Human Rights & Human Welfare

Volume 6 | Issue 1 Article 49

10-9-2006

Labor's Human Rights: A Review of the Nature and Status of Core Labor Rights as Human Rights

Roy J. Adams
McMaster University

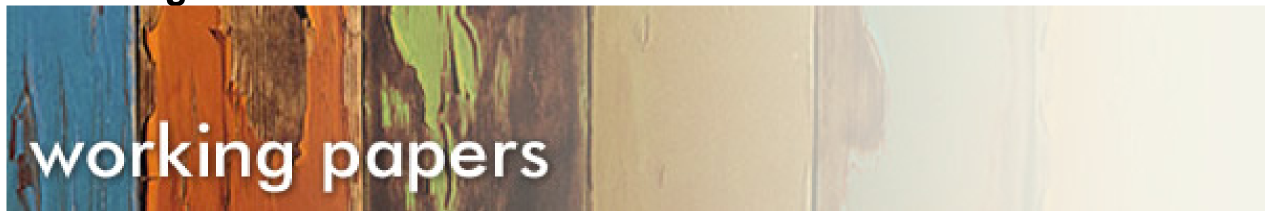
Follow this and additional works at: https://digitalcommons.du.edu/hrhw

Part of the Human Rights Law Commons, International Humanitarian Law Commons, International Law Commons, and the Labor and Employment Law Commons

Recommended Citation
Adams, Roy J. (2006) "Labor's Human Rights: A Review of the Nature and Status of Core Labor Rights as Human Rights," *Human Rights & Human Welfare*: Vol. 6 : Iss. 1 , Article 49.
Available at: https://digitalcommons.du.edu/hrhw/vol6/iss1/49

This Working Paper is brought to you for free and open access by the Josef Korbel School of International Studies at Digital Commons @ DU. It has been accepted for inclusion in Human Rights & Human Welfare by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu,dig-commons@du.edu.

human rights & human welfare



a forum for works in progress

working paper no. 36

Labor's Human Rights: A Review of the Nature and Status of Core Labor Rights as Human Rights

by Roy J. Adams, Ph.D.
Professor Emeritus
McMaster University
adamsr@mcmaster.ca

Posted on 09 October 2006

http://www.du.edu/gsis/hrhw/working/2006/36-adams-2006.pdf

© Roy J. Adams. All rights reserved.

This paper may be freely circulated in electronic or hard copy provided it is not modified in any way, the rights of the author not infringed, and the paper is not quoted or cited without express permission of the author. The editors cannot guarantee a stable URL for any paper posted here, nor will they be responsible for notifying others if the URL is changed or the paper is taken off the site. Electronic copies of this paper may not be posted on any other website without express permission of the author.

The posting of this paper on the **hrhw working papers** website does not constitute any position of opinion or judgment about the contents, arguments or claims made in the paper by the editors. For more information about the **hrhw working papers** series or website, please visit the site online at http://www.du.edu/gsis/hrhw/working

Labor's Human Rights: A Review of the Nature and Status of Core Labor Rights as Human Rights[1]

By Roy J. Adams

INTRODUCTION

As discussed by Donnelly and Howard (1987), human rights are "rights held by each (and every) person simply as a human being." They are, "by their nature, universal." Although they may be suppressed or neglected, they may not be legitimately granted nor taken away by states or by non-state actors. They are rights that, in the words of the International Court of Justice are, "obligatio erga omnes" - that is they are owed by all to all (Paust 2002)[2].

As a class of rights, labor rights have two generally understood meanings. In the broader meaning labor rights encompass a range of worker rights covered in the International Bill of Rights which includes the United Nations' Covenant on Economic, Cultural and Social Rights and its Covenant on Civil and Political Rights (Hannum 1997). The narrower meaning, sometimes referred to as trade union rights, focuses attention on the rights of working people universally to a collective voice in the establishment of the conditions under which they work (Ewing 2000). Although advocacy of some worker rights such as the right to equal treatment at work regardless of sex, religion, or ethnic origin is shared by many human rights organizations, advocacy of the right to organize and bargain collectively has, until very recently, been left largely to labor unions (Leary 1996, Adams 2001).

