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Labour Rights as Human Rights

PHILIP ALSTON (Ed.)

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Since the 1970s, expanding international trade and increasing migration have threatened wages and labor rights established through a century of struggle. Built through great sacrifice, welfare states and collective-bargaining regimes have been menaced when trade barriers have fallen, allowing businesses to relocate to less generous regimes. Well-paid and well-protected workers in advanced economies have been threatened with the products of low-wage labor in foreign countries or by those workers themselves when they migrate to the advanced economies. An unquestioned boon for consumers and for well-paid, professional workers, globalization has been seen as the enemy of less skilled workers in advanced economies; and support for globalization has plummeted among workers and their allies who now see it as a conspiracy to raise profits and undermine social protection. Worse, by undermining national regulations, globalization threatens to restore the power of markets over policy, contract over rights.

Hoping to find a middle course between national protectionism and an unbridled globalism that expands trade even at the expense of labor, many have sought to promote globalization with a social face, a fair-trade globalization that would respect labor rights. There has been a growing popular movement either to restrict trade or to require 'fair trade' on the basis of high labor standards. In the market place, many certifiable fair-trade commodities are now available,

including the coffee beans in my coffee grinder and my daughter's high-priced designer jeans. Anti-sweatshop campaigns are a common feature of American college campuses where students interrupt the institutions of global trade, including the International Monetary Fund and the World Trade Organization, to demand that university sweatshirts be made in fair-trade factories. These all reflect popular demands for 'upward harmonization' to raise labor standards in poorer countries to the levels of the more affluent.

But if market competition can be expected to produce 'downward harmonization,' or 'a race to the bottom,' there is no clear mechanism for international trade to lead to upward convergence, or 'a race to the top'. The contributors to *Labor Rights as Human Rights* want to protect labor rights within the framework of an emerging global economic system, and they search for institutional mechanisms to do this. They fail; but not for lack of effort. This is a distinguished group. A professor at New York University Law School, the editor, Philip Alston, has served as a United Nations Special Rapporteur, a Special Adviser to the High Commissioner for Human Rights, and chaired the UN Committee on Economic, Social, and Cultural Rights through the 1990s. Other contributors include Francis Maupain, Legal Advisor to the International Labor Organization and Special Advisor to the International Labor Organization (ILO) Director-General, and Steve Charnovitz, a Professor of Law at George Washington University and for many years an international relations officer at the United States Department of Labor. Some of the world's finest legal scholars, including Anne C. L. Davies (of Oxford), Simon Deakin (Cambridge), Patrick Macklem (Toronto), and Tonia Novitz (Bristol), also contributed. These are all experienced, knowledgeable, and thoughtful. If there was an easy, or even a clear way, to reconcile labor rights and globalization, then these are the people who would find it.

While he tries to put a good face on things, Philip Alston leads off the collection honestly with an introduction entitled 'Labour Rights as Human Rights: The Not So Happy State of the Art.' Accentuating the positive, he notes that some notion of labor rights *is* recognized by most countries and a variety of international organizations. But, frankly, little more than lip service is paid to these rights in practice. Inadequate resources are provided to monitor labor rights, and international agreements provide little opportunity for enforcement. In his essay on 'Social Rights in a Globalized Economy,' Simon Deakin supports Alston's findings. Solicitous of the rights of *capital*, the European Court has shown little interest in extending *labor's* social rights. Essays by Charnovitz (on labor rights in free trade agreements in the Americas) and Davies (on the European Union) also conclude that little is done to promote upward convergence of wages and working conditions in international agreements. Even when labor rights are formally acknowledged, they note that little is done to enforce them. (This is a point also made by Novitz for the European Union and the ILO and Macklem for the right to collective representation in particular.)

Only one essay provides *any* grounds for optimism. Francis Maupain of the ILO shows how pressure from the ILO led the government of Myanmar to accept international supervision of a new program to end forced labor. Years of discussion led to the formation of an ILO Commission of Inquiry in 1997. This group's report and threatened sanctions led to the adoption of new regulations to end forced labor at the end of 2000. This was a great success, and Maupain is right to hold this success up as evidence contradicting the popular perception that 'The ILO has been around forever, but it has done nothing forever' (p. 85). But even this success tells us much about just how difficult it is to enforce international labor standards. Here we have a clear case of gross abuse

committed by a small and politically isolated country; and even there it takes years of effort and there is still no guarantee that the recently installed military government will honor the agreement made in 2000. If it is so hard to win effective international cooperation in a case like this, then what are the chances of using the ILO to bring about genuine upward convergence elsewhere?

Maupain concludes by saying that 'the ILO does indeed have a strong capacity to promote, in a verifiable manner, its objectives.' But he also acknowledges that 'its potential will remain inactive, unless there is a strong political will to activate it' (p. 140).

As much as anything, it is the political will that remains lacking. Charnovitz quotes Kimberly Elliott and Richard Freeman as saying that 'If capital needs international protection from potentially corrupt and rapacious government officials, surely so does labor.' He concludes that '[t]he rationale for treating labor (and environment) differently from the other harmonization is not explained within the NAFTA [North American Free Trade Agreement] side agreements or in newer FTAs with that same orientation' (p. 157). Perhaps the greater protection extended to capital rather than labor is unexplained because it is indefensible. But until we can muster the political will to protect labor, this indefensible policy will continue.