RETHINKING LAW IN GLOBALIZING LABOR MARKETS

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One of the most salient features of the twenty-first century workplace is that its participants are increasingly being drawn from, and drawn into, a globalized labor market. When coupled with the fact that for the better part of this century the laws governing labor markets have been enacted and enforced in large measure at a national level, this development creates serious conceptual and practical problems for the traditional "rule of law" as it pertains to the world of work. My aim in this essay is to highlight some of those conceptual and practical problems, with a particular emphasis on the dangers and opportunities they pose for the future of any local, national, or supranational democracy worthy of the name.

I will also try to situate this inquiry in the context of some of my own research, which has involved meeting and traveling with blue-collar workers in northern and southern parts of the Americas and collaborating with some of them in a series of participatory investigations about the

† Professor of Law, University of Tennessee; B.A. Harvard/Radcliffe College, 1969; J.D. University of Tennessee, 1979; LL.M. Harvard Law School, 1988. I have too many people to thank for the past ten years of introductions to the global economy. This article builds on a number of investigations that received support from various individuals and organizations, including the Angelina Fund, Appalshop, Inc., Deborah Barndt, David Bryant, the Community Partnership Center at the University of Tennessee, Rosie Freeman, the Fund for Labor Relations Studies, John Gaventa, the Highlander Research & Education Center, Anne Lewis, Debbie Nathan, Chris Pelton, Jim Sessions, the Social Science and Humanities Research Council of Canada, the Tennessee Industrial Renewal Network, Jeannine Ugarte, the University of Pennsylvania Journal of Labor and Employment Law, the University of Tennessee College of Law, the University of Tennessee Faculty Development Program, the U.S. Department of Housing and Urban Development, Loida Velazquez, Mike Whalen, and Susan Williams. I am especially grateful for the help from members and staff of the Tennessee Industrial Renewal Network ("TIRN") in Nashville, Tennessee, Centro de Estudios y Taller Laboral ("CETLAC"), and Centro de Investigacion y Solidaridad Obrera ("CISO"), both in Juarez, Chihuahua, Mexico.
nature of changing labor markets. Highlighting my choice of vantage points is, I believe, important. For one thing, I think it is right to inform readers about choices that will inevitably affect both what I perceive and conclude. In my view, the possibilities for "objectivity" in social inquiry are limited. We, as researchers, are thoroughly positioned and situated in ways we can only partly apprehend. In fact, claims to neutrality, sincere and otherwise, are often based on assumed norms that work to obscure and reinforce the workings of social privilege. It therefore behooves researchers interested in developing principled and disciplined alternatives to such claims to acknowledge and openly delineate what we know of our own relevant perspectives and choices.¹

Secondly, I want to affirm that value of the particular point of view in which I have attempted to ground this work. If the subject is labor markets, then the experiences, views, and interests of people who must sell their labor power in those markets should surely be at the center of discussion and policy making. Yet too often, the views and interests of people like my primary collaborators are discounted or silenced in the mainstream discourse around globalization. I hope in this essay to seize one small opportunity to alter the usual balance.²

I. TWO WAYS THE LABOR MARKET IS GLOBALIZING

Two important trends in world labor markets—the mobility of industrial capital from North to South, and the mobility of immigrant workers from South to North—are opposite sides of a single global coin. Both are having profound effects on the economies of countries in all regions of the world. For many industrial employers, for instance, their relevant labor market is no longer local or even national. Today, when making decisions about what to manufacture, where to operate, whom to hire, or how to divide, manage, and compensate production, the people who do strategic planning for large corporations plan increasingly on a global field. Cutting production costs has become a dominant strategy for shoring


². For a discussion of the importance and value of choosing to produce knowledge about social phenomena with and for those most directly and adversely affected, see, for example, John Gaventa, The Powerful, the Powerless, and the Experts: Knowledge Struggles in an Information Age, in VOICES OF CHANGE: PARTICIPATORY RESEARCH IN THE UNITED STATES AND CANADA 21 (Peter Park et al. eds., 1993); Francesca Cancian, Feminist Science: Methodologies that Challenge Inequality, 6 GENDER & SOC'Y 623 (1992); Orlando Fals-Borda, Participatory Research and Rural Social Change, 10 J. RURAL COOPERATION 25 (1982).
up profits, and manufacturers have discovered that access to third-world workers under conditions as they now exist, whether that access is achieved by the movement of plants or the movement of people, can put wages high on the list of items from which huge cost "savings" can be achieved. Further, access to new third-world laborers often allows companies to reorganize the process by which their product is made without the protests and resistance that could be predicted in a situation where the workers are seasoned and organized.  

This essay will begin with a brief review of these two trends toward globalized labor markets and will introduce competing arguments about their impact and significance. I will then go on to talk about what these trends might have to do with the rule of law in the twenty-first century workplace and with the prospects for democracy in the years that lie ahead.

A. Mobility of Industrial Capital

For reasons political, economic, and technological, industrial capital is increasingly mobile. Corporate managers can, and do, deploy their resources in coordinated and integrated ways around the world. Although a great deal of the increased trade and increased cross-border investment is thatched among the wealthy triad of North America, Europe, and Japan, those relationships are not the whole story. Increasingly, industrial manufacturers headquartered in the world's North are shifting labor-

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3. In interviews with managers at a large, new U.S.-owned automotive facility in Mexico, Harley Shaiken gathered a number of telling comments from managers concerning their interest in interrupting the chain of collective memory and understanding among workers. "Transfers of hourly personnel and their supervisors from [the company's other existing] Mexico operations were not allowed, in order to avoid inflated wages/benefits and old work practices." HARLEY SHAIKEN & STEPHEN HERZENBERG, AUTOMATION AND GLOBAL PRODUCTION: AUTOMOBILE ENGINE PRODUCTION IN MEXICO, THE UNITED STATES, AND CANADA 47 (1987). "[The young workforce] hasn't been spoiled by negotiated agreements or unwritten agreements that hurt the operations of the plant . . . . They're new and they don't have the habits to break." Id. at 51-52.

"The relative impact of labor costs was significant, but nowhere near the top of the list in terms of controllable cost parameters . . . . The issue is quality of labor not cost of labor. What was important to do was to mold a workforce so that it was an asset in the total effort to keep the machinery running productively."

Id. at 42.

4. A comment on this usage of "North" (and its implied opposite "South") may be in order here. For a person like me—born and raised in Georgia, now living in Tennessee, long self-identifying as a "white Southerner"—it has been a funny ride over the past ten years or so entering into transnational collaboration and dialogue with third-world activists and intellectuals from whom I have learned that I am very decidedly and unavoidably a member of the world's "North." My great-grandmother would turn over in her grave.

Names for the global divide are problematic, of course. The location of a global "North" (meaning the wealthy, industrialized, and culturally dominant countries, for example, the United States, Canada, and Japan) and a global "South" (meaning the poor,
intensive phases of their operations to "export processing zones" like the *maquiladora* region of Mexico, where workers can be had for a fraction of the wages paid for comparable work in the United States, Europe, or Japan.

1. Viewed from the North

From the point of view of industrial workers in the United States, the new international division of labor has resulted in a radical rewriting of the social contract many had come to believe set the framework for their work lives, and for their own and their children's futures. For blue-collar employees, working in a profitable plant and building a satisfactory or even outstanding work record there no longer translates into job security. From individual plant closings to the virtual collapse of entire domestic industries, from wage concessions to lost or abandoned elections for union

less industrialized, and culturally subordinate countries, for example, Mexico, Cambodia, and Tanzania) is more a metaphor than a geographic description, and one that is wildly sloppy at the edges even on its own terms.

Nevertheless, the existing alternatives are equally unsatisfactory. One usage, that of "developed" and "underdeveloped," suggests a linear directionality, both moral and historical, now widely and properly discredited. Similarly, the use of "first-world" and "third-world" was always irritating to those who questioned the initial choice of sequence (hence, for instance, the counter-usage of "First Nations" by native peoples of Canada). Now that the "nominally socialist second world" has collapsed or exploded with the fall of the Soviet bloc, this usage has become even less satisfactory. Similarly, using "industrial" and "nonindustrial" would be anachronistic and inaccurate. Many countries in the global "South" are highly industrialized today, and much industry in the global "North" is gone or in decay.

Another twist on this dilemma is that many international colleagues from the global South tell me that their own participation in cross-border networks has convinced them that there is a "South within the North." This usage warms my heart, but of course they do not mean my home region. They mean something far more complex, having less to do with geographic location than with things like race, class, and gender.

5. *Maquiladora* factories (or "*maquilas*" as they are often called) were originally a phenomenon of the U.S.-Mexico border. Their numbers have surged there since the peso's dramatic decline against the dollar first made itself felt in the 1980s. They are also now appearing in the interior of Mexico. On the most basic level, they are foreign-owned firms that import components from abroad for labor-intensive assembly and similar tasks, then shipped back to other nations for sale. First designed as a set of expectations to various U.S. and Mexican trade restrictions, the *maquilas* continue to exist and expand in the NAFTA era that they foreshadowed. See infra note 14.

6. On the contrary, national news media recently described as a significant victory for labor the United Auto Workers' ("UAW") successful staging of the most expensive strike for an employer in U.S. history, despite the fact that the astonishingly paltry heart of that victory, at least in terms of concrete demands won from the company, was an assurance from General Motors that it would not sell three of the plants involved for another sixteen or so months. See, e.g., Brian Akre, *GM Agrees to Tentative Contract with Largest Union*, KNOXVILLE NEWS-SENTINEL, July 29, 1998, at A1.

7. For descriptions of individual plant closings and their aftermath, see COMMUNITY AND CAPITAL IN CONFLICT: PLANT CLOSINGS AND JOB LOSS (John Raines et al. eds., 1982).
representation,\(^8\) the harsh impact of capital mobility on the job security, wages, working conditions, and bargaining power of blue-collar workers has seemed unmistakable to most of the people directly affected.\(^9\)

A Tennessee story may shed some light on the dynamics that can occur in a world where manufacturers can easily move operations to the third world. An economic justice group in my community, the Tennessee Industrial Renewal Network ("TIRN"), was contacted a number of years ago by workers at an area electronics plant owned by a large multinational company. Hourly employees at the factory told TIRN that they were apprehensive about their future. They explained that trouble had been brewing for several years, when the firm began moving parts of what used to be Tennessee production to low-wage locations in developing countries. First, one small assembly line was taken off to some strange-sounding place along the Mexican border. As "Larry," a local union officer later recounted, wryly reflecting on his own race-based assumptions had blinded him as to the vulnerabilities of the people he represented:

They started moving the T-line. That was the cheap quality units, supposed to have been easy to run, simple. And we thought at the time that's all they'd probably take, because it was so simple for anybody to build. . . . I kind of pictured a Mexican with a sombrero over his head, kind of laying down in the shade with his head down.\(^10\)

Today Larry is wiser: "But no, it's not that way. They say they're great workers. And more, they say they can build anything we can build here."\(^11\)

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10. Interview with "Larry," a local Tennessee union leader (Nov. 1996). (Note that in this instance, as in several other interviews cited in this essay, I have changed names or otherwise worked to obscure or alter identifying facts to preserve confidentiality, either of the interviewee or of some other related person or entity. This practice will be signaled in the text or footnotes by the use of quotation marks around the fictitious name at first usage.)

11. Larry's current perceptions are borne out by close observation of field researchers in Mexico. See Shaiken & Herzenberg, supra note 3.
Within a few years, it was clear that things would not stop with the T-line. Several other parts of the production process were also moved. In addition, there were rumors that new products that the workers had hoped would come to their plant were instead being assigned to Mexican plants or other locations offshore. In grievance meetings or during informal conversations on the shop floor, if union members showed resistance to management proposals, company representatives began to drop remarks. "You're going to drive us to Mexico," they would say, or "This is the kind of thing that will force us to move to Mexico." This refrain eventually made itself felt in contract negotiations as well, and local union leaders decided to call the company's bluff. They announced that they wanted to see the company's Mexican facilities for themselves. An opportunity was arranged, the international union bought airplane tickets for the negotiating committee, and from the worker's point of view, the trip turned out to be a decided success. The facilities they toured in Mexico looked second-rate to them. Engineering troubles appeared to be substantial, and problems with quality were apparent to the educated eyes of the union visitors. "It was a rinky-dink outfit.... We could see those lines, and the solder pot all dilapidated that they took down there and remodeled it. It came right out of our shop." That year the committee returned to the United States and obtained a contract in which they felt pride.

However, three years later, during the next round of contract negotiations, the outcome was quite different. On their second trip to the Mexican plant, the workers found themselves staring open-mouthed at a vastly upgraded operation. The facility was large, efficient, and smoothly running, with an excellent finished product pouring steadily off a high-tech line. More ominously, their tour guides pointedly showed them another

12. Id.
13. Id.
14. Harley Shaiken agrees with Larry's more recent assessment. He and fellow researchers have documented not only that Mexican workers have not been asleep under their sombreros, but that multinational automotive plants in Mexico are using sophisticated technology and achieving high levels of productivity. Some celebrants of the benefits of the neoliberal development model in Mexico point to advanced technology and post-Fordist regimes in some maquilas as proof that the model is "working" to modernize Mexico, and that the country is moving through a series of progressive developmental stages toward a high-tech, high-skill future.

Other commentators dispute these conclusions, arguing rather that the maquilas display a "dual" or more complex "heterogeneous" structure, with low-tech, low-wage, old-style operations flourishing and proliferating alongside newer and more high-tech firms and facilities. See Kathryn Kopinak, The Maquilazation of the Mexican Economy, in THE POLITICAL ECONOMY OF NORTH AMERICAN FREE TRADE 141 (Ricardo Grinspun & Maxwell A. Cameron eds., 1993) (reviewing the literature of this debate).

My own observations along the U.S.-Mexico border are in line with the latter thesis. While I have toured facilities that are heavily investing in computers and more advanced training for operators, I am also aware of sizable facilities where the task of line workers is
large industrial space that was standing empty, ready to receive additional production from their own factory should the "need" arise. The union officers found themselves remembering all too keenly some of the engineering changes they had been watching in the plant back home which had made production lines more segmented, flexible, and easy to dismantle. They noticed that such construction was perfect for loading onto tractor-trailers at a moment's notice.\footnote{Of course, it takes more than loading lines onto trailers to transfer production, and I do not want to create the impression that companies do frequently move "on a moment's notice." As Kim Moody has astutely observed, "The idea, so prominent in popular globalization literature, that businesses pick up stakes and relocate offshore in the blink of an eye is largely 'globaloney.'" \textit{Kim Moody, Workers in a Lean World: Unions in the International Economy} 7 (1997). Nevertheless, technical mobility of plant equipment can facilitate overall corporate mobility, and the workers were right to be noticing these shop floor changes. Worker perception, in turn, is a substantial aspect of the increased leverage that real-life, non-exaggerated capital mobility does confer on the employer in our altered economy.}

At the conclusion of this tour, the leaders of the union local returned home to negotiations deeply shaken about their ability to preserve jobs for their members. They ended up agreeing to a "two-tier" contract that did little more than narrowly preserve previously existing benefits for current workers. New hires would come in at substantially lower pay and benefits. Even worse, all those on layoff status at the time the contract was negotiated were assigned to the lower tier. The group on layoff status included a significant number of workers, due to slack production at the time of negotiations, and these people were also declared ineligible to vote in the contract ratification process.

Workers from both tiers (many of them related by ties of friendship or kin) were furious at this turn of events, and many blamed the bad contract on the union’s leaders. Membership in the union dropped from over sixty percent to less than forty percent. The union local tried to fight its way back to health, but it has never fully recovered from the wounds of that concessionary contract. The story of these particular workers and their adventures in the global economy has since spun out additional instructive chapters too long to tell here; however, I share the pieces recounted above to put some flesh on the skeletal statement that increased international mobility of industrial capital hurts blue-collar workers in the “sending” countries in ways that go beyond simple job loss. Capital mobility affected
the climate of daily and yearly life on the job, at the bargaining table, and eventually, the workers’ influence in the halls of Congress.\textsuperscript{15} Anyone attempting to analyze the job-destroying or job-creating effects of increased international trade must recognize other important job-destroying developments afoot in today’s economy, such as technological change and organizational restructuring. But all these trends affect each other as well. For instance, to the extent that the current brand of globalization has a pronounced tendency to destroy or weaken trade unions, it has a significant impact on how new technology is introduced into workplaces, and how any gains of such changes are distributed.