Freedom of association and its manifestation in the realm of employment as the right to organize and bargain collectively preceded the establishment of the contemporary world-wide human rights regime. Human rights as a focus of global attention traces its heritage to the Universal Declaration of Human Rights which appeared in 1948. Freedom of Association, on the other hand, was clearly recognized as a universal right in the 1944 Declaration of Philadelphia which reaffirmed the mission and status of the International Labor Organization. Indeed, the Philadelphia Declaration is considered to have provided inspiration and guidance for the later Universal Declaration.

It is ironic, therefore, that in some countries (of which Canada and the United States are notable) the right to organize and bargain collectively is not accorded the status of other human rights but is instead treated as a statutory right that may be expanded or contracted with the change of political regimes (Compa 2000, Atleson 2006, Adams 2006). Since the right to organize and bargain collectively is less well established than other labor rights, the initial task of this article will be to review the rationale for including it as a fundamental human right.

THE HUMAN RIGHTS CHARACTER OF COLLECTIVE BARGAINING AS THE MAINIFESTATION OF FREEDOM OF ASSOCIATION IN THE REALM OF EMPLOYMENT

To understand why the right to associate and to bargain collectively one's conditions of employment is heralded as a human right one must review the development of modern political and economic institutions.

Labor rights are intricately bound up with property rights. During the industrial revolution of the 18th and 19th centuries the convention became generally established that capitalist entrepreneurs, those who supplied the capital and initiated enterprise, owned the final product of the production process. A labor contract system came into being under which individual workers sold or hired their labor to the capitalist in return for wages (Atiyah 1985). Although by convention the entrepreneur "owned" the final product, by about 1800 it was generally conceded that the primary ingredient transforming raw materials to more valuable products was labor (Abrahamsson and Broström 1980). According to that theory, if one started with a tree and finished with a chair the value of the wood would have increased primarily because labor had been "mixed in" to the final product[3].

In the course of the industrial revolution, feudal norms that gave peasants rights to remain on the land and receive a sufficient amount of the product to feed, clothe and house their family broke down. Free labor was on its own, and, although many entrepreneurs adopted paternalistic policies, their only fundamental responsibility was to fulfill the wage contract. Since individual workers had bargaining power much inferior to that of the capitalists the wage bargain commonly resulted in conditions of poverty and insecurity (Abrahamsson and Broström 1980).

It was out of these conditions that "the labor movement" emerged. Spontaneous demonstrations, riots, and political and social movements of free laborers became a common and growing phenomenon in the 19th century. The dominant stream of this movement had two major objectives – democracy and socialism (Adams 1995). Democracy in the political sphere would come to mean government elected by and responsible to the governed (Therborn 1977). Socialism meant that the productive capacity of society would be owned by the state in the name of the people and, instead of being a vehicle for producing profit for capitalists, would be managed to the benefit of all.

The labor movement's goal of democracy, defined as a vote for all adults regardless of sex, wealth or level of education would, by the late 20th century, become the norm (Therborn 1977). Forms of state socialism were tried in Russia, Eastern Europe and parts of Asia and Latin America but by the end of the 20th century most had been judged failed experiments.

In Western Europe national settlements between labor and capital were worked out in most countries (Adams 1995). In the most common form of these settlements, labor

recognized that capital had the right to organize and direct production, the right to ownership of the product and the right to make a profit. In turn, capital recognized the right of labor to associate and to negotiate collectively through representatives of its own choosing the terms of its contract as well as the right at the national level to co-decide with capital and the state economic and social policy. Labor and Capital were said to have become Social Partners.

No such agreement was achieved in the United States or Canada or in most other countries. Nevertheless, operating through the aegis of the International Labor Organization, a similar global "settlement" came about when labor, business and government representatives at the ILO's Annual Labor Conference came to agreement about that organization's Freedom of Association and Collective Bargaining conventions. Since then the principles in those conventions have been endorsed by nearly all of the world's nations and have been actively promoted by the ILO. In short, according to ILO standards, labor has the right to organize and bargain collectively its terms and conditions of work and the right to participate in the making and administration of economic and social policy.

Whether these standards, even if fully honored (which is hardly the case in the majority of the world's nations) provides workers with the human rights to which they are entitled is still problematic. There are at least two relevant issues that arise. First, the right to organize and bargain collectively is commonly interpreted to imply a right to refrain from organizing and bargaining collectively thus legitimizing the absence of collective representation (White 1998). Secondly, some writers are of the opinion that the convention that legitimizes the authority of capital to organize and direct production and to own the result of the production process offends labor's fundamental human rights. To these writers, for workers' rights to be fully honored it is necessary to go beyond collective bargaining to worker control of economic enterprise (Gewirth 1996, Ellerman 1992, 2005, Gould 1988).

The right to refrain from bargaining collectively is explicitly included in the National Labor Relations Act in the United States and is implicitly accepted in practice in several nations and in the writings of many labor relations experts. Nevertheless, I have argued that that interpretation is incorrect (Adams 2003). The basis of this widespread acceptance is, apparently, the established human right of all people to associate and to refrain from associating (see, e.g., Leader 1992). The logic of the right to refrain is perhaps best seen when applied to religion. In a predominantly Catholic nation, one has a human right to be a Catholic but also a human right to profess another faith or no faith at all. The same logic is often applied to the right to join a trade union or refrain from joining a trade union.

Since collective bargaining is intimately associated with trade unionism it is easy to conclude that the right to refrain from joining a union incorporates the right to refrain from bargaining collectively. But, looking at the issues from a human rights perspective, it is critical to separate the two rights because the issues that one must consider are quite different in the two cases. That they may be separated in practice is demonstrated by the

situation in several European countries where nearly everyone is covered by collectively negotiated agreements but where a large percent of people are not union members (Visser 2006). Commonly, the unions accorded the right to negotiate are those designated "most representative" in the relevant bargaining situation (Adams 1995).

The argument for separating the two issues may be stated as follows: whereas the right to join or refrain from joining an association enhances freedom, refraining from collective bargaining undermines freedom, democracy and human dignity. As Gewirth notes, in the enterprise without workplace representation:

> "The employer…gives orders and the workers must carry them out, on pain of dismissal; these orders pertain to what the workers are to do, how they are to do it, and so forth…the very fact that the workers are hired or rented by an employer to do his bidding removes from them a certain kind of autonomy or responsibility; even if they have voluntarily agreed to this, they are his instruments, required to do his bidding. Thus the situation of workers in a widespread kind of capitalistic economy is marked by a serious curtailment of their freedom." (Gewirth 266).

In short, the employer purchases from the worker agreement to forgo autonomy, responsibility and freedom, qualities without which dignity is compromised.

The common response of defenders of the status-quo is that the conditions are not simply imposed but are instead individually negotiated by the worker and the employer (Alchian and Demsetz 1972 noted in Gewirth 1996). The problem here is that bargaining power of the typical worker is much inferior to that of the typical employer with the result that the bargain that is offered is commonly one of "take it or leave it." Moreover, in an enterprise of any size a large range of conditions such as the wage-payment system and the pension plan, are collectively applied and thus are not amenable to individual negotiation (Adams 2003). Since the achievement of a reasonable standard of living is dependent on employment the typical worker has little alternative but to accept the bargain offered and thus to compromise his/her dignity and freedom.

It might be argued that, despite the disparity of power, the value of freedom means that the worker must be free to accept such a proposition. In some cases, however, respect for human rights requires that apparent freedoms be curtailed. Thus, human beings cannot voluntarily sell themselves into slavery because the condition of slavery denies one of one's basic humanity (Ellerman 2005). The parallels between capitalist employment and voluntary slavery are strong. In both systems one places oneself under the control of another for a price, a condition antithetical to the human right to dignity of person. As a result, labor rights advocates in the 19th century referred to employment under unilateral employer control as "wage slavery," a status that is as ethically objectionable as chattel slavery whether coerced or voluntarily entered into. (Ellerman 1992, 1999, Stanley 1998). Although it might be argued that in the employment situation, the individual is free to withdraw from the arrangement whereas the slave is not, in an economic system where the alternative employment opportunities require the placing of oneself under the unilateral control of another, systemically the difference disappears[4]. But more

fundamentally, as Sheldon Leader expressed it in a note to me, if "it is intrinsically wrong for X to agree to be the instrument of Y" then whether or not the agreement is free and voluntary is irrelevant. His argument is more fully developed in Leader 2006.

Within the international system, the ILO has been designated the appropriate agency for working out the concrete meaning of the right to organize and bargain collectively (Wheeler 1994, Macklem 2005). Both of the Covenants that comprise the International Bill of Rights make reference to the ILO and its relevant instruments. By means of the adoption of conventions and recommendations and by way of the jurisprudence developed by its oversight committees and especially the Committee on Freedom of Association, the ILO has established that the right encompasses all of the following attributes (Gernigon, Odero and Guido 2000, Adams 2006b)[5]:

1. The right to form or join a workers' organization.
2. The right to select leaders of one's own choosing
3. The right of the workers' organizations to develop their own programs
4. The right, through the workers' organization, to make collective representations to one's employer
5. The duty of the employer in such circumstances to recognize the workers' organization and to bargain in good faith with it with a view towards arriving at a collective agreement.
6. In the event of an impasse, the right of the workers to strike.

According to ILO principles and norms, states have a positive responsibility to protect and promote this concept of collective bargaining with the object of it being enjoyed by the largest possible number of workers. States also have a positive responsibility to consult with worker organizations and employer organizations over economic and social policy with a view towards reaching a consensus on issues of mutual concern (ILO 2004).

Unfortunately, since the global recession of the early 1980s and the advent of the era of globalization collective bargaining has been in retreat. Of particular note is the situation in several highly advanced countries where other human rights are actively promoted. In Canada governments have repeatedly and consciously offended international norms by overriding collective agreements and by unilaterally imposing conditions on public sector workers (Fudge and Brewin 2005). In the private sector employers actively oppose the exercise of the right to organize and bargain collectively while governments remain neutral. (Adams 2006). In the United States, the federal government has turned a blind eye to widespread employer offenses against worker rights with the result that the practice of unionization and collective bargaining has fallen substantially from already very low levels. In blatant disregard of international standards, some state governments forbid public sector employees from organizing and bargaining collectively (Compa 2000). In Australia and New Zealand governments have begun to encourage individual over collective agreements and in the United Kingdom the government abandoned a policy of collective bargaining encouragement that had been supported by regimes of both the right and the left for most of the 20th century (Peetz 2002). Although union

membership has fallen in continental Europe, collective bargaining coverage has generally held up (Visser 2006). Contrary to the general pattern, the Social Partnership model promoted by the ILO has been embraced generally, at least in principle, in much of Eastern Europe subsequent to the demise of one-party communism[6]. Against the general trend, South Africa has also instituted a vibrant collective bargaining system after the demise of apartheid (ILO 2004).

Below we consider mechanisms through which greater compliance with both the right to organize and bargain collectively as well as other worker rights might be achieved. Before we do so, however, it is first necessary to consider the argument by some writers (Pateman 1970, Gould 1988, Gewirth 1996) that economic democracy, a more radical revision of contemporary institutions than universal collective bargaining, is the preferred way to protect and promote worker dignity and freedom[7].

Economic democracy is defined by some writers as a system of enterprise governance under which those who direct the enterprise have essentially the same relation to the work force as democratic government has to the electorate. As under political democracy, the enterprise's managers are chosen by and are responsible to the workers. The human rights object of economic democracy is the same as that of collective bargaining – to secure the dignity of the worker by ensuring that he or she is not the victim of arbitrary control. It is certainly a more robust form of industrial democracy than is collective bargaining qua Social Partnership in which democracy is practiced in the worker organization but with regard to conditions and organization of work the right that is secured is the right to negotiate not the right to control. Under collective bargaining management retains the right to control subject to the terms of the negotiated agreement.

Economic democracy reduces the property right of capitalists to that of receiving a return on their investment. Capital is placed in the "take it or leave it" position of the worker under prevailing conventions. Investors may retain their investment in the firm or cash out and invest it elsewhere. They have, however, no right to a say over the organization and direction of the firm, or more precisely, the actions of the people who bring the firm to life (Ellerman 1999). One of the justifications for this form of industrial democracy is the logic of the labor theory of value which holds that labor rights supersede property rights because labor is the ingredient that adds value to all commodities including capital (Abrahamsson and Broström 1980). That theory is challenged by the, currently dominant, subjective theory of value which holds that the sole determinant of the value of any commodity is supply and demand.

Ellerman (2005) takes a different tack. He argues that citizens in a democracy cannot alienate their labor because it is technically impossible to separate labor and person. Nor can workers alienate their responsibility for their actions to the employer which Ellerman illustrates by demonstrating that where an employee commits a crime under the order of the employer he or she is still held responsible. