provides formal images that distort rather than decode the well-protected values of the privileged institutions that create illusions that demand deference. Law, therefore, is an integral feature of capitalism. The culture of labour law evident in the ILO as well as the current policies of the IMF and WB replete with the rhetoric of democracy manipulate by “de-politicizing” and “cooling-out.” A legal system can oppress and marginalize people in different ways, some of which are painfully obvious; others are difficult to detect. Conley and O’Barr (1998:129) note:

If the objectives are to understand the nature of law’s power, to see how that power is exercised over real people, to identify points at which it might be challenged, and to assess which challenges are likely to work, then micro discourse is the place to look.

### Conclusion

#### *Beyond the Market of Legal Injustices Towards a Morality of Social Justice*

The macro discourses of ILO’s enforcement policies and the micro management of IMF and WB mystify the new colonialism. For the ILO, the spirit of international law is a sacred instrument that responds to social injustices by transcending material conditions. Together, the spirit and letter, form and function, theory and practice of international law appeal to the liberal democratic idea of “equality” and the cultural talk of freedom. But, the practice of international law, however, reflects the ILO’s complicitous corporatist connections. An intrepid analysis of what the ILO’s Articles and Conventions reveal and conceal demonstrates that law is continuously constituted by its patterns of usage. The ineffective enforcement of laws is consistent with the interests of capital primarily because for the IMF,

World Bank, and the ILO labour laws inhibit economic development. Instead of direct action there has been a proliferation of enlightened talk regarding civil society, consultation with a wide array of constituencies, partnership building and dialogue, creative or innovative methodologies, accessibility, and accountability.

This paper problematizes the relationship between corporate machinations and democratic accountability by exposing the chatter of "rights." Within the ILO marketplace of rhetoric, jargon and clichés, the concept of rights has become a negotiable commodity the value of which is conveniently determined by a corporate agenda of profits. The concept of rights provides both an ideological legitimacy and a forum to discipline dialogue and pre-empt criticism. The moral appeal of law balances the vulgarities of corporate profit. This elusive concept of universal rights has also been too easily appropriated by the IMF and World Bank to engineer support for limited initiatives that fail to grapple with fundamental inequalities. Similarly, ILO's shallow gestures fail to confront structural deficiencies oriented towards the maintenance of dependency relations. Instead, the hyperbolic niceties of labour rights, enshrined in lofty, nostalgic and tantalizing mythologies, have become appropriated by neo-liberal discourses that popularize freedom from government regulation, the primacy of market forces, privatization, fiscal reform, the reduction of state spending, and decentralization.

Admittedly, the ILO does little to ensure that member states protect labour rights. Rather the ILO "contains" oppositional currents by manipulating governments to "buy" into the impression that "something" is being done to ameliorate labour problems. This mechanism keeps disturbances in check while ostensibly gathering information about local economies and politics. Well orchestrated public relations campaigns distract the discontent. In other words, ILO commissions, conferences, and funded research are methods of filtering levels of tolerable criticisms, to minimize creativity and to protect the hegemonic imperatives of transnational capital.

An emphasis on ineffective legal remedies tacitly ensures inequality by failing to address socioeconomic conditions created by such organizations as the IMF and the World Bank. In brief, international law is a project constructed in conflict, contextually determined and discursively shaped. The depoliticizing metaphor of economic rights neglects those centrifugal social forces that obscure the historical complicity of financial capital. How then does orthodox economics affect one's understanding of globalization? For Shapiro (1999), whether operating nationally or globally, the world of investment conjures away social, political, and ethical issues. Lastly, this paper examined the impact of globalization on arbitrary and disjunctive structures of the law-economics nexus by exploring the extent to which law has become a locus of attachment to counter the self-regulating spheres of the economy. The social placement of individuals and the availability of resources are differentially dispersed. An emphasis on the legal "individual" country is at best a partial remedy to the subordinate treatment of many developing societies. Historically, the mobilization of legal remedies have not

facilitated the resolution of economic disputes. By its very nature, law is an extremely conservative mechanism which has seldom assumed an activist stance on issues of universal entitlements. The law defines the violation of rights as unfair state practices that will be vindicated on an individual case basis rather than an expression of more deeply rooted structural or institutional barriers. The lexicon of international law, weak enforcement, turgid case law, incomprehensible legalese and abstract principles demonstrate that the “boundaries between the political and the non-political are constantly under negotiation” (O’Neill 1997:32). As Habermas (1998) suggests, the legal response to contemporary globalization accepts disjointed co-presence, which has resulted from a continuous dynamic of globalization within which governance and economy have been continuously imbricated spheres of activity. Law is increasingly eclipsing politics as a site of inquiry.

This paper highlights the false assumptions of the IMF and WB which emphasize the advantage of a short sighted approach to development by capitalizing on immediate short-term profits which do not consider the long-term interests of client nations, the long-term impact, the economic benefits accrued with strategic investments in labour rights, the time horizon, the importance of balancing the power of corporate and political interests with labour. Historically and in current practice both the guiding principles and the key principals of the ILO and IMF/WB are indistinguishable. It is no wonder then that the often-celebrated efficacy of international law is of dubious value given the capitalistic consciousness that created the ILO. Social data are overwhelming in demonstrating that the practice of law remains a “disembodied spectacle” (O’Neill 1985), largely divorced from its larger social foundations—the people. An emphasis on the legal is at best a partial remedy to the subordinate treatment of many. But as Ericson (1984:3) clearly argues, “those who seek equality in social structure and social relations and, the justice this promises, should look more often to means other than the law.” Likewise, Foucault (1980) admonishes, “one should start with popular justice, with acts of justice by the people” (p.1). More generically, this paper demystifies the relationship between law and capital. What is required is a more comprehensive conception of law that is loyal to a culture of justice, a justice that regulates the political economy of capital. By transforming itself in terms of morality and social justice, the authenticity of law will be restored. In doing so the law reclaims its rightful authority not rhetorically but in all its applications.

## NOTES

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