Some domestic proponents of the benefits of “free trade” argue that the negative impacts of capital flight and global wage competition on industrial workers in the United States are nonexistent or overstated with the causes of existing trouble lying elsewhere.\textsuperscript{17} Of course, many

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\textsuperscript{16} Of course, the “simple” job loss question is neither small nor uncontroversial. Observers disagree on a number of issues related to jobs, including how many jobs have been lost or gained as a result of various manifestations of globalization. Critics of NAFTA often cite the large numbers of workers who have been awarded benefits under training programs available to workers who can show they lost a job as a result of U.S. trade and investment with Mexico or Canada. \textit{See, e.g.}, \textit{NAFTA's First Two Years: The Myths and the Realities} (Sarah Anderson et al. eds., 1996) 5; \textit{NAFTA's First Year: Lessons for the Hemisphere} (Sarah Anderson et al. eds., 1994) 36; Peter Cooper & Lori Wallach, \textit{NAFTA's Broken Promises: Job Creation Under NAFTA}, PUB. CITIZEN, Sept. 1995, at 11-13.

Promoters of NAFTA, on the other hand, have claimed that it has created jobs, often relying on a controversial presumed relationship between exports and job creation. \textit{See, e.g.}, \textit{No Massive Employment Losses to Mexico Since NAFTA Implementation, Study Says}, 12 Intr'l. TRADE REP. (BNA) 2106 (1995). However, despite considerable pressure from the Clinton administration for news that could help it win “fast-track” authority, claims of NAFTA gains have become more muted as the post-NAFTA trade deficit with Mexico has mounted and the picture has grown more complex. \textit{See, e.g.}, International Trade Commission, \textit{The Impact of the North American Free Trade Agreement on the U.S. Economy and Industries: A Three-Year Review} (visited Nov. 30, 1998) <http://www.usitc.gov/wais/reports/arc/w3045.htm>. (“[T]he effort to isolate the effects of NAFTA from any effects of other economic occurrences since the start of NAFTA in January 1994 is difficult. … Despite these complicating factors, the ITC estimated that NAFTA has had, on balance, positive although modest results.”).

Proponents and opponents alike must concede that empirical assessments face many obstacles, given the difficulty of tracing cause and effect in an economy as dynamic and complex as ours. Empirical studies can, however, sometimes provide an important check on the use of abstract modeling. Researchers at the University of Illinois-Chicago, for instance, have challenged the presumed relationship between exports and job growth by showing that those Chicago industries most heavily involved in production for export showed an actual decline in employment during the post-NAFTA period of their study. \textit{See} David Ranney & Anne Miller, \textit{NAFTA in Illinois: Who Benefits and Who Pays?}, ILL. FAIR TRADE CAMPAIGN, Apr. 1996, at 5-8.

\textsuperscript{17} \textit{See, e.g.}, Jagdish Bhagwati & Vivek H. Dehejia, \textit{Freer Trade and Wages of the Unskilled—Is Marx Striking Again?}, in \textit{TRADE AND WAGES: LEVELING WAGES DOWN?} 36 (Jagdish Bhagwati & Marvin Kosters eds., 1994).
commentators do not consider diminished bargaining strength of organized labor to be a negative factor in any case. Other boosters of free trade concede some unwanted impacts but argue that these are (or will eventually be) outweighed by the payoff U.S. workers are predicted to enjoy under the new international division of labor. The theory is that while many manufacturing jobs will shift to southern locations, northern workers can take a new place in the reorganized world workforce, moving into higher-skilled, higher-paying jobs, many of which will be producing exports for a newly stimulated global marketplace.

2. Viewed from the South

In any event, the advisability of the free trade agenda should not be evaluated in terms of its impact on one country alone. The impacts of cross-border capital mobility are felt and should be assessed at both sending and receiving locations. For workers in areas of the world’s South that are on the receiving end of such investments, in places where export processing is on the upswing, these developments have also brought radical changes. New third world millionaires are created among those members of the local elite who manage to get into a profitable relationship with international investors, and in some areas, the new export processing firms and their supporters have come to dominate local economies and political arenas. However, small domestic businesses often suffer as traditional protections for such enterprises are withdrawn and as the effects of competition with large multinational firms make themselves felt. Meanwhile, new groups of workers are swept into the process of industrial production, recruited from places and from demographic groups (such as young women and indigenous people) never before engaged in this kind of work or directly involved with global enterprises. Such employment sometimes enables individual or family survival in the midst of the profound economic crises now epidemic among the world’s poor countries. Likewise, at times it can provide a new measure of independence for women previously without access to an income stream.


19. The 1997 Human Development Report from the United Nations noted that the economies of more than 100 nations around the world are worse off today than they were 15 years ago. The U.N. Commission for Latin America and the Caribbean reported in 1997 that 38% of the population of the Caribbean was estimated to be in poverty, and that one out of every six households in Latin America was “indigent,” that is, unable to satisfy its basic nutritional needs, even if the entire family income were to be spent on food. See ECLAC, THE EQUITY GAP: LATIN AMERICA, THE CARIBBEAN, AND THE SOCIAL SUMMIT 30 (1997).
outside patriarchal family structures. But workers involved in these new manufacturing and agro-export sectors, in country after country and industry after industry, also report that the conditions are arduous, the exposures to occupational hazards are severe, and the wages are seldom able to support anything like an adequate standard of living even for an individual, much less a family.20

Ciudad Juarez and Tijuana, Mexico, are good examples of southern locations where export processing has become a dominant force in local economies. These are cities along the U.S.-Mexico border where maquiladora plants (sometimes interchangeably referred to as maquilas) have grown exponentially in size and number since the program's original slow start in the late 1960s. Originally these plants, together with the web of new import/export and investment rules that were developed to allow and support them, were devised as a binational strategy intended to soften the blow to Mexico when the U.S. decided to discontinue the U.S.-Mexico guestworker or bracero program in the 1960s. Since World War II, the bracero program had allowed Mexican workers to enter the United States as temporary agricultural workers, and when the program was terminated, Mexico saw a need to provide alternative employment for Mexican men returning home from work in the U.S. fields.21

When the Mexican economy experienced a series of shocks beginning in the 1980s, blue-collar wages in Mexico suffered corresponding precipitous drops, each of which increased the buying power of the dollar in Mexico, and thus made the maquiladoras a more attractive destination for investment capital. The process of "maquilization" was also encouraged by the rules of the World Trade Organization ("WTO") and NAFTA, which continued to strengthen the legal privileges and protections offered to foreign investors. As the U.S. International Trade Commission predicted in the course of helping to push NAFTA through Congress, "By codifying liberal trade and investment policies in an international agreement... [a] U.S.-Mexico FTA would increase the confidence of

20. The literature on the work and home lives of export-processing workers is large and growing. For a sampling of materials that touch on Latin America, Asia, and Africa, see INTERNATIONAL LABOR RESOURCE AND INFORMATION GROUP, EXPORT PROCESSING ZONES: SOLVING THE PROBLEMS OF SOUTHERN AFRICA? (1996); MARIA PATRICIA FERNANDEZ-KELLY, FOR WE ARE SOLD, I AND MY PEOPLE: WOMEN AND INDUSTRY IN MEXICO'S FRONTIER (1983); SUSAN TIANO, PATRIARCHY ON THE LINE: LABOR, GENDER AND IDEOLOGY IN THE MEXICAN MAQUILA INDUSTRY (1994); Gallin, supra note 18.

investors in the Mexican economy.”

The causes of these economic shocks in Mexico are the topic of hot dispute. Explanations offered by various observers and players include the dropping of oil prices, the weight of Mexico’s share of the South’s insupportable debt load, and widespread corruption in the large state apparatus created by the country’s long-dominant ruling party, the Partido Revolucionario Instituido (“PRI”) or the Institutional Revolutionary Party. Commentators on the right tend to identify what they see as excessive statism and nationalism in Mexico’s earlier import-substitution economic policies. Those on the left point instead to recent neoliberal reforms, adopted at the behest of northern creditors, foreign investors, and transnational financial institutions, as important causes of the crisis now faced by those in the lower levels of Mexico’s bottom-heavy economic pyramid.

Whatever the causes of the free-fall of Mexican wages, the decline created a strong magnet for foreign direct investment in manufacturing. Tijuana and Juarez have experienced dizzying growth of export processing industries with a corresponding rise in the power wielded locally by their respective maquila sectors. At this writing, the tortuous course of a historic and still unresolved labor dispute at the Han Young automotive parts plant in Tijuana provides a case study of how the multifaceted political and economic clout of the industry can be mobilized at local, state, and national levels to prevent independent trade unions from gaining even the most modest of toeholds in the region’s maquilas. The political and economic life of Ciudad Juarez is similarly dominated by the local maquila industry and its close collaborators in the real estate development sector.

Proponents of the NAFTA model argue that factory workers in the global South who produce manufactured goods for the world market may

have to toil initially for wages that are admittedly austere and under regimes that are admittedly oppressive. But, they claim that if the home countries of these workers sincerely eschew old inward-looking, protectionist development strategies, and if they energetically and thoroughly embrace the mandate to welcome and protect foreign investment and to favor production for export, they will begin working their own sequential way up the evolutionary development ladder toward a higher-tech, higher-skilled economy. In fact, so the theory goes, such a country is even likely to begin boasting a more liberal democratic political culture as time goes on.

Supporters of this view acknowledge that there is likely to be some pain experienced by relative have-nots, in both the North and the South, due to the inevitable friction accompanying transitions to new stages. Most of them also say that reasonable people could therefore disagree about the nature and extent of appropriate policy measures designed to ease the process of change in a particular case for a particular needy sector. But they take the position that such transitions are essentially temporary phenomena, that current trends ultimately are benign, and that the primary goal of policy makers in countries going through neoliberal "reform" should be to stay the course.

A Juarez story may shed some light on the impacts of capital mobility on third world destinations. Ciudad Juarez, Chihuahua, across the border from El Paso, Texas, is a city of approximately 800,000 people. It has more *maquila* workers than any other town or city on Mexico's northern border and is experiencing an unprecedented boom in *maquila* development. Meanwhile, its population is also burgeoning. Small farmers are finding it impossible to continue working on the land, as their local markets have collapsed in the face of competition with cheap U.S. grains, as the Mexican government has dismantled many previous programs of support for small agricultural producers, and as environmental problems in many areas have burdened or interrupted agricultural production.26

I have had an opportunity to learn a little about Juarez because my local collaborator, the Tennessee Industrial Renewal Network ("TIRN"), has developed a particular interest in that city. Since 1991, TIRN has

sponsored a series of two-way, people-to-people exchange trips between factory workers in Tennessee and in the *maquiladoras.*\(^{27}\) Several of these trips have taken the organization to Juarez, in part because the city boasts a number of *maquila* plants that are related to multinational companies that also have facilities in Tennessee. In the summer of 1998, the organization sponsored its most recent trip to the city. The delegation included Tennessee workers who make windshields, televisions, toilet paper, and seat belts; an over-the-road truck driver; a college student who is a single mother and who worked for a shoe factory before it moved south of the border; two TIRN staff members; and myself. On the trip we met several people whose stories cast some light on the impacts of foreign direct investment in export processing regions of the world. One of those people was “Ofelia.”

Ofelia is a seventeen-year-old girl who arrived in Juarez several years ago with her parents and younger siblings. They had come from a state further in the interior where the peso devaluation and its many shock waves had been the last blow to the family’s attempt to make a living from the land. In Juarez, they found their way to Anapra, one of that city’s rawest settlements, a neighborhood built in part on top of an old landfill, out on the city’s growing western edge. Our group found its way to Anapra too, on our first day across the border in the care of one of our local hosts. The host thought this place and a visit with Ofelia would provide an important frame of reference for the rest of our visit. And, she was right. Since the trip, many members of the delegation have come back to memories of that evening as a kind of touchstone about life on the border.

Anapra is a residential community that seems more like a living organism than a mere neighborhood. It is still a work of progress, expanding bit by bit across dry desert hills, a wild and dusty assortment of infinitely inventive structures leaning into each other, dug into and emerging out of the baked and nearly treeless dirt. Here are some of the “*casas de carton*”—the houses of cardboard—that Mexican pop singers

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croon about, and that put an edge in the voice of a Mexican organizer when she is explaining things to visiting gringos. This *colonia*, or neighborhood, also has homes of stronger stuff: discarded industrial pallets, adobe, cinder blocks, scrap plywood, automobile body parts, and cast-off asbestos board. The *colonia* displays a fabulous collection of structures made from used automobile tires, including pig pens, retaining walls, boundary fences, long stairways built sinuously into steep clay hillsides, planters for flowers, decorative ornamentation, and often a series of smoldering, inextinguishable, foul-smelling fires. This is a post-modern landscape way beyond where the rubber hits the road. This is more like where rubber, and people, and the environment—some would say Western Civilization—hit the wall.

Anapra is a place where you might run into a rattletrap 1972 Ford sedan packed to the gills with local men returning home from a long day's work at a construction sight; or a six-vehicle fleet of Presbyterian minivans from North Alabama, bouncing crazily over potholes, the youth group stunned in silence, their faces plastered wanly to the windows, while some adult sits tensely at the wheel. The church van driver that I saw looked like his mind was reeling, as if he was wondering what he would say in closing prayer that night because this was all somehow more than he had bargained for. Anapra is a place where you might see a police officer in a utility vehicle shouldering a semi-automatic weapon—something that police say they have to do now that the drug wars are what they are in Juarez. Or you might see half a dozen sick-looking, sharp-ribbed dogs in a pack. Or near midnight, you might see a stunning young woman adroitly picking her way to the bus stop, earrings dangling and spike heels flashing through dust, discarded disposable diapers, and treacherous gravel, heading off for a third shift at the light bulb factory.

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29. As to Western Civilization, see BOWDEN, *supra* note 25.

30. This late night walk to the bus stop is commonplace, despite everyone's brooding awareness of the still-growing number of unsolved crimes against young *maquila* women, mostly night shift workers, who have been raped, murdered, and left for dead in Juarez over the past several years. As one woman said to me when I quizzed her about her own decision to work nights, "It's true that I don't like moving around so much after dark. But there are many others from the neighborhood on the third shift, too, so we kind of look out for each other. The main thing is, this way, the kids hardly even know I'm gone." Interview with "Sabrina," in Ciudad Juarez, Chihuahua, Mex. (June 1998). For more on the string of rapes and murders, see BOWDEN, *supra* note 25, at 67; Charles Bowden, *While You Were Sleeping*, HARPER'S MAG., Dec. 1, 1996, at 44; Debbie Nathan, *When Death Comes to the Maquilas: A Border Story*, THE NATION, Jan. 13/20, 1997, at 18; Fred Rosen, With 130 Women Dead, Parish Buries Three More Victims as Killings Continue in Ciudad Juarez, Mexican Labor News & Analysis (electronic mail source sent June 2, 1998, on file with author); Mark Stevenson, Rights Commission Criticizes Mexican Probe into Rape Deaths (electronic mail
This place, Anapra, has water but only by the grace of tank trucks that come irregularly. We are told that the best chance for a period of steady delivery is just before election time. Users are charged a fee equivalent to many hours of work for amounts of water that require constant thrift and aggressive stewardship to stretch them until the next chance to purchase some more. At Ofelia’s house we are shown an elaborate collection of containers that allow for holding, using, and reusing water in various sequences. Pigs, for instance, do not mind drinking water in which the clothes have been washed. Used chemical drums (with plenty of English-language warning labels) make handy water barrels, which does not seem like such a good idea.

The neighborhood also benefits from the fact that electrical lines now reach to it. In contrast, some new settlements in overpopulated Juarez lack electricity altogether. However, so few in Anapra can afford the market price of electricity that the lines overhead are thickly strung with illegal taps. A main line is slung from pole to pole across the edge of someone’s yard, and then, like a giant harp, it drops a vertical curtain of home-rigged wires to the edge of the road. Each drop wire runs to a weight rock, neatly spaced with others in a row on the ground below. From there, the wires fan out in plain view across the open dirt to peoples’ houses, children skipping barefoot through them where they cross a path or road. Standing in this neighborhood in the 100-degree heat, you feel the strength of the inducement to tap into the current to run an electric fan. Never mind the convenience of lights; think of the difference it would make to have a refrigerator instead of the usual second-hand Coleman ice chest, or a television with a world’s worth of U.S. and Mexican channels right at your fingertips.

There is another thing you need to understand. All of these scenes of Anapra going dark as the twilight descends—all of these third world images and sounds and smells, the makeshift privies, the surreal lacings of pirate electrical lines, the sharp purple mountains rising straight up out of the desert, the kids running everywhere and playing with our cameras and (to our shame and embarrassment) begging for our snacks and bottled water, our intense self-consciousness and confusion about our identity and position, the hot dry wind driving dust into every crack and wrinkle, the slogan “La Biblia Es La Verdad” (“the Bible is the Truth”) splayed drunkenly in huge white letters across the Texas-facing Mexican mountainside like some joke or judgment on Hollywood, the groups of people gathered on nearby corners to seek evening cool, to visit with each other, and to keep an eye on this questionable group of Anglos standing around in Ofelia’s yard—all of this scene, so unimaginable to us visitors
just two short hours ago, is happening within clear sight of the city of El Paso, Texas, U.S.A.

That city is right over there, crisply visible through the desert air, looking for all the world like you could throw a rock and hit one of those skyscrapers that is just now starting to light up with the beginnings of that deceptively glamorous nighttime cityscape look. Surely you could throw that rock right over Interstate 10, and you would hear the ping as it bounced off the shatterproof glass and fell to American ground. Hung above the downtown cityscape and just below the moon is the symbol that Texans have decided to place on their Juarez-facing mountainside—a huge lone star outlined in single white lights. The star is not quite vertical or horizontal because the face of the mountain tilts, so the star looks a little like a leaf floating slantwise through the air, or a celestial handkerchief that has just dropped crookedly to rest on the rugged hillside, or a stingray skating underwater at an uncertain and transitory angle. All day the Juarez mountain speaks whitely to Texas of the truth, and all night the Texas mountain signals to Juarez its golden leaning star. And neither mountain moves.

Somehow, in the midst of all of this, it is really hard for our delegation to get oriented, to deal with such breathtaking, gigantic gaps and differences, and such patent, intimate connections and similarities, all rolled up before us into one fully loaded package. So we are standing around in this scene, more or less dazed, accepting Ofelia’s inexplicable hospitality that is just now taking the form of generously sharing with us a little about her life. “I’m sorry, it is probably better to talk out here. It’s really hot inside right now—muy caliente a dentro ahora....” Last year, Ofelia tells us, at age sixteen, she started work. She got a job in a maquila making temperature controls and worked there for several months before quitting and going to another plant. Now she is making “harnesses” for

31. I say deceptive because, seen in the light of day and from close range, El Paso is hardly glamorous. Boasting one of the highest poverty rates for a city of its size in the country, El Paso has taken a huge negative hit as its garment industry, long dominated by Chicana/Chicano and Mexican immigrant workers, has virtually collapsed in the aftermath of NAFTA. See Interview with Guillermo Glenn, in El Paso, Tex. (June 1998); see also Jane E. Larson, Free Markets Deep in the Heart of Texas, 84 GEO. L.J. 179 (1995); Sam Howe Verhovek, Free Trade’s Benefits Bypass Border Towns, N.Y. TIMES, June 23, 1998, at A1.

32. This kind of turnover is not at all unusual in Ciudad Juarez. Most line workers in the maquilas have little chance of moving up, but they have plenty of opportunity to move around, at least if they refrain from making a name as a troublemaker. One plant manager in Juarez told U.S. visitors that despite his efforts to combat workforce instability at his facility, the company experienced an average turnover rate of 12% per month. He also said that maquila factories in Juarez are in active competition with each other to hold workers longer by the use of non-wage incentives (for example, seniority bonuses and free visits to the plant nurse for workers’ children several times a year). When he was asked whether a
automobiles, the elaborate network of wiring that connects the dashboard of the car to its brake lights, radio speakers, windshield wipers and all the other places where electricity may need to go in the vehicle. Making harnesses is a highly labor-intensive process, well suited to export processing, and many harness plants have now opened in Juárez and elsewhere along the border, supplying most of the major automotive manufacturers.

Ofelia normally works six days a week, eight hours a day, and a half a day on Saturday. She gets up around four o’clock each morning and rides a bus for approximately an hour to get to work. Her weekly take-home pay is a little more than thirty dollars. Half of this pay she turns over to her father to help with the family finances, and half she keeps for herself.

When asked about conditions and wages in the industry, Ofelia first shrugs and says that things are pretty good at the harness plant. When quizzed a little more, she confirms that the wages are actually impossible to live on. However, she lifts her eyebrows—that’s true at all the maquilas. One is not so different from the other. Besides, what is the alternative?

At other junctures on our trip, puzzled about why there have not been more attempts by workers to press for more adequate wages, we asked local organizers and a plant manager about what would happen if a group of workers from a particular maquila approached the company as a group and asked for a higher wage. The manager told us that if he heard of any union activity, he would find out which workers were behind it, call them into his office, and ask them what it was all about, not to intimidate them, he said, but just to get to the bottom of things. If the workers see that they don’t need a union, then they won’t press for one. And such a conversation could help demonstrate that fact to them. When asked the same question, every organizer said, matter-of-factly, that a worker who pressed openly for higher wages and tried to get others to join him in doing so would certainly be fired, perhaps right away, or perhaps a bit later with some pretextual explanation.33

After subjecting Ofelia to a rush of our questions, we invite her to quiz us in return. “Ask us anything you like.” What she wants to know about is the wages of U.S. factory workers. When Luvernel Clark, one of the leaders of our group, an African-American woman who works in a seat belt

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33. See Interviews by Beatriz Lujan, labor leader and educator, with Carlos Gutierrez, labor lawyer and professor at the University of Juárez Law School, in Ciudad Juárez, Chihuahua, Mex. (June 1998); Interview with Robin Alexander, labor lawyer, in Peterborough, N.H. (Mar. 1998); Interview with Martin Cordero, fired maquila worker, in Knoxville, Tenn. (July 1997); Interview with Leslie Salzinger, graduate student, in Ciudad Juárez, Chihuahua, Mex. (July 1993).
plant in Knoxville, Tennessee, tells her that she makes around eleven dollars an hour, Ofelia’s eyes widen, and she is knocked speechless for a minute. The information just does not make sense to her. “I don’t understand,” she says. “If you make that much money, then why are you here? How can you be having a problem?” There is not a trace of hostility in her voice, just pure bafflement.

When asked about her future, Ofelia says she hopes to marry and have a family. She believes the average age of workers in her plant is around nineteen or twenty, but she is not really sure. Anyway, this is a young person’s job, and she does not expect to be working in a maquila when she is thirty. Perhaps by then she will own her own little store, a tiendita, from where she can sell Cokes and stuff to others in Anapra, like the women across the road. Maybe she will open a restaurant. Or maybe, some of us think later, she will just wade across the river one morning and never come back. Maybe she will come to Tennessee and get a job at El Phenix restaurant where some of her companeras already work.

B. Immigration

The upsurge in migration flows around the world is the second major way that labor markets today are becoming globalized. Our own national history powerfully attests that the movement of workers, bound or free, across national borders is hardly a new phenomenon. Nevertheless, current patterns are different in important ways from those of the past. For one thing, the sheer number of uprooted people is unprecedented. The International Labor Organization notes that “As recently as the 1980s, the migration of workers across international boundaries was a relatively minor phenomenon. Today it is one of the most striking aspects of an intensive globalization of the world economy—with a major impact on the economies and labor forces of well over 100 countries.”


In addition to these international migrants, there are millions more who journey within their own countries, people displaced and seeking or doing work away from “home,” although they have not crossed a national border. Such people include the internal settler migrants who move from rural to urban areas within a country, such as the Tarahumara indigenous people of Chihuahua who are moving in increasing numbers to Ciudad Juarez as environmental degradation, economic depression, and the ravages of the drug trade make life in their homes less and less viable. See Interview with “Juana,” Tarahumara bilingual schoolteacher, in Ciudad Juarez, Chihuahua, Mex. (June 1998). They also include groups who stay on the road most of the year, such as the indigenous jornaleros (day laborers) in Mexico who leave villages in the south of the country and elsewhere to help bring in the massive tomato harvest in Sinaloa or to pick strawberries in Baja, California. Interestingly, although these indigenous migrant farm workers remain in Mexico, the crops they pick are frequently bound for U.S. markets now that NAFTA is steadily reducing barriers to the
Of course, only a small fraction of the world’s cross-border migrants come to our country. Nonetheless, immigrants arriving in the United States in this latest phase make up the largest sustained wave in our history, and they are having a significant impact on local economies and communities. Even areas of the country relatively isolated from previous non-European immigration streams, places like my own region of the Southeast and the rural Midwest, now find themselves hosts to new seasonal workers and year-round settlers from Mexico, Central America, Asia, and elsewhere.

entry of Mexican fruits and vegetables into the U.S. See Interview with Dr. Maria Antonieta Barron, Mexican economist, in Ont., Can. (June 1998).

I was first introduced to the phenomenon of internal migrant farm workers in Mexico in an interview with Dr. Leonardo Lamas and his wife Isabel Muniz when they gave me a tour of their community in Sayula, Jalisco, Mexico, in March 1997. They showed me the empty barracks where migrants had stayed the season before and where they were scheduled to return within a few months. These quarters were made of tar paper and flimsy wooden frames, with an open cooking hearth in the “kitchen” room and empty chemical drums by the doors where I was told that water would be stored when people were once again living on the site. Adjacent were makeshift shallow privies whose walls were plastic sheeting, and which I learned had been the result of a reform movement the season before. Prior to the protests, workers and their families were left to resort to the open fields, so the privies were a source of some wry pride despite their patent inadequacy. Dr. and Mrs. Lamas also told me the story of their efforts to intercede with the local municipal authorities and with the Mexican agribusiness firm that employed the tomato-picking jornaleros. In this small town they had succeeded in garnering thousands of signatures from year-round residents (most of them in straitened circumstances themselves), demanding that their municipality require the tomato company to provide safe and sanitary living conditions for the indigenous workers brought to their town for this newly global harvest. See Interview with Dr. and Mrs. Lamas, in Sayula, Jalisco, Mex. (Mar. 1997). The story gave me pause when I compared it with the reception a different group of Mexican farm workers are receiving in my own community in Tennessee, and the general paucity of civic response to the harsh conditions that have too often greeted them upon their arrival in our state.

For journalistic reports on Baja, California, see Sam Quinones, “Grapes of Wrath South of the Border, and Migrant Life: Poverty and Exploitation, both in S.F. Examiner, Jan. 11, 1998, at A21. For research findings on internal migrant farm workers in Mexico, see Antonieta Barron, Women in the Move: Migrant Workers in Mexico and Canada, in In The Belly of The Beast: Women Working the NAFTA Food Chain (Deborah Barndt ed., forthcoming 1999) [hereinafter In The Belly of The Beast]. For a story on internal industrial migrants in China, see On Their Own: The Plight of Migrant Workers in South China, WORKER RTS. NEWS, Fall 1994/Winter 1995, at 3.


The new immigration era is also distinguishable from prior ones by the color of those who are arriving. Though the working of U.S. immigration law is still importantly structured by both open and covert attention to color, the elimination of old national origin quotas in 1965 has had an impact on the racial and economic character of the immigrant stream (although probably not as strong an impact as the economic crisis in Mexico). By contrast to those admitted before quotas were dropped, today's immigrants to the United States are more racially diverse and more likely to come from poor countries in the world's South.

In many U.S. communities, local racial formations have long histories and have come to be widely perceived as "natural." Now in many instances these older forms and patterns are being unsettled and reconfigured as different kinds of racially-marked (and class-stratified) immigrants find or are recruited into neighborhoods and into particular employment niches previously occupied by others. Rather than eradicating racially-ordered segmentation in labor markets, however, new workers from around the globe have been woven into configurations that are new and sometimes more complex, but still strongly correlated to race, marked by inequality, and saturated with assumptions of white superiority.

Immigrants without papers, education, or both are usually relegated to tough, low-wage sectors such as farm labor, meat and poultry processing, landscaping, tree planting, roofing and construction, day labor, and domestic service. These are the "3-D jobs" so often held by low-wage

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39. See generally GEORGE J. BORJAS & RICHARD B. FREEMAN, IMMIGRATION AND THE WORKFORCE, 19-23 (1992). It is nonetheless important to recall that earlier immigrants were perceived in different racial terms than they would be today. Given the way we naturalize and biologize race, it is not easy for most contemporary Americans to appreciate how thoroughly non-white the Irish were when they arrived here in the last century. See, e.g., DAVID ROEDIGER, TOWARDS THE ABOLITION OF WHITENESS 181-98 (1994); see also NOEL IGNATIEV, HOW THE IRISH BECAME WHITE (1995).
immigrants: "dirty, dangerous, and difficult." In Appalachia, they used to be held largely by poor whites. In other parts of the Southeast, it was mostly African-Americans who did this work. In the Southwest, it was often Chicanos and Chicanas. Today, in more and more communities around the Southeast, this sort of job is turning from white to black to brown. The jobs are being "re-raced" right under native-born people's startled gaze and regrouped in a system of racial categories that is itself undergoing rapid change. Nevertheless, the "Model Worker" is a useful character with a certain amount of rhetorical clout. His name is invoked in discussions about work and welfare and what young people are coming to today. He has a strong part in the morality play that accompanies the re-racing of the local labor market, and one of his primary functions is the setting up of explicit and implicit comparisons. Such racial reconfiguring is not a new phenomenon in U.S. history, of course, but for people in many


41. The naming of racial groups merits an essay of its own but will not receive one here. Suffice it to say that by "Chicano or Chicana" in this context I mean a U.S.-born man or woman of Mexican descent. Though many Anglos and other non-Latinos often make little distinction between Mexican immigrants and U.S.-born persons of Mexican descent, these two groups of people are, of course, quite different.

42. Accompanying these changes is a legitimating and explanatory discourse about them. In the editorial pages of local newspapers, in talks by lay staff of the local Catholic diocese to Rotary and Kiwanis clubs, in chats down at the Chamber of Commerce, and in the supermarket line, explanations are being offered, and racial imagery is being spun. At least where I live, a new Latino/Latina character is being introduced to local imaginations—this is the new "Model Worker." The Model Worker is definitely not asleep under a cactus, but rather someone who is hard working, diligent, prompt, obedient, energetic, uncomplaining, ambitious, thrifty, respectful of authority, and devoted to family. The lazy, disobedient, profigate, pleasure-seeking, greedy, broken-familied, surly, chip-on-the-shoulder, defiant, inefficient native-born workers with whom such immigrants are implicitly being contrasted are those who could actually be imagined in the bottom-tier jobs these new model workers are being offered—that is, people of color (especially African-Americans) and "poor white trash."

I do not want to suggest that Latinos and Latinas who have recently come to this community are freed from the burden or pain of negative racial imagery. The Model Worker image itself carries plenty of negative consequences. There are other less seemingly benign stock characters taking up residence in local imaginations as well. There is the "Dangerous Mexican," for instance (though he might be from Guatemala), who is young and male and drinks too much on the weekends. He hangs out menacingly in the public park and hogs the basketball court with his dangerous friends. He makes eyes at local girls. He has been seen urinating openly beside the highway in plain view. He always carries a knife. He gets arrested (though not often enough!) for drunk driving, and his unmistakable and indistinguishable name is in the paper week after week, line after line, for everybody to see, right there in black and white and Spanish, all over the crime page.

43. See Gil Rosenberg, Hispanic Migrant Farmworkers Come to Kentucky via Video: Three Attempts to Frame Social Change (unpublished manuscript, on file with author) (discussing the role of video in "framing" issues such as the labor shortage and the immigrant work ethic).
In addition to the influx of immigrants into low-wage sectors, there are immigrants finding places in middle and higher niches of the economy as well. From Filipina nurses to Indian moteliers, Vietnamese nail shop owners, and the foreign-born computer programmers of the Silicon Valley, immigrant entrepreneurs and professionals are becoming more commonplace in local economies. Given these dynamics, charges that these arrangements are tantamount to "indentured servitude" are not hard to understand. The current visa program is known as H-1B, and it allows 65,000 temporary high-skill people to enter the United States each year. At this writing there are attempts underway in Congress to enlarge and "liberalize" the program. Employers want to be able to bring in more workers with fewer protections and less red tape. Labor advocates and other critics say the program is open to abuse and should be further limited.

Whether an industry is high or low, focused on computers or cucumbers, the increased presence of immigrants often coincides with at least a localized or sectoral downward pressure on wage levels and working conditions and an intensified drive to increase productivity in ways previously thought not to be tolerable. One Georgia employer enthusiastically told a newspaper reporter, "It's much more productive. You can't work side-by-side with a Mexican and do half the work.

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44. Rapid, race-marked labor transitions have occurred often in the history of U.S. agriculture. In 1869, for instance, thousands of Chinese workers no longer needed for building the railroads were released into California's farm labor force, thus supporting the move of growers from wheat to labor-intensive fruits and vegetables. See, e.g., Carey McWilliams, Factories in the Field: The Story of Migratory Farm Labor in California (1939); Robert Thomas, Citizenship, Gender, and Work (1985); see also Tomas Almaguer, Racial Fault Lines (1994).

45. Computer programmers provide a fascinating case study. Although certainly better paid than the lower-skilled immigrant farm workers and poultry processors at the low end of the immigrant economy, foreign programmers often earn substantially less than their American counterparts. Further, although they are officially authorized to work, and therefore do not live with the shadow of an illegal status like so many of their low-income peers, they often labor under conditions that are vulnerable to abuse. Most have contracted with special temporary agencies, many of them immigrant-owned. These companies recruit them, loan them money for their passage to the United States, and often promise to arrange for a worker's permanent residency status if he remains in their good graces. These brokering agencies are the ones paid by the employers, and they withhold substantial fees and overhead. In addition, many of the workers have agreed in their contracts to pay a large penalty to the agency if they accept a job with anyone else. See William Branigin, Visa Program, High-Tech Workers Exploited, Critics Say: Visa Program Brings Charges of Exploitation, Wash. Post, July 26, 1998, at A1; see also Katharine Q. Seelye, U.S. Strikes at Smuggling Ring That Exploited Foreign Nurses, N.Y. Times, Jan. 15, 1998, at A14.

46. See Branigin, supra note 45; Seelye, supra note 45.
They've raised the standard." Similarly, a Georgia landscaper observed in a letter to the editor, "Unlike some Americans in this country who don't want to work, at least these guys put in blood, sweat and tears, and I like what they are doing. I'll tell you this: I'll hire a Spanish person over any of the other Americans I've had working for me."  

Recently, I talked with "Manuel," a Mexican immigrant in his twenties who came illegally to Tennessee four years ago. He has worked in the local vegetable harvest and a chicken processing plant. He put it this way:

American people have just one rhythm. You set your rhythm to work, and you don't change it. And we tend to work faster than Americans. We know that this is not our home, that you are not going to put up with us. So we need to show you what we are worth—that we can do it as fast or better than Americans. I was working for five months at [the chicken processing plant]. I was in the stock room. I had to divide all the different processed chickens. [It was hard,] especially during the winter, when the ice was on the floor, and we had to move fast, but at the same time trying to not slip and fall. Because we were handling boxes of forty, fifty, seventy, and eighty pounds. Six. Six an hour. What we get paid is not really cheap from our point of view. How can we raise our voice if we know that we don't have papers? That we are in danger, because if you don't like me, you can call INS, you can get somebody that has some kind of pull and says, "Okay, just come and pick so many Hispanics."  

American employers at earlier points in our history sometimes imported minority racial or ethnic groups in moments of labor crisis to cross picket lines and break strikes, strategically using a toxic mixture of the nativism and righteous indignation of white, native-born workers to hobble efforts at organization and collective bargaining. Today,
immigrants are more likely to be used as "wage busters" and "condition busters" than as strike breakers. In some instances, the savings thus realized translate into super-profits for employers, while in others they allow an otherwise marginal enterprise barely to stay afloat. In either case, immigration policy and practice continue to be driven largely by the goals of U.S. employers. Immigrant workers are often left to bear a heavy part of the risk and to pay a heavy part of the cost of seriously deteriorated wages associated with poor working conditions. Meanwhile, the power of racial classification to divide the workforce within a given labor market and to disable the workforce from effective economic or political action remains a constant.

Caution is in order, however, regarding any easy assumptions about

the Hearing Before the President's Committee on Fair Employment Practices, 4 LAW. GUILD REV. 32 (1944).

51. For a classic work discussing rate busting that highlights the work of Frederick Winslow Taylor, the inventor of "scientific management," including several riveting episodes described in Taylor's own words, see HARRY BRAVERMAN, LABOR AND MONOPOLY CAPITAL: THE DEGRADATION OF WORK IN THE TWENTIETH CENTURY (1974).

52. A local social services worker with whom I am acquainted regularly invokes the image of the needy widow he knows in East Tennessee who is able to stay on her land and off the public welfare rolls through the good offices of the Mexican farm workers who now live in her barn every summer and keep her farm going for who knows what wages. On a similar theme, the president and owner of an Atlanta landscaping business gestured toward a group of Latino employees and told a reporter who was visiting an English class conducted by the company for its Latino supervisors, "We're successful and able to grow because of that group right there. . . . The Hispanic workforce has helped us build during a period that would have been difficult had they not been here." Tammy Joyner, Industries' Survival Hinges on Immigrants, ATLANTA J.-CONST., Apr. 19, 1998, at P4.

53. A particularly bald example of business-driven immigration policy and practice was recently reported from my own region:

The $90 million Vidalia [onion] industry was shaken two weeks ago by an Immigration and Naturalization Service sweep code-named Southern Denial. The INS halted the raids after less than a week, under a hastily negotiated truce with onion farmers who said their harvest would be ruined without the 4,000 to 5,000 Mexicans they hire each season.


It sounds as though this faux pay was only a minor glitch and that INS raids on the onion fields will be more surgically timed in the future. I found myself relishing the thought of a different story in which the INS would halt its raids and hastily negotiate a truce once being informed of the economic havoc that massive deportations would wreak on impoverished Mexican and Guatemalan families whose carefully-laid survival plans relied on the ability of their spouses, parents, siblings, cousins, or grandparents to complete the harvest and return safely home. For a contrary view that immigration policy is (to its detriment) politically rather than economically driven, see VERNON M. BRIGGS, JR., IMMIGRATION AND THE U.S. LABOR MARKET: PUBLIC POLICY GONE AWRY, 30-32 (Working Paper #92-41, on file with the center for Advanced Human Resource Studies, Cornell University).
cause and effect. Observers of all stripes often seem to attribute what they see about the work situations and the job performance of immigrants to some personal or cultural trait that immigrant workers carry with them in the journey from third to first world. Whether the talk is of a laudable "strong work ethic" or lamentable "sweatshop conditions," immigrants are often pictured as importing something foreign into the American scene, changing the climate for good or ill.\footnote{A virtual cottage industry has sprung up trying to quantify and measure the impact of immigrants on the U.S. economy and public purse. See, e.g., THE DEBATE IN THE UNITED STATES OVER IMMIGRATION (Peter Duignan & Lewis Gann eds., 1998) (recapitulating some of the major debates). Those who want to restrict immigration or otherwise penalize immigrants already living in the U.S. cite studies showing that poor immigrants are a drain on public funds, a depressant to wage levels of native-born workers out of the job market altogether. See, e.g., STEVEN CAMAROTA, THE WAGES OF IMMIGRATION: THE EFFECT ON THE LOW-SKILLED LABOR MARKET (1998).}

Disturbingly, both sides often proceed as though a cost-benefit analysis oriented exclusively to the U.S. economy and public fisc adequately captures the relevant issues for the development of a good immigration policy. In a new world order so dominated by the U.S. economic agenda, this assumption appears particularly lacking in moral imagination. This characterization is too simple for several reasons. First, as a group, immigrant workers bring into their U.S. jobs and communities not only the habit of hard work, not only a situationally heightened need and desire to perform to their employers’ wishes, but also traditions and experiences of collective resistance and bottom-up institution building. Despite the tremendous disincentives to immigrant organizing, there are myriad instances of immigrants doing just that, sometimes with greater militancy and creativity than their U.S.-born counterparts, and sometimes in ways that help to catalyze and animate U.S.-born collaborators and allies.\footnote{Immigrant advocates, on the other hand, point to opposing studies showing that immigrants contribute substantially to the public coffers while drawing proportionately less upon them in times of need, that as consumers, immigrants are a boost to the retail economy, and that as workers they diligently perform necessary and dangerous tasks that otherwise go begging because native-born workers refuse to do them. See MICHAEL FIX & JEFFREY S. PASSEL, IMMIGRATION AND IMMIGRANTS: SETTING THE RECORD STRAIGHT, (1994); see also William Booth, Sweat of Their Brows Reshapes an Economy, WASH. POST, July 13, 1998, at A1; Rubén G. Rumbaut, Immigrants Continue to Shape America, NEXO, Spring 1998, at 1.}

Therefore, a discourse that pictures immigrant workers as the
cause or carrier of deteriorated wage structures and work environments wrongly ignores immigrant activity in resisting and reforming such conditions.

There is another reason why it is misleading to think of immigrants as “importing” sweatshop conditions. Such assumptions underestimate certain dynamics at work within our own economy. These dynamics send many employers on intense searches for ways to cheapen the costs of production, drive growth in jobs at both the top and the bottom of the income scale, and reduce the number of available jobs traditionally found in the middle. For instance, jobs for providers of complex “high-level” services such as international tax advice, and jobs for providers of basic “low-level” services such as housecleaning and in-home child care, are being generated at a rapid rate in large urban centers while jobs in heavy manufacturing are on the decline.56

As the demand for labor changes and as the pressure to cut costs continues to grow, new management strategies emerge in many sectors. Immigrants are sometimes aggressively recruited from their homeland and are sometimes serendipitously “found” after they have made their own way to a destination community.57 In either case, these new kinds of workers with all their complex motivations and obligations and all of their legal vulnerabilities, present new opportunities that ambitious managers and

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Coalition of Immokalee Workers in Immokalee, Florida); Barry Yeoman, Spiritual Union: A Case Study, THE NATION, Dec. 1, 1997, at 15 (discussing the efforts of Guatemalan immigrants to organize a union at a chicken processing plant in North Carolina).

56. For example, Saskia Sassen, in discussing social polarization, helpfully distinguishes types of urban marginality that are produced through “abandonment” from those that she sees as increasingly produced “as a result of new structural processes of economic growth.” Saskia Sassen, Service Employment Regimes and the New Inequality, in URBAN POVERTY AND THE UNDERCLASS: A READER 64 (Enzo Mingione, ed., 1996); Patrick J. McDonnell, Jobs Exist for Immigrants, Study Finds, L.A. TIMES, May 4, 1998, at B1 (quoting the author of a study, Wayne Cornelius, to the effect that “immigrant labor is increasingly ‘structurally embedded’ into the economy” and that we “may not like the fact that so-called ‘bad’ jobs survive in our high-tech, post-industrial economy, but it’s simply wishful thinking to expect that they are going to disappear in the foreseeable future”).

57. The costs and risks associated with the journey for those without documents can hardly be overstated, especially as the militarization of the U.S. border continues to intensify. Undocumented immigrants from Mexico and Central America pay large sums to “coyotes,” or smugglers, many of whom show little concern for the welfare of those they transport. In addition, the crossings have become significantly more dangerous as travelers are forced further and further into remote areas by increased patrols at easier crossing points. A particularly horrific story unfolded near Salton Sea, California, last summer, when eight immigrants and two of their smuggler guides were found dead in the desert not far from Tijuana. See Mark Henry, Fear Raised for Companions of Nine Desert Trek Victims, SAN DIEGO PRESS ENTERPRISE, Aug. 18, 1998, at A1; Mark Henry, Images Are All That Are Left of Quest for a Better Life, SAN DIEGO PRESS ENTERPRISE, Aug. 21, 1998, at A11; Patricia G. Portillo & Mark Henry, Immigrant Risked Heat of Desert for Work, SAN DIEGO PRESS ENTERPRISE, Aug. 19, 1998, at A3.
entrepreneurs are investigating, molding, and putting to use. In turn, immigrants themselves, using the widely disparate resources at their varied disposal, invent ways to respond to emergent demands for labor of different kinds.

In this process, the types of labor markets and management methods associated with the periphery begin to emerge in the core, in the commanding centers of the world economy. What is frequently missed is that these phenomena are integral to the new economies of the center, not the result of alien persons carrying “third world conditions” on the sheen of their skins, in the folds of their clothes, or in the habits of their homeland.

For a U.S.-born, Anglo-American observer like me, it has been important to learn and to remember that immigrants themselves are encountering these conditions and negotiating these challenges from within their own complex realities and life strategies. They are working on active agendas and priorities of their own, many having much to do with issues and conditions in the United States. Further, there are predictions that immigrants in the coming period will stay more connected to their countries of origin, remaining more binational than in the past.

Late twentieth-century migration is happening across a smaller planet than did early twentieth-century immigration, and those who move are better able to maintain regular communication and interaction with those who stay behind. Such interaction includes the sustained flow of remittances (from immigrant wage earners to individuals, family members, and religious and community organizations in sending countries), multigenerational and repeated return travel, eventual retirement to the country of origin, and maintenance of old and new sorts of political ties.

58. In many instances in my own hometown of Knoxville, Tennessee, the initial employers of immigrants are immigrants themselves. Chinese restaurants in Knoxville began hiring Mexican immigrants as soon as or sooner than did the Mexican restaurants. Immigrant employers know the legal and economic realities of immigrating to America. Whether through a desire to make money or a desire to help others with whom they identify (or some likely combination of the two), they are often willing to hire immigrants when others will not. However, the word is getting out, and now native-born employers in some industries are scrambling to learn the score.

59. For descriptions of living and working conditions that have previously been associated with the periphery, see Yolanda S. Wu, Domestic Workers in the Underground Economy: The Lack of Civil Rights Protections, POVERTY & RACE, Mar.-Apr. 1998, at 3; Steve Lash, Justice, Labor to Crack Down on “Slavery,” HOUSTON CHRON., Apr. 24, 1998, at 6; Seven Charged with Holding Mexicans in Virtual Slavery,” KNOXVILLE NEWS-SENTINEL, July 21, 1997; Craig Wolff, Immigrants to Life Underground, N.Y. TIMES, Mar. 13, 1994, at 29.

60. See TOWARD A TRANSNATIONAL PERSPECTIVE ON MIGRATION: RACE, CLASS, ETHNICITY, AND NATIONALISM RECONSIDERED (Nina Glick Schiller et al. eds., 1992); Nina Glick Schiller et al., From Immigrant to Transmigrant: Theorizing Transnational Migration, 68 ANTHROPOLOGICAL Q. 48 (1995); Susan Ferriss, Georgia Money Feeds Families Across Mexico, ATLANTA J.-CONST., Apr. 19, 1998, at 6; Miguel David Baraona,
These new conditions mean that allegiances and interactions are likely to become more diffuse and complex as such diasporic movements continue and as nation-states develop different sorts of stakes in their continuation.\textsuperscript{61} Mexico's recent decision to allow Mexican-born people to take on "dual nationality," a move that required changes in the Mexican Constitution, is one indication that national governments may be increasingly ready to accommodate transnationalism (and to put it to use), at least in limited contexts.\textsuperscript{62}

Several Mexican families I have encountered in Mexico and Tennessee have described their own decisions about migration in ways that reveal a complex calculus. Often a Mexican family arrives at an informal designation of one or more members who will journey northward, sometimes for a preset and legal season under a U.S. or Canadian guest worker program. In other instances, the family anticipates an open-ended stay that will last at least several years, or possibly end in permanent settlement.

"Carlos" is one case in point. A young man from a town near Mexico City came to Tennessee over four years ago to work in a Mexican restaurant near my home. He came for a number of intertwined reasons. His family was poor. Although his mother "Perla" had a steady job as a cleaning woman at a private school, his father was employed sporadically. When Carlos was younger, his father had come north regularly, working for two-month annual stints in Virginia at the height of the tobacco harvest, but that had been years ago. Two siblings were in high school and college (a valued and unusual accomplishment for a family of this class in today's crisis-ridden Mexico), but their ability to remain in school was precarious. An older brother was married with children of his own, still living with Perla and working with two uncles in a backyard metal shop.

Meanwhile, seventeen-year-old Carlos grew thoroughly tired of his

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job at the Kentucky Fried Chicken outlet near his home. After three years of working eight-hour shifts, he was bringing home less than three dollars a day, and it was evident to him that he had no chance to get ahead. If he immigrated, he believed he could make substantial contributions to the family budget, earn the special respect and affection of his mother and siblings, get away from the irregular but awful occasions on which his father battered his mother, and have the thrill of hitting the road in the company of similarly-minded buddies bound for adventure. So, with Perla’s apprehensive but hopeful blessing, Carlos set out for Tijuana (just across the border from San Diego, California), one of the main gateways into the United States for undocumented immigrants. He spent a traumatic ten days at the border there, penniless and shelterless, making multiple attempts to cross over into the United States across the heavily militarized boundary, forced to traverse a zone that was even then, several years ago, monitored by infrared cameras and military helicopters. It was an experience he will never forget.

On the tenth day, he finally made it across the border to San Diego. Once there, he contacted kinship and friendship networks that snapped into action, and soon he was on a bus, humming along an eastbound interstate highway, on his way to a prearranged apartment and a job a few miles from my home. Now instead of serving southern fried chicken to Mexicans, he would be serving tacos and enchiladas to Tennesseans. He would work twelve hours a day, six days a week, surrounded by Mexican coworkers, his life centered almost entirely on the restaurant, which provided a sort of home away from home. The manager even threw a little party for the employees on Christmas Eve. Carlos sent crucial money home every payday by certified mail and had the unusual good fortune not to lose a single payment in transit. He became the distant apple of Perla’s grateful eye, kept his two siblings in school, bought an old car that ran pretty well (although he had to climb into the driver’s seat via the window due to the broken door), learned English, and resisted the importuning of his American girlfriend that he should marry her so that he could “get his papers.” After three years, he even started chafing at the bit because he wanted “a life.” The thought had begun to nag him, despite his close ties to home and the biweekly calls to his mother, that he wanted at least something of that life now, not in some distant future.

“Roberto” is another newcomer to Tennessee. He moved to the United States a number of years ago, leaving Guatemala at a time when political violence was epidemic and many people were fleeing the country to escape repression, as well as the accompanying social chaos and

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economic privation. He worked initially as a farm worker, picking tomatoes and peppers in the East Coast migrant stream. Somewhere along the line he found legal help and filed for political asylum. His claim is still pending, but the fact of its filing allowed Roberto to receive cherished, if provisional, permission to work. He came to Tennessee over a year ago, to a town located several hours drive from my own. He had heard through a grapevine nourished by fellow Guatemalans that factory jobs for Spanish speakers were available here at wages substantially above the forty cents per bucket he was making in the fields further south.

Within days of his arrival, Roberto had landed a job, with the help of friends, in a poultry-processing plant and had found an apartment in a complex with many other immigrants, mostly from Mexico and Guatemala. He learned that most of his neighbors were also working in the plant, which had in the previous year begun hiring a large number of Latinos.

For the first few months, Roberto and his wife Eugenia settled into their jobs and began to learn the ropes. It was hard work, with grueling line speeds, harsh oversight from the bilingual supervisors specially hired to manage the Latino portion of the workforce, and all the well-known problems, such as standing water, cold temperatures, and repetitive motion, that are common in poultry processing plants today. However, the pay was close to eight dollars an hour, which certainly beat the forty cents per bucket that Roberto had been making in the tomato fields.

All this I learned from Roberto and a group of coworkers that he had invited to meet with me in a small, bare, and poorly heated apartment where one of them lived with his wife and two children. Roberto and I had made initial contact through a mutual friend. Although all of those who attended the gathering had, at least, provisional work authorization, they reported that many at the plant were in a different position. Over the past year or so, they said there had been a steady increase in the number of Spanish-speaking immigrants applying for work at the plant and that an increasing number of the applicants lacked bona fide papers. The company required all applicants to present some proof of work authorization, but according to Roberto, it did virtually nothing to test the authenticity of the documents presented. In his view, this was a conscious strategy to increase the percentage of undocumented workers in the plant because workers without papers were demonstrably more compliant and less likely to protest or complain. Of course, any fool could predict and understand that.

One by one, the others at the meeting told their own stories. "Hugo" told of being fired after his strained elbow caused such pain that he had to leave work. "Hector" told of being sent home when he told a supervisor, in

front of the other workers, that it was impossible to obey her shouted orders to work faster. "You must be very tired," the supervisor had responded. "I think you'd better go home and rest. You go home now and go to sleep. Call us next Monday, and I'll see if we have any work that a man like you can manage."

Roberto also had been fired by the company. His alleged infraction was returning to the line several minutes late from a bathroom break. However, Roberto was certain that the real cause was different. He had begun talking openly with undocumented workers at the plant about their right to minimum wage and workers' compensation.

So there I sat, getting an education from new neighbors about a new niche in the global economy. With my fine training in Anglo-American law, my scholarly research interest in economic restructuring, and the entire legal edifice of my advanced Western democratic homeland securely in place around us, one would have thought I might have something to offer. But, in fact, I could figure out almost nothing immediate to do for or with this sterling handful of tough, frustrated, articulate, funny, productive, and unconscionably mistreated sojourners about their legal rights in their global workplace right here in my own backyard.

I tried a few things. Two different labor unions I consulted lamented what they perceived as their lack of ability to successfully intervene. Neither had a single Spanish-speaking organizer in the area. Both were painfully aware of the extremely poor odds confronting any union attempting to organize in the Southeast today, even in the absence of problems with language barriers and immigration status. They pointed out that the poultry processing industry was particularly infamous for its resistance to efforts by workers to act collectively. One reported that his union had tried to have a meeting with white workers in this same plant some months before and that a group of anti-union employees had crashed the meeting and threatened them with violence. Both explained convincingly that their unions were trying to be careful and strategic in

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66. See, e.g., GRIFFITH, supra note 64 (discussing the particular difficulties faced by workers in the poultry processing industry); PAUL C. WEILER, GOVERNING THE WORKPLACE: THE FUTURE OF LABOR AND EMPLOYMENT LAW 114-81 (1990) (discussing the difficulty of achieving effective union representation generally).

The poultry industry’s response to collective bargaining demonstrates its resistance to the efforts of contract poultry growers to exact more favorable terms by organizing. See, e.g., Steve Bjerklie, Dark Passage: Is Contract Poultry Growing a Return to Servitude?, MEAT UPDATE, Jan. 1992, at 4; Mississippi Farmers Score Partial Victory in “Chicken War,” SOUTHERN COMMUNITIES, July-Aug. 1996, at 8; Randi Ilyse Roth, Contract Farming Breeds Big Problems for Growers, MINN. FAMILY FARM L. UPDATE, Winter 1992, at 1 (describing poultry growers who raise birds for the same vertically-integrated companies that run the processing factories where so many immigrant workers are now finding jobs).
choosing targets because organizing drives were so expensive and so easy to lose. Both predicted that this particular situation would not meet their criteria.

To its credit, a local legal services office pitched in and did what it could. Staff arranged for a Spanish translation of a simply-worded client brochure about workers' compensation in Tennessee. They assisted a woman in the group when a neighbor began sexually harassing her. They got some of the workers' U.S.-born children enrolled in our state's health care program for the medically indigent. These services were helpful in their way. Their delivery provided me with some personal solace; at least workers who had summoned their courage and spent valuable time speaking with me that day had not come away entirely empty-handed. But how pitiful! None of these steps came close to touching the fundamental problems facing Roberto and his friends, much less those of the many undocumented workers who had been afraid even to join our conversation.

Workers like Carlos, Roberto, Eugenia, Hugo, and Hector need labor laws that meaningfully protect their right to organize and their right to strike. They need strong, democratic, anti-racist labor unions that will zealously represent them. They need meaningful assurance that they can call upon all legal protections to which workers in the U.S. economy are entitled, without fear that invoking such laws will lead to their firing or deportation. They need accessible English classes, welcoming schools, adequate health care, competent legal representation, responsive public servants, and ways to connect with native-born neighbors and fellow-workers. They need a living wage. Perhaps most fundamentally, they and their stretched and battered families need peace, sustainable development, and democracy in Guatemala, Mexico, and their homelands.

The somewhat camouflaged stories just recounted—narratives about U.S. workers threatened by plant closings, about overworked Mexican teenagers awash in plant openings, about Latina and Latino sojourners working so hard and at such cost to put food on U.S. tables—are fascinating to me in their own right. However, I tell them here, not for their own sake, but to make concrete the claims in this article about the internationalization of labor markets. Workers from and in different countries now find themselves pulled into new arenas where they work in much closer competition than ever before, both connected and separated in new ways. This increase in destructive, internationalized competition over wages and working conditions poses sharp challenges for labor movements

and workers advocates around the world. A fundamental aim and tenet of labor unions is the notion that human labor is not like other commodities, and labor market rules should reflect the special nature of the exchange involved in the sale of labor power, in part by limiting the nature and scope of permitted wage competition.

To succeed in winning rules that significantly reduce destructive competition, however, workers' organizations, whether through direct dealings with employers or through legislative and other approaches to the state, must be able to organize and mobilize a critical mass of workers and their allies within the relevant labor market or perhaps within the relevant electorate. Accordingly, when corporations begin shopping for low cost labor in venues all over the world, they make the task of organizing that critical mass of workers and voters exponentially more difficult. The difficulties are not only ones of scale. Workers seeking the kinds of unity that would be necessary to eliminate or reduce global wage competition now confront barriers of language, culture, history, race, religion, geographic distance, and law. Their number now includes diverse and distant populations, often with conflicting histories. They operate under different rules imposed by different jurisdictions whose customs and structures are little known to those on the other sides of the jurisdictional boundaries. Under these conditions, old visions and tactics for building the bargaining power of unions are painfully inadequate. New demands and challenges range from the logistical (finding Spanish-speaking organizers) to the profound (confronting and overcoming both white racism and inter-ethnic conflict within the labor movement and the

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68. I hardly need to acknowledge that one man's "destructive competition" is another man's welcome growth in productivity and profit margins. How to deal with these competing characteristics in any given situation is a complex proposition involving both empirical data and fundamental values.

69. Here in the United States, unions have in their proudest moments worked to effect such limits through inclusive strategies, reaching out to unite a broad spectrum of workers who could then refuse to be played off against each other and developing demands and visions that could speak to the needs and aspirations of all. In other cases, however, U.S. unions have attempted to reduce competition through shortsighted exclusionary strategies, but have foundered repeatedly on the rocks of race and gender. See, e.g., SUSAN EISENBERG, WE'LL CALL YOU IF WE NEED YOU: EXPERIENCES OF WOMEN WORKING CONSTRUCTION (1988) (offering analysis and personal testimony of the post-civil rights failure of the construction industry to integrate women into the trades); FONER, supra, note 50, at 1619-73 (recognizing and examining both racially exclusionary and racially unifying moves by organized labor but concluding that the former have been dominant); HERBERT HILL, RACE AND ETHNICITY IN ORGANIZED LABOR (1987); DAVID ROEDIGER, THE WAVES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS 167-82 (1991); ALEXANDER SAXTON, THE INDISPENSABLE ENEMY: LABOR AND ANTI-CHINESE MOVEMENT IN CALIFORNIA (1971).

workforce).\footnote{71}

In the present situation, it seems perfectly obvious to most pro-labor observers that cross-race, cross-sector, and cross-border organizing of workplaces and communities is the single most important response to the destructive competition that globalizing labor markets have introduced. A priority on organizing has now been affirmed at the highest levels of the AFL-CIO, whose new leadership has endorsed broad-based organizing as a domestic priority and has also announced its commitment to new post-Cold War, cross-border labor alliances as a necessary strategy for American labor in the global economy.\footnote{72}

Of course, policy pronouncements do not always translate into real-world actions or victories. Labor movements around the world are on the defensive, shrinking in numbers, declining in bargaining strength, losing the influence in domestic politics that at least some of them had previously enjoyed, while parties formerly (and sometimes still formally) allied with labor rush to embrace the new neoliberal agenda. In the United States, the labor movement is also burdened with profound levels of institutional inertia. A climate of business unionism still prevails at many levels of many U.S. labor organizations, and often entails a demobilized and alienated membership, a turf-protecting bureaucracy, and a lack of trust and a history of collaboration between unions and other social movements in local communities.


72. This new policy is particularly significant given the AFL-CIO's deeply compromised history as a Cold War partner with the U.S. State Department in many parts of the world where independent trade unions were perceived as security threats because of their Communist leanings or perhaps their insufficiently vociferous anti-Communist leanings. For glimpses into both past practices and present aspirations, see Andy Banks, New Voice, New Internationalism, in A NEW LABOR MOVEMENT FOR THE NEW CENTURY 319 (Gregory Mantios ed., 1998) [hereinafter NEW LABOR MOVEMENT]; Jeremy Brecher & Tim Costello, A "New Labor Movement" in the Shell of the Old?, in NEW LABOR MOVEMENT, supra, at 29; Hector J. Figueroa, International Labor Solidarity in an Era of Global Competition, in NEW LABOR MOVEMENT, supra, at 349; Barbara Sailor & George Kourpias, Developing and Enforcing International Labor Standards, in NEW LABOR MOVEMENT, supra, at 319.
Nevertheless, recent changes are instructive. Workers around the world, sometimes with and sometimes without the help of organized labor in their home countries and abroad, and despite the tremendous odds against them, have staged amazing political and workplace actions in the face of economic pressures that one might have thought would be too crushing to resist. Further, nascent forms of cross-border labor solidarity are emerging, both at a grassroots level of people-to-people projects and exchanges and at top levels of union leadership.

The experiences of my local research partner TIRN, a local economic justice organization, constitute one small example of the increased interest in cross-border collaboration. From its beginnings when TIRN focused on the problem of plant closings in Tennessee, the organization has moved, step by step, with a logic that the entire blue-collar membership could clearly see and firmly endorse to a place where it now devotes a significant portion of its time and energy to working in an internationalist way on

73. For instance, a recent Associated Press story described recent events in Korea where 15,000 riot police stood poised to arrest 5,000 workers and their families who had been encamped since July 20 at a Hyundai Motor Company plant as part of a month-long strike. “Workers blocked all eight gates to the plant, reinforcing barricades with hundreds of brand-new passenger cars and trucks loaded with oxygen which they threatened to explode if police moved in.” The workers were seeking pay cuts as an alternative to the company’s plan to discharge 1,600 workers due to slumping sales in a context where unemployment in Korea had doubled since December 1997. Apparently they were not happy with the fact that “[A] flexible labor market [was] a key part of reforms South Korea promised to make in return for a $58 billion bailout package by the International Monetary Fund.” Y.J. Ahn, Hyundai Raid Suspended, Associated Press, Aug. 18, 1998, available in 1998 WL 6710191; see also Kim Moody, WORKERS IN A LEAN WORLD: UNIONS IN THE INTERNATIONAL ECONOMY (1997) (stressing strong degree of resistance by workers in recent years, despite great odds); David Brooks & Jim Cason, Mexican Unions: Will Turmoil Lead to Independence?, WORKINGUSA, Mar./Apr. 1998, at 22; Mieye Navarro, Marking a Puerto Rican Anniversary, N.Y. TIMES, July 26, 1998, at 24 (describing a then five-week-old strike against privatization of telephone company); Hector R. Reyes, Puerto Rican Workers Strike Back, NACLA REP. ON THE AMERICAS, Sept./Oct. 1998, at 6.

74. An example of recent “top level” collaboration was the joint effort of labor unions from all over the Americas and the Caribbean (including the U.S. AFL-CIO) to convene a forum on labor at the Summit of the Peoples of America in Santiago, Chile, in April 1998, and to take the pathbreaking step of coordinating that meeting with other social movement groups from the civil sector. Individual labor unions in different countries have also begun taking occasional coordinated action on areas of mutual concern. For instance, the International Brotherhood of Teamsters in the U.S. and the main Brazilian workers federation (CUT-Brazil) recently collaborated to expose child labor violations in the Brazilian orange harvest in a way that helped the Teamsters with contract negotiations. The United Electrical Workers have a “strategic organizing alliance” with the Frente Autentico de Trabajo (“FAT”), an independent labor union in Mexico. The Union of Industrial Needletrades and Textile Employees (“UNITE”) is collaborating with unions in the Dominican Republic. See also supra note 72 and accompanying text. Finally, at “ground level,” there are the kinds of rank-and-file, person-to-person exchanges described supra note 23 and accompanying text.
issues related to the global economy. Those who have become involved in this aspect of the organization’s work, especially those who have traveled to Mexico on one or more of the organization’s exchange trips, report that their lives have been changed. They now look at themselves, their communities, their labor market competitors in Mexico, and at the world in ways that will never be the same. The reasons why these experiences have been so gripping are various, of course, but important among them is the widely shared sense that these trips are “eye-opening,” that they provide a line of sight for American workers on important things that are happening around the world. However frightening the view from global borderlands, it feels good for people to have access to this new vista, to see what their own employers and presidents are up to. This hunger to see and understand can, in turn, help to fuel organized demands for full labor and community participation in decisions about the future of the global economy. People’s reactions to these experiences make me hopeful about the long-range possibilities for trying to disrupt the ruinous competition that is too often a feature of current labor market arrangements.

II. THE RULE OF LAW

The foregoing sections of this essay have explored two ways in which U.S. labor markets are “going global.” They argue that these developments work increasingly to put more power in the hands of multinational employers, to weaken national and subnational governments as well as trade unions, and to pit workers against each other, both across and within national boundaries, in a downward spiral of competition. This essay identified the labor movement as a crucial candidate for the task of interrupting and limiting this competition but pointed out some major difficulties that now hinder its capacity to do so.

What does law have to do with these complex dynamics and challenges? What difference does it make to capital flight and the movement of low-wage workers from South to North or to the attempts of labor unions to limit the destructive competition that is born of these twin movements?

One answer, of course, is that substantial labor law reform is long overdue and would make a significant difference in the opportunities for American workers, especially those in the low-wage workforce, to win union recognition, to deal with their employers collectively, and to help animate labor activities beyond the shop floor. What I hope to examine here is another answer frequently voiced by critics of the current state of globalization—that we need to develop law that will somehow be international in reach. Specifically, such critics often say that we need to create international labor standards, and this seems logical enough.
Through law one should be able to require certain behaviors, say, of employers, bankers, investors, or government officials, thus effectively preempting competition in areas covered by these mandates. Some see international labor standards as a way of vindicating the rights and improving the lives of individuals while others see their function as inducing firms to abandon "sweating" in favor of more "high road" business strategies. But whatever the articulated goal, the thought is that international standards could create a floor beneath which competition would be discouraged and upon which enterprises that respected those standards could operate without being undercut by others. Meanwhile, rules that are as obviously labor-related as the foregoing do not provide the full story. The presence or absence of capital controls and other accountability requirements on investment, the status of the rights of immigrants, and the strength or fragility of the "social wage" are all background rules that have a powerful impact on the actual functioning of workplace rules in a global economy.

No matter how clear the need for common standards in the midst of global change may seem to be, however, it is precisely at this point that the

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76. What should be included in a list of "labor standards" is the subject of some dispute. Widely accepted are freedom of association, freedom from bonded labor, freedom from discrimination, and prohibitions on child labor. The right to a livable wage is more controversial, but some would say fundamental. Of course, the politics of reaching agreement across national and regional boundaries on the meaning of "livable wage" will be complex, to say the least, even among pro-labor groups. However, work has already begun on this difficult but exciting project. See, e.g., Richard Rothstein, Low Wages in Developing Countries = Poverty in the U.S., POVERTY & RACE, Mar. 1993, at 6 ("There are ... available non-discriminatory bases for determining acceptable minimum wage levels for developing nations’ export sectors, using indices such as the wage share of [the] Gross Domestic Product ("GDP"), the wage share of manufacturing value-added, or comparative productivity levels.").

77. "Social wage" refers to those services, facilities, and amenities that are extended to the community generally as a function of community membership rather than linked to, say, an earned wage or a legal relationship to a wage earner. It could include anything from a public library to unemployment insurance in universal health care. The United States is, of course, famous for the thinness of its social wage.
discussion is often brought up short. To what global authority can workers in today’s world appeal for creation of this imagined rule structure? Despite the existence of a global economy, there is no global parliament or president or court of last resort, and appeals to national legislative bodies are useless if those bodies themselves are powerless to govern internationalized labor markets.

An oversimplified story about how this situation came to be, contemplated from the perspective of one interested in how have-nots can affect the rules under which they live and work, might go something like the following. In the past, rule structures, such as labor and employment law regimes that governed various aspects of social and economic life, were created in different jurisdictions around the world. They were creatures of the complex lawmaking and law-enforcing capacities of their different respective nation-states, and at any given moment, they represented the provisional culmination of historical struggles among contending social forces within those nations.

Among the many different sorts of rule structures that have thus far emerged in industrialized countries, those that govern the workplace and those that define and structure the employment relation are of particular importance. Because they pertain to a site and a relationship so crucial for the basic character of a society and because they play so strong a role in defining various power relations within and beyond that site, they profoundly affect both the distribution of a country’s political and economic resources and the nature and extent of its democratic practice. For instance, the legally sanctioned process for negotiating the terms of an employer-employee relationship; the substance of the deals typically struck (or the terms typically imposed) in a given labor market; the respective abilities of employers and employees to invoke the power of the state to enforce those terms; the social consequences of nonparticipation in the labor market; whether distinct kinds of labor markets are differentiated within a given economy by race, gender, sector, or otherwise, and the degree to which that differentiation is legally tolerated or even required; all of these are powerful determinants of a nation’s quality of life and the character of its social structure.

Because we live in a democracy, the conceptual and practical links between the rules described above and “the people” are, theoretically, fairly clear. Social movements (and, of course, their adversaries) pressure legislators to pass or defeat relevant legislation. They elect or defeat candidates running for public office; they provoke or use splits among dominant groups to enhance support for their proposals; they reach out to allies, form coalitions, agitate, educate, speak, write, and generally raise sand in ways that are conducive to reframing issues and changing the hearts
and/or minds of both their allies and opponents. Laws are created as a result, and they, in turn, operate to create and structure climates and relationships in workplaces throughout the society.

Today, however, globalization is radically altering this picture. As labor markets have "gone global," nationally generated rules that directly and indirectly govern the worksite and the employment relation are losing their purchase, and therefore the ability of domestic social movements to affect the work environment and the employment relation through state-focused strategies is increasingly in doubt. Multinational corporations now move investments around the globe and select their laborers and their plant sites from an international menu. They can escape the rules of their home polity by leaving, or sometimes by merely threatening to leave, its territory. Even in the absence of such moves and threats, the fact that domestic manufacturers in a global economy must increasingly compete with imports from countries whose wages and other labor standards are lower itself exerts powerful downward pressure on labor standards within the country, both as they are written and as they are applied.

In nations whose electorates have previously believed that their public officials could make rules to govern corporate behavior, these changes represent a profound and unsettling change. If the elected lawmakers of a nation, together with those who they appoint, cannot enact or enforce rules they believe are best calculated to produce the work environments and the employment relations that the people of the nation want, and if they cannot somehow contain the crucial actors whose conduct they are attempting to govern, then a large hole has been torn in the democratic fabric, and a significant challenge has been posed both for the continued sovereign powers of the nation-state and for democratic theory.79

78. Of course, critics have long questioned whether this picture is more than a fantasy. They claim that in most industrialized democracies today the links between "the people" and "the law" that are envisioned in this model are more theoretical than real, often serving less to render governments accountable to the desires of the populace than to legitimize unjust legal arrangements that benefit the powerful and reflect their interests and perspective. In the United States, for instance, many critics claim that political life is now more than ever controlled by wealthy individuals and groups that are in a position to wield influence through lobbying and campaign contributions and to dominate media coverage of issues and events. Meanwhile in the world's South, anti-colonialist critics have pointed out that the rule structures of third world countries have never been accurately characterized as the product of dynamics in internal to their nations or of struggles among contending domestic constituencies. Nevertheless, these criticisms do not quarrel with the aspirations of the model but rather point out the failure of actually existing "democracies."

That is the simplified story. And although I am somewhat enamored of it, I worry about it too. I am afraid that it falls prey to the temptation to see globalization as a kind of escape from law and to pay too much heed to the protestations of today's politicians that today's economy is out of their hands.

However appealing it may be to think in terms of multinational corporations "cutting loose" and vaulting fences, such imagery is deceptive in several important ways. It encourages us to fall for the notion that "out there" is a state of nature, inhabited only by "the market" and now "free" of "regulation." But in fact there is a huge amount of lawmaking activity that is already underway in the global economy. This activity is centered largely on the numerous negotiations and complex institution-building activities now being carried out in connection with trade and investment agreements like the World Trade Organization, the Free Trade Area of the Americas, and the Multilateral Agreement on Investment. And it has already created a thicket of law directly related to many of the issues at the heart of this article.

Governments, corporations and their lawyers are at this moment busily using, invoking, attempting to skirt, interpreting, planning in light of, and being sanctioned by that law, whether most people in the world know about it or not. Much of this body of law is aimed at providing acceptable and efficient systems for resolving disputes between multinational corporations. However, much of it is also aimed at restricting the ability of governments to enact programs or policies that run counter to the "free market" neoliberal model of economic growth and development.80

The body of rules enshrining neoliberal theories of economic and human development already have proven effective in defeating contrary policies. One well-known example, but neither the most recent nor the most important, is the case of free trade rules defeating a U.S. ban on tuna caught with purse seine nets that kill dolphins.81

80. The kinds of rules that have begun to proliferate, albeit unevenly, provide a flotilla of protections for investors of capital. For instance, they assume such investors will have free entrance into and exit from countries even for speculative investments, that they will be treated "equally" with domestic businesses (a principle which prevents governments from trying to incubate or nourish national firms or sectors), that they will not be required to hire local people unless they want to, that "expropriation" (often defined to include in the broadest possible way what U.S. constitutionalists would call "regulatory takings") is narrowly constrained and must be compensated at rates that provide maximum insurance for investors against risks such as currency fluctuations, and that governments of the world will not be allowed to limit investors or other governments' actions. Our own government has long pressed in these transnational negotiations toward increased "openness." Openness means full access to markets even at the expense of domestic producers and constant pressure on any areas (such as public enterprises or key natural resource sectors) where prior laws had restricted investment by foreign corporations.

81. Already reports from around the world are piling up a list of instances in which the
We should avoid mistakenly thinking that the global economy is a lawless unregulated realm that only requires the civilizing influence of law to become more ordered and humane. For one thing, such a mistake can distract attention from the intense lawmaking activity that is currently underway. Unless this lawmaking activity is more broadly understood, challenged, and opened to the democratic process, it will undoubtedly govern the conduct of many people in the world without their participation and adversely affect their interests.

Second, the idea that any market, global or otherwise, can exist free of law is an old and pernicious myth. Opponents of the current brand of globalization should refuse to propagate this myth. The false dualism of "the market" and "the law" is enjoying a strong resurgence today. While it is operative at a domestic level and is bandied about on questions of domestic policy, it is having its strongest run in the debates about globalization and the wonders of "free" trade.

If the main problem posed by globalization were the "escape" of economic actors into a sphere of unregulated activity "above" the level of enactments of legislative bodies at a national or sub-national level have been overturned, limited, forestalled, or compromised away because of real or potential conflicts with these sorts of "free trade" rules adopted at a global level.

Bruce Campbell recounts an instance in which a newly elected Ontario provincial government planned to deliver on campaign promises by replacing private auto insurance in Ontario with a "single payer" plan already successfully in place in three other provinces. However, the U.S. auto insurance industry began preparing claims under the Canada-U.S. Free Trade Agreement ("CUFTA," a precursor to NAFTA) for $2 billion of compensation for "expropriation" which it claimed would be due to it under provisions of CUFTA if the government proceeded with its plans. When the U.S. Trade Representative Carla Hills relayed her office's support for the industry's claims, the Ontario government folded. See Bruce Campbell, Restructuring the Economy: Canada into the Free Trade Era, in The Political Economy of North American Free Trade 92 (Ricardo Grinspun & Maxwell A. Cameron eds., 1992).

Another example of "global trumping" involved U.S. gasoline regulations aimed at reducing air pollution. In the nineties, the Environmental Protection Agency ("EPA") announced that gasoline producers desiring access to U.S. markets would be required to reduce polluting components by a certain percentage in relation to a baseline derived from U.S. refinery averages. Venezuela objected to the baseline, arguing that it unfairly disadvantaged Venezuela and some other foreign producers, and threatened to take its claim to a panel convened under the rules of the General Agreement on Tariffs and Trade ("GATT"), precursor to the WTO. The EPA, in part fearing the negative publicity that might arise if a GATT panel were convened to review U.S. environmental standards, quickly moved to reopen the standard to accommodate Venezuela. See EPA Announces Fuel Plan for Venezuela, Threatened GATT Complaint is Shelved, 11 Int'l Trade Rep. (BNA) 504 (Mar. 30, 1994); Improper White House Pressure Prompts EPA Plan for Venezuela, Baucus Charges, 11 Int'l Trade Rep. (BNA) 659 (Apr. 27, 1994); see also Kenneth J. Cooper, Note, To Compel or Encourage: Seeking Compliance with International Trade Agreements at the State Level, 2 Minn. J. Global Trade 143 (1993); Conrad Weiler, GATT, NAFTA and State and Local Powers, Intergovernmental Persp., Fall 93-Winter 94, at 38-41.
the nation-state, then a logical response to that danger might well be a plan to create some new law at that level to regulate the unregulated market. On this view, those concerned about democracy should forget Peoria (and Harlem and Harlingen) and Washington, D.C., and fly off to Geneva. Instead, I believe a messier strategy is in order. Advocates who wish to limit ruinous competition in the world’s workplaces can and often do press for international labor standards, but they need to press local and national politicians and corporations to recognize, expand, and protect labor rights, the global economy notwithstanding. Such advocates also need to look beyond overtly labor-related provisions, but should monitor, expose, and criticize other parts of the legal rule structure of globalization that is now being hammered out in forums dominated by large corporations and politicians. This rule structure is much broader than traditionally defined labor standards. It includes banking and finance, intellectual property, agriculture and food security, basic definitions of entitlements and property interests, and other pieces of “local and global background law” that will in some instances help to determine life on the shop floor as much as labor standards will. In fact, activists pressing for reforms and creative development strategies in local communities may wake up one day before too long and discover that their proposals are illegal under one of the new rules of the global economy. Critics of the Multilateral Agreement on Investment, for instance, claim that America’s Community Reinvestment Act, which requires that banks reinvest in the communities where they do business, would be illegal under the provisions of the current drafts.82

Perhaps these exhortations are superfluous. Advocates of internationally effective labor rights have already been creative and persistent in seeking new strategies and forums.83 Some of the primary strategies tried include:

(1) **Inclusion of labor standards in the main text and implementing structure of regional and multilateral trade agreements.** An advantage of

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82. See, e.g., Friends of the Earth-U.S. Fact Sheet: Ten Reasons to Be Concerned About the Multilateral Agreement on Investment (MAI) (Friends of the Earth, D.C.), Apr. 1997, at 1, 2.


For a creative attempt by a Canadian author to use existing provisions of the Canada-U.S. Free Trade Agreement as an unintended but logically impeccable labor standard, see Jim Stanford, *Going South: Cheap Labour as an Unfair Subsidy in North American Free Trade* (1991), arguing that right-to-work laws in the southern United States constitute a state-sponsored wage subsidy to industries operating there and that, as a consequence, these laws should trigger the imposition of countervailing duties, a common sanction for unfair trade practices.
this approach is that labor rights included in the body of trade agreements could then presumably be enforced through the same powerful state-imposed trade sanctions available under those agreements for the resolution of commercial and other “normal” disputes.\textsuperscript{84} Attempts to include labor rights in GATT, the WTO, and the Free Trade Area of the Americas have been met with stiff resistance both from the multinational corporations who play such an important role in the negotiation of the trade deals, and from third world governments who often see such standards as thinly-veiled protectionism aimed at diminishing one of their few comparative advantages.\textsuperscript{85}

(2) Peripheral attachment of labor standards to regional and multilateral trade agreements. In this approach, the labor standards are announced, but do not enjoy the same level of enforcement as other kinds of rights covered in the agreements. Their peripheral inclusion usually at least creates some sort of space or forum for the airing of problems and the stating of grievances, and may facilitate transnational collaboration by workers from different countries. The North American Free Trade Agreement, for instance, included a “side agreement” on labor rights known as the North American Agreement on Labor Cooperation (NAALC). Labor unions and worker advocacy groups have in fact been utilizing its provisions, despite its extremely weak enforcement mechanisms.\textsuperscript{86}

\textsuperscript{84} The European Community (“EC”) probably comes the closest to this model. The EC attempted to include a charter on worker rights in the Maastricht Treaty. Although the proposal failed when it was vetoed by the United Kingdom, the other eleven EC members adopted it as a “Protocol and Agreement” and annexed it to the treaty in 1989. Aggrieved parties have access to European courts as well. See, e.g., Daniel S. Ehrenberg, \textit{From Intention to Action: An ILO-GATT/WTO Enforcement Regime for International Labor Rights}, in \textit{HUMAN RIGHTS, LABOR RIGHTS, AND INTERNATIONAL TRADE}, supra note 67, at 163.


\textsuperscript{86} See Stephen F. Diamond, \textit{Labor Rights in the Global Economy: A Case Study of the North American Free Trade Agreement}, in \textit{HUMAN RIGHTS, LABOR RIGHTS, AND INTERNATIONAL TRADE}, supra note 67, at 199. Advocates of labor standards have been critical of NAALC, but have also urged others to test, use, and expand it. For some standard doubts, see Robert F. Housman, \textit{Access to Transnational Justice Under the NAFTA: Different Interests, Different Access} (paper delivered at 1994 Meeting of the American Society for International Law) (“[W]hat the NAFTA package establishes is a hierarchy of access based upon the subject matter of disputes. At the top of this hierarchy are business interests... At the bottom of this hierarchy are social interests.”); Stephen Herzenberg,
(3) **Strengthening of labor standards through continued and expanded promotion of those already contained in various human rights conventions.** The venerable International Labor Organization ("ILO") has a large body of conventions pertaining to labor rights and conditions of work, and a significant history of working to get them recognized and obeyed. Further, the Universal Declaration of Human Rights and the two international covenants that flow from it, along with a number of regional human rights instruments, contain some provisions on labor standards as well. Of course, all of these conventions suffer from the same enforcement dilemmas as do other international human rights norms.  

(4) **Adoption of labor standards at a "sub-national" level.** States and local governments, as well as private entities and institutions interested in promoting international labor rights, may adopt labor standards if they wish, and some have done so, most often in relation to procurement policies.  

(5) **Adoption of labor standards through voluntary codes of corporate conduct.** Voluntary codes of corporate conduct are another way to achieve standards without benefit of a legitimate transnational enacting authority. Such codes have been proposed by advocacy organizations and pressed upon corporations from the outside by means of general publicity campaigns and shareholder resolutions. For example, the Coalition for Justice in the Maquiladoras has developed a code of conduct for maquila factories and has been pressing it for years with companies active on the U.S.–Mexico border, thus far with little success. Some codes enjoy the sponsorship of government agencies. For example, the U.S. Department of Labor is currently promoting a voluntary code of conduct for


88. Anti-apartheid ordinances enacted by local or state governments and anti-apartheid policies adopted by universities, churches, and other private entities during the worldwide campaign against South African apartheid are good examples of such measures. Though not restricted to labor rights, such measures certainly included them. In more recent times, Duke University has adopted a policy that requires companies that are licensed to carry its name on sports clothing and the like to identify the factories and sub-contractors that make the products and to require such factories to give access to independent monitors. See Bob Herbert, The Hidden Truth Behind the Hats, ROCKY MTN. NEWS, Apr. 14, 1998, at A31. A handful of local governments have adopted "anti-sweatshop" ordinances. See Julie Mason, Cities Put Pressure on Sweatshops: Nationwide Effort Isn't Building Here, HOUS. CHRON., July 6, 1997, at 29. Note that all such measures would be at least suspect under the provisions of the still-pending Multilateral Agreement on Investment and may be vulnerable to challenges under GATT provisions as well. See infra note 105 and accompanying text.
manufacturers who produce or contract for garments in the third world. Finally, a few corporations, like Levi Strauss and Reebok (often companies with market vulnerability to negative consumer opinion), have developed and publicized codes of their own relating to these matters although resistance is a more typical response. Of course, even when such a code has been adopted, many difficult questions remain about who will monitor compliance and how.99

(6) Inclusion of labor standards in collective bargaining agreements with multinational employers. Theoretically, it should be possible for workers in one place to exert demands on their employer to abide by certain standards in another place. The idea is, however, in its infancy.90

(7) Promotion of labor standards through case-by-case litigation. In some cases, parties have succeeded in bringing litigation in U.S. courts, invoking a range of common law and other claims and encountering various responses to the predictable jurisdictional problems that are likely to arise in such cases.91

(8) Inclusion of labor rights in unilateral conditionality provisions of national trade laws. Such statutes provide for imposition of trade sanctions against countries that violate the standards. These types of provisions can have real bite, but their unilateral character is problematic both in terms of efficacy and equity. Only in the hands of a rich country does the possibility of imposing trade sanctions pose much of a threat or produce much of a result, so a troubling fundamental asymmetry seems unavoidable. In practice, however, actions under these statutes can be pursued in a collaborative manner between trade unionists or human rights activists in the legislating country and their counterparts in the "target" country. In such instances, many of the asymmetry problems can be alleviated, at least if the collaboration is equitable and principled.92

89. See generally Lance A. Compa & Tashia Hinchliffe Darricarrere, Private Labor Rights Enforcement through Corporate Codes of Conduct, in HUMAN RIGHTS, LABOR RIGHTS, AND INTERNATIONAL TRADE, supra note 67, at 181.

90. See Burton Bendiner, International Labour Affairs: The World Trade Unions and the Multinational Companies (1987); see also supra note 72.


92. Philip Alston criticizes such measures as out of harmony with international human rights law in that they seek to "appl[y] to other countries ... standards that have not been accepted by those countries and that are not generally considered to be part of customary international law." He also points out that the United States in particular should be modest about imposing its standards on others because it has been scandalously slow in ratifying ILO conventions itself. See Philip Alston, Labor Rights Provisions in U.S. Trade Law:
At any rate, all these avenues remind us that the creation of rule structures is not the exclusive province of the nation-state and never has been. Many public and private sites for lawmaking exist and can be investigated and used by advocates, and this continues to be true whatever sovereignty-threatening vicissitudes the nation-state seems to be enduring. Perhaps those interested in more just rule structures for the workplaces of the next century should eschew excessive anxiety over the dissolution of the national subject and get busy finding other fruitful sites for action. Let a thousand levels bloom.

However, in all this blooming, it would be a great mistake to underestimate both the actual and potential importance of law generated at a national level, and at the level of the political subdivisions of the state. Struggles of the past have established two crucial principles that at least in theory guide decision making in those venues. Both principles are valuable legacies of those prior struggles, and they should be preserved for future generations. Neither is presently operative at the level of transnational rule making.

The first principle is that important decisions about the nation's life should be made not on the basis of expertise, wealth, or arms, but democratically, by representatives who are chosen by the votes of individual human beings, on the basis of broad-based nearly universal suffrage, and on the principle of "one person, one vote" rather than "one dollar, one vote" or some other scheme. Achievement of this principle in the United States is an uneven and reiterative accomplishment, imperfectly begun at the Founding, and continuing through Reconstruction, the long struggle for women's suffrage, the civil rights movement, and up to the "Aggressive Unilateralism"?, in Human Rights, Labor Rights, and International Trade, supra note 67, at 71. But see Leary, supra note 89, at 31-34 (arguing that Alston is too conservative in his conclusion that labor rights are not part of customary international law). At any rate, any assumption that bilateral or multilateral agreements are free of asymmetry in ways that make them universally preferable to unilateral sanctions would be highly questionable. Sharp inequalities between states deeply structure and determine multilateral regimes as well.


94. Of course, there are important exceptions to the "universality" of universal suffrage, most of which have impacts that are pointedly disproportionate with regard to race. The exclusion from the franchise of people with certain kinds of criminal records is one example. Another is the growth of the non-citizen immigrant population. For an argument that the long-term presence of a permanent nonvoting block degrades democracy, see William Rogers Brubaker, Membership Without Citizenship: The Economic and Social Rights of Noncitizens, in Immigration and the Politics of Citizenship in Europe and North America 162 (William Rogers Brubaker ed., 1989). But see Richard Edwards & Paolo Garonna, The Forgotten Link: Labor's Stake in International Economic Cooperation 17-20 (1991) (arguing that, for immigrants, freedom of movement and enjoyment of "basic rights" is more salient than citizenship).
present. Today there are new assaults on the effective right of African-Americans and other people of color to meaningfully participate in the electoral life of the nation, but these assaults have not taken the form of open attacks on the principle of universal suffrage or representative democracy.95

A second relevant principle embedded in the American concept of the democratic nation-state is that “The People” have the right, through their duly elected representatives, to enact rules that govern the economy. There are constitutional limits to this legitimate power, of course, and the achievement of this principle, like that of broad-based electoral democracy, is uneven, reiterative, and still unfinished. But the principle is clear. In this century it was primarily an accomplishment of the Depression and the New Deal, when the ideology of the well-known *Lochner* case was, at least for a time, put to rest.96 Today, this second principle is under serious attack in the United States. Sometimes the attack takes a “mandatory” form. That is, at times, contemporary protagonists claim that it is affirmatively illegal for the polity to set rules for the market.97 At other times, contemporary attacks on the rights of the people to set rules for the market are couched as matters of discretionary policy rather than of legal prohibition. Thus, in the steady and massive de-commissioning of large parts of the U.S. social safety net, there has been no serious claim that the welfare state is illegal, only that it is poor policy. Despite the attacks, however, strong support for the right and duty of the government to frame rules for economic conduct continues to exist in the American electorate.

Today, with the emergence of a very visible set of issues related to globalization, the debate about law and the market has powerfully resurfaced in the international domain. Nowadays, it is more at the global than at the domestic level that the ghost of *Lochner* stalks our discussions.98

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And although the ideological controversy in this arena began (and continues) as a matter of policy rather than of law, developments are rapidly "legalizing" some aspects of the debate. Increasing numbers of regional and multilateral trade agreements lock in constraints on certain types of government action and weave them into an emerging, pro-business, Lochner-style "world constitution" for the global economy. 99

After winning the battle against Lochner and its siblings, and after defeating the notion that state legislatures or the national Congress could not constitutionally enact labor standards because that would be an interference with the "freedom of contract," we now may be coming full circle. Today we hear from many that the enactment of international labor standards would be bad policy, hindering the ability of poorer countries to make the most of their low-wage advantage, distorting the naturally beneficent workings of the market, and second-guessing the wisdom of individual firms, workers, consumers, and nations 100 to agree to whatever wage they wish. 101 But there is more. We are also told that some attempts to "interfere" with the natural and free functioning of international markets will not only reflect bad policy, but will positively be forbidden under the new global "free trade" regime.

The commercial and industrial activities of multinational corporations are depicted in this parlance as happening on a plane of freedom, in some sort of transnational ether where the bad old hand of government regulation should not be allowed to reach.

Yet all the while, the proponents of this freedom and openness are at work constructing legal regimes that are filled with constraints on the ability of states to follow the will of their electorates if that will diverges from the dictates of the economic model that animates present corporate

course, Lochner is usually analyzed as a case that is about judicial review and judicial activism rather than a case that is about the positive right of the electorate to take an active part in constructing the rules that will govern the labor market. Nevertheless, at this juncture it would be something of a jurisprudential embarrassment to openly resurrect the Lochner idea about the nature of labor markets and their governance, irrespective of the questions about the nature of judicial review.


100. Note that "nations" are often cast as individual, interest-maximizing, economic actors in this discourse—surely a slip of some significance for classical liberal theory. Treating corporations as rights-bearing subjects is, of course, well-established practice, though it should not go uncriticized.

strategies. Further, reports continue to pour in, both from the core and the periphery, about unconscionable levels of physical and economic coercion that appear to be flourishing in the workplaces of the new global production process that has been ushered in by the era of "free" trade.

It should give us pause to recall that the Lochner era came to an end largely because of the function of democratic institutions in our country, however imperfect they may have been. Members of the U.S. electorate voted, demonstrated, marched all the way to Washington, wrote thousands of letters, sang hundreds of songs, and created massive, if uncoordinated, unrest in society. U.S. workers went on strike, occupied factories, voted for unions, picketed, sat down, slowed down, stood up, and created massive if uncoordinated unrest in the workplace. FDR was in the White House; Congress was on the Hill. Economists and policy makers were furiously spinning out models, dreaming up alternatives, and arguing ideology. Old justices went and new justices came (although not as fast as the President would have liked). And a funny thing happened. Before long, the law of the land changed.

By what process will the world’s people have a chance to impact the World Trade Organization about its "free trade" rules? Or the International Monetary Fund or the World Bank about their coercive "structural


103. See, e.g., supra note 59; Kate Bronfenbrenner, Organizing in the NAFTA Environment: How Companies Use 'Free Trade' to Stop Unions, NEW LAB. F., Fall 1997, at 51 (describing conditions in the United States); William Greider, Why the Global Economy Needs Worker’s Rights, WORKINGUSA, May/June 1997, at 23 (describing conditions in Indonesia). Meanwhile, Mexico, which should have been a poster child of good behavior given its special place in the free trade saga, is the source of numerous complaints about coercive practices. For instance, there are reports of strong official resistance to the formation of independent unions in Mexican industry. See, e.g., Cross Border Blues: A Call for Justice for Maquiladora Workers in Tehuacan (National Interfaith Committee for Worker Justice, Chicago, Ill.) July 1998, at 1 (reporting on abuses in the center of U.S.-bound denim production in the interior of Mexico). Other reports concern Mexican government responses to unrest in impoverished indigenous communities, including the military occupation of large areas of the state of Chiapas and government collusion in widespread violence against indigenous villagers accused of sympathizing with the Zapatistas (whose initial uprising on January 1, 1994, was carefully timed to coincide with the first day of NAFTA’s official life).

adjustment" conditions on loans to cash-strapped third world countries? Or the OECD about the proposed Multilateral Agreement on Investment with its unprecedented set of one-sided protections for global investors? Or to impact any of the other rapidly proliferating supranational and non-democratic entities that are emerging in the global economy today? The never-enfranchised members of the world's non-electorate are the new subjects of this emerging system of non-democratic global governance. If they decide that they wish to change course, as the U.S. electorate did during the Great Depression, by what means can they let it be known?

If the international business community has its way, the answer would appear to be that democratically-mandated change of course is not an option. The Multilateral Agreement on Investment ("MAI") is a prime example. Currently being negotiated by the wealthy industrial nations of the Organization for Economic Co-operation and Development ("OECD"), the plan is for its member countries to hammer out an Agreement, after which the rest of the world's nations will be offered an opportunity to attempt to join on a take-it-or-leave-it basis. The OECD itself has described the MAI in terms that make clear its intention to drastically restrict the ability of local or national electorates to change the flood of pro-business rules now sweeping the globe as part of the rush to liberalize trade and investment. It characterizes the agreement as an effort that would:

pull together under one single instrument the most important disciplines found in bilateral investment treaties, regional agreements . . . and sectorial agreements. . . . The ultimate aim is to create a more favourable investment environment for enterprises confronted with the challenge of globalization and thereby encourage investment flows. . . . While investment regimes in many countries have become much more open and welcoming, there is no assurance they will remain so in the years to come. Indeed, the risks of backsliding are significant. Even in the OECD area, foreign investors still encounter barriers, discriminatory treatment and legal and regulatory uncertainties. . . . While a potential investor would welcome government policy statements that such conditions will prevail, much greater assurance can be provided by binding international commitments to this effect.106


106. Organization for Economic Cooperation & Development, Main Features of the
Among other things, draft versions of this agreement have proposed the following restrictions on the elected legislatures of member states. Member states are forbidden to:

(1) Enact policies that treat the country's own businesses differently from outside multinational investors (a "national treatment" requirement);

(2) Impose "performance requirements" on the receipt of public benefits by foreign investors (such as a requirement that an outside investor hire local workers or purchase from local suppliers in return for tax breaks, public contracts, or market benefits), even in cases where such requirements are imposed on domestic businesses that receive government benefits;

(3) Restrict the movement of capital (such a requirement, as Chile now has, that portfolio investors leave their capital in the country for some minimum period in order to avoid sudden speculative withdrawals like the one that triggered the Mexican peso crisis several years ago); and

(4) Impose restrictions on corporations headquartered in a country accused of human rights violations (such as many of the prohibitions on purchases of investments in South Africa adopted by local and national governments around the world before the fall of apartheid).\(^{107}\)

Beyond these prohibitions, MAI drafts have proposed unprecedented "private standing," whereby private corporations would have the right to challenge state practices that they believe to be in violation of the MAI.

Exit from the new generation of international trade deals is never easy. In the practical sense, fear of economic retaliation is a strong disincentive for withdrawal, especially for weaker states. In the formal sense, the rule structures usually include new political and legal hurdles that a member state will be required to jump or burdens it must assume, if it decides to withdraw or adopt a development strategy that conflicts with the neoliberal agenda that is embedded in this new generation of trade agreements. The MAI is even stronger on the question of exit. One of its proposed provisions would prevent withdrawal by any contracting party for five years after the date the Agreement enters into force, and would mandate

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\(^{107}\) In this, as in many other provisions, the MAI overlaps with many aspects of the WTO and other trade agreements. See, e.g., European Union Seeks WTO Consultations Over Massachusetts' Burma Sanctions Law, 14 Int'l Trade Rep. (BNA) 1098 (June 25, 1997) (reporting that the EU would request consultations on a Massachusetts law that discouraged state procurement from Burma and mentioning EU worries over "proliferation" of similar laws against Burma and notorious labor rights violator, Indonesia).
that even *after* the country decided to withdraw the provisions of the Agreement, that its provisions "shall continue to apply for a period of [fifteen] years from the date of notification of withdrawal."¹⁰⁸

The precise future of the MAI is presently in some doubt. After a draft document was leaked to the world press, social movements and parliamentarians around the world were alarmed to learn of its radical provisions, and OECD negotiators were subjected to a degree of challenge and publicity that they had apparently not anticipated. Accordingly, the timetable for adoption was shifted back. In the meantime, the extreme volatility that has shaken world markets in 1998 has overtaken international financiers in ways that pose sharp challenges for the neoclassical economic faith that has permeated MAI negotiations to date.¹⁰⁹ Whatever the fate of the MAI itself, some portions of the MAI apparatus are already embedded in existing trade agreements and other portions are currently being proposed for insertion in additional international agreements being negotiated in other venues, such as the Free Trade Area of the Americas.¹¹⁰

With plans like this afoot, one does not have to wax unrealistically sentimental about the present quality of national democratic institutions to see that something important may be lost on the way to a global future.¹¹¹

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¹¹⁰. The Free Trade Area of the Americas would unite all of the Continent—"from the Bering Straits to Tierra del Fuego"—under one NAFTA-like trade agreement. Negotiations are already underway, but U.S. President Bill Clinton's failure to win fast track authority has cast something of a cloud over their immediate future. Trade ministers, and occasionally presidents, continue to meet at intervals and are dogged at each stop by alternative forums where labor, community, and environmental groups have convened to offer critiques and alternatives. For descriptions of the "Cumbre de Los Pueblos de America," or the Summit of the Peoples of America, convened in Santiago, Chile, as a parallel to the official Presidential Summit held there in April 1998, see Victor Menotti, *Santiago's Other Summit*, S.F. BAY GUARDIAN, Apr. 29, 1998, and American Friends Service Committee, Beginnings of a New Hemispheric Social Alliance in the Americas: A Report on the Peoples' Summit in Santiago, July 1998 (available from the American Friends Service Committee in Chicago) (both by U.S. attendees); Alejandro Bendafia, *The Santiago People's Summit: A Report*, in THE PROGRESSIVE RESPONSE, May 16, 1998 (published by Foreign Policy in Focus, a joint project of the Interhemispheric Resource Center in Albuquerque, N.M., and the Institute for Policy Studies in Washington, D.C.) (by a Nicaraguan attendee).

¹¹¹. For an accessibly-written classical liberal defense of the theory that the alternative to free trade is big government and that free trade regimes are supportive of democracy, see Frederick M. Abbott, *Trade and Democratic Values*, 1 MINN. J. GLOBAL TRADE 9, 11 (1992) ("The underlying commitment of the United States to liberal trade policy is not based
The ability of nations and other political subdivisions to adopt and pursue development policies that deviate from the ideology of free trade and corporate dominance is in real jeopardy. In this context, it is crucial to defend national, state, and local arenas where democracy is the announced norm. Such arenas can provide actual and ideological purchase for grassroots and workplace-based social movements, spaces for the expression of grounded local sentiments, circuits for feedback from constituents about the effects of economic changes on the less powerful, and channels for the infusion of international popular knowledge into the crucial policy decisions that will face the planet in coming years.

Those interested in helping to win American workplaces that are equitable and sustainable, whose rules facilitate both efficient production and a daily work culture that is supportive of human flourishing, need to become better informed about the erection of these new governing rules and structures, and need to find ways of becoming involved in pro-democracy, internationalist conversations and campaigns about the nature of global competition and global labor markets.1

This article began with a look at one particular problem: the fact that labor markets are globalizing. Individual workers in places all over the world, including the particular Tennessee and Chihuahua microenvironments that I have been striving to understand, find themselves with new structures of competition imposed upon them by emerging corporate strategies that are increasingly supported by the force of law.

Those who believe that the rules of the workplace should be arrived at through democratic processes face a serious challenge in determining how such a radical change could actually come about. The broadly inclusive and deeply participatory polity that strong democracy requires is a tall order and not one that is a clear feature of a national past to which we could "return." Besides, even if the old forms had performed better more often, simply moving them upward to a planetary level is not a particularly credible strategy. Many experiences with problems of scale suggest, for

\[\text{on a simplistic commitment to comparative advantage as an end in itself, but is deeply rooted in a commitment to democratic values.} \ldots [\text{I}]nherent in the formation of a federal government-industrial alliance to manage U.S. trade relations is a restriction of the decision-making sphere and influence of the individual."].

112. The principle of internationalism is, of course, a particularly crucial one for movements located in the super powers of the North, whose "hyper-sovereignty" has often led to the oppression of people in weaker states. At the same time, calls for preserving the "comparative advantage" of low wages often issued by members of privileged third world elites should be closely scrutinized as well, and reevaluated in light of the uneven distribution of power and resources within such states. For a brief introduction to some of the difficulties embedded in this set of issues, see Lance Compa, ... And the Twain Shall Meet? A North South-Controversy over Labor Rights and Trade, 23 LAB. RES. REV. 51 (1995).
instance, that "a Congress of the World" would be unlikely to prove accountable or to encourage participatory processes, even if the creation of such a body were remotely likely in the near future, which it is not.

On the other hand, a broadly inclusive and participatory civil and political society is certainly an important part of the American national dream, and an important part of the international dream of millions. Those dreams can nourish the work ahead. In this era of shredding polities, virtual communities, and questionable and competing sovereignties, the demand for strong democracy must be posed simultaneously at many levels: on the shop floor and in the pension fund; in the web of work-based relationships that emerge among a large corporation and its contracting suppliers of labor, materials, and components; in state and local governments; in school districts; in subnational regions (like Appalachia or "the Border"); in supranational regions (like the three-party North America that most of us didn't even know we belonged to until the advent of NAFTA); and in new and old international networks ranging from groups like the International Labor Organization, the United Nations, and the World Trade Organization, to continental labor confederations and the string of women's conferences that last gathered in Beijing.

Within all this dizzying postmodern proliferation, the State has not lost all significance. Nation states (albeit seldom in an open way) are promoting and facilitating a new world of elite-engendered and elite-dominated economic rules. At the same time, the right and authority of national, local, and tribal territorial governments to pursue self-defined development projects are still alive and need defending. State-limited public arenas provide crucial social space in which advocates for democracy can make their voices heard, and state-linked powers (such as fiscal and monetary policy) provide crucial tools for the carrying out of development goals. Social movements—as well as scholars, artists, and intellectuals who identify with the future of those movements—need to defend the legitimacy of development projects that are based on the needs and democratically expressed desires of those within a given polity. A global rule structure that denies this legitimacy, or effectively deprives polities of the tools they must have to make development projects real, will produce social and environmental outcomes that are not only destructive and unjust but also sometimes irreversible.

It is not easy to find opportunities to raise these issues in political arenas. Only in rare instances do the old engines of democracy intersect with the new structures of corporate-dominated global governance. In those few instances—for instance, in the Congressional debates on whether Clinton should have "fast track" negotiating authority—ordinary members of the electorate have shown remarkable interest in issues of globalization.

During the periods leading up to votes on NAFTA and "fast track," for
instance, TIRN was able to recruit eager delegations of blue-collar workers to talk to their Congressmen, both at home and in Washington. The ensuing conversations (and yelling matches, story-telling fests, and battles of wits) were exercises in old-fashioned democracy. Whatever the outcomes, TIRN members left those encounters feeling energized, often angry, better informed, more likely to follow the subsequent voting records of the people they had spoken with, and much more savvy about counterpressures that were being brought to bear upon their representatives. On the days before the vote, people leafleted supermarkets and shopping malls, took rolls of coins to work, and urged fellow union members to get on the phones with their Congressmen at break time. They wrote letters to editors and granted first-time television interviews. They told their friends to sign postcards and send faxes. Despite all this effort, when NAFTA was finally approved in Congress, not a single member of Tennessee’s delegation voted against the agreement. But no one in TIRN expressed regret over the effort expended. Further, the next time the fast track came up, it was defeated.113

Of course, this is the regular stuff of grassroots lobbying. However, I found the sense of energy behind this burst of activity to be remarkable. The Congressional vote finally gave people a way to voice what they had been feeling about the economy and their future, and they were obviously hungry for the opportunity—hungry to say something about the changes they were experiencing, about the threats they perceived from the global economy that their employers were harping upon so incessantly, and about the knot they felt in the pit of their stomachs when they heard what Mexican workers were paid for a week’s labor.

Instructively, they also felt righteous indignation that their government was not somehow doing more to control the maquiladora phenomenon. This indignation echoed comments I heard repeatedly from U.S. workers during trips to the border. People were mad at the corporations, yes, but they were also mad at the government. They had a clear (and accurate) sense that the U.S. government was thoroughly implicated in the existence of the maquiladora industry and in the conditions that prevail in export processing zones at the border. They also had a clear and indignant sense that by taking the side of the corporations, the government was failing to live up to its obligations to the electorate as a whole and was making our country look bad to the people of other nations.

Many of my academic and professional friends have remarked to me that the labor movement is too fixated on NAFTA, that it has wrongly demonized the agreement as if it were a cause rather than a mere symptom

113. See David Glenn, How Fast Track Was Derailed: Lessons for Labor’s Future, DISSENT, Fall 1997, at 47.
of global restructuring. They voice discomfort with the nationalism of Americans, with the selfishness, racism, and parochialism of that sort of nationalism. I would be the last to deny that Americans (of all classes and educational levels) must take care to avoid the racist and chauvinist assumptions that lie embedded, consciously or not, in the many brands of U.S. nationalism. It is certainly true that many Americans, and many American "fair trade" activists, have exaggerated the discrete employment effects of particular trade agreements, when the forces at work in the current economic restructuring are in fact many and complex.

Nonetheless, the free trade agenda of neoliberalism, if not any one particular manifestation of it, is indeed changing the face of our world and in ways that I believe are largely negative. Further, at least in some instances, I believe my friends and colleagues have missed an important point about democracy.

Americans have become agitated about "fast track" and about NAFTA partly because the votes in Congress have provided one of the very few opportunities in which voters could register their objections to the neoliberal policy agenda that is now embraced in so many important particulars by Democrats and Republicans alike. Especially with regard to the global economy, no U.S. administration has invited a national debate, has provided accessible forums, or has proposed legislation that would open this issue for meaningful discussion.

It is a shameful commentary on the anemic nature of our democracy that so many important changes in the rules and unwritten culture of American workplaces and communities are being decided and implemented completely outside any process of democratic deliberation. In this context, the fact that American voters have been so exercised over NAFTA, even if sometimes disproportionately so, is welcome news. At least in important part, it constitutes not unfortunate proof of the backwardness, ignorance, and narrowness of American blue-collar workers (an implication that I often hear in the cosmopolitan protestations of my friends), but a good sign about the possible future of democracy, should we decide to take that concept seriously as one that we should carry with us into the global economy of the twenty-first century.

If we are to build a global rule structure equal to the serious challenges of the times, we will need the experiences and the wisdom of "Larry" the local union leader who got the frightening tour of Juarez, of "Ofelia" the teenage maquiladora worker enduring the rigors of life in the settlement of Anapra, of "Juana" the bilingual Tarahumara elementary school teacher who is fighting against the racism of mestizos toward her students and their parents, of "Manuel" struggling to keep his balance on the ice while wrestling those boxes in the Tennessee chicken plant, of "Carlos" waiting tables at the Mexican restaurant in Tennessee, and "Perla" waiting for the
checks he sends back home, of "Roberto" who was fired for knowing too much about U.S. employment law, of "Hugo" who was fired for being disabled, of "Hector" who was laid off as an object lesson in mandatory obedience, of organizers and labor and community activists in Mexico and the U.S. who are trying to put together the pieces of the global jigsaw puzzle to understand the bigger picture, of the U.S. workers—women and men, black and white—who have traveled to Mexico, pestered their Congressmen, and spoken about their experiences. A democracy worthy of the name, whether local, national, regional, organizational, or global, will make room for all these voices and more, and will invite the people to deliberate on what sorts of communities and workplaces and markets they/we want in the twenty-first century.

In April 1998, an unusual gathering took place in conjunction with the official Presidential Summit in Santiago, Chile, in April of 1998. The Presidential Summit met to discuss the Free Trade Area of the Americas ("FTAA"), albeit in somewhat dampened tones due to President Clinton's failure to obtain approval for "fast track." The Peoples' Summit, on the other hand, met to protest the impacts of "free trade" and neoliberal policies in the Americas and to hold dialogues within and between labor unions and other social movements and organizations of the civil sector. It was an event of historic significance.

The agenda and the multinational, multisectoral structure of the People's Summit were rich and complex, but one of the features of the Summit's agenda is particularly relevant here. I will close with some selections from a working paper prepared by an international team of drafters from Brazil, Canada, Chile, Mexico, and the United States, then discussed in the larger forum with representatives from most of the countries in Latin America.114 There is much more to the statement than I have presented, as the drafters worked hard to include many specific alternative proposals (for instance, provisions on performance requirements, valuation of expropriated property, taxation on foreign exchange transactions, incentives for productive as opposed to speculative investment, etc.). The excerpts below are more general, and brief at that, but my hope is that they will convey something of both the letter and the spirit of this hopeful and challenging project. Although only in its infancy,

114. The following six national organizations organized the Forum on Social and Economic Alternatives: Centro Estudios Sobre Transnacionalización, Economía Y Sociedad (Center for the Study of Transnationalization, Economy, and Society) (Chile), Common Frontiers (Canada), Development Gap/Alliance for Responsible Trade (U.S.), Instituto Brasileiro de Ação Social e Econômica ("IBASE"—Brazilian Institute of Social and Economic Action) (Brazil), Red Mexicana de Acción Frente al Libre Comercio (Mexican Action Network on Free Trade), and Réseau Québécois sur L'intégration Continentale ("RQIC") (Quebec).
and although faced with tremendous obstacles to the work it is trying to initiate, this "hemispheric social alliance" shows the potential that exists for transnational democratic visioning and deliberation. It suggests the need for theorizing, as well as a practical struggle to defend and advance multi-level sites for democratic lawmaking about labor markets in the global economy.

The objective of this document is to put forward a set of fundamental principles and ideas which could underlie an alternative to the current form of globalization, which is dominated and driven by multinational corporations and where integration equals subordination. It attempts to think through an alternative form of sustainable development based in the interests of the peoples of the Americas. The point is not simply to imagine a just alternative, but also one which is viable.

No country can nor should remain isolated from the global economy. This does not mean, however, that we share the theoretical approach of free trade as the only, much less the best, form of integration into globalization.

History has demonstrated that the market on its own doesn’t generate development, much less justice. Our criticism is of the use of free trade as a global economic paradigm to justify the implementation of an economic project which has proven to be exclusionary.

We must refuse to allow the global market, with the consent of our governments, to define the futures of our countries and our peoples. We must democratically build in our respective countries national sustainable development plans and from this starting point fight for our place in the world.

It is not wrong to establish rules for trade and investment in regions and in the world. But not just any rules.

 Debates, decision-making, and framework building in matters of economic integration have mostly been dominated by financial, corporate, and political elites.

A thorough democratization of trade and investment policy debates and decision-making is a precondition for progress in fashioning new rules of investment, environment, and labor in a context of greater democratization of the economy, a practice of citizenship which monitors more closely the results, impacts, and failures of the economic policy.

We need to recognize that global corporations have grown so large and powerful, that in many areas they are no longer
effectively controlled by, or meaningfully accountable to, governments. We need new instruments to reassert public control and citizen sovereignty over these firms.

Localities, states, provinces, and countries should have the right to pursue—without challenge—effective labour, health, safety, and environmental standards.

The lack of social protection, which is the result of asymmetry, has tended to create an environment where the strategies of the large corporations are able to capitalize on inequalities, especially with regard to working conditions and wages. The result is that they are able to force down standards, claiming that it is a requirement for international competitiveness. This implies a need for national and global economic policies designed to redistribute income.

Faced with more than a decade of liberalization, voices critical of these policies have emerged from every corner of the globe. Globalization imposed from above and guided by the most powerful economic interests in the world and their governments has generated an incipient integration from below, from the people. A dialogue has emerged seeking to develop an alternative position.

Our proposal brings forward a distinctive economic logic: trade and investment should not be the goal but rather the instruments for achieving just and sustainable development.\(^\text{115}\)

It is clear that the world of work will be transformed in the twenty-first century, and that the process of globalization will play a significant role in determining the nature of that transformation. Those who hope that democracy can play a strong role both in the process of change and in the resulting cultures of the world’s workplace, including U.S. labor rights advocates, labor and community organizers, rank-and-file workers, and labor rights scholars, are now in a position to learn from colleagues and counterparts “from every corner of the globe,” and to join in a process of “incipient integration from below.” The tasks are enormous, but we are fortunate indeed to have the opportunity to take them up.

\(^{115}\) Excerpt from Summit of the Peoples of America: Social and Economic Alternatives, in Santiago, Chile (Apr. 1998) (working paper, on file with author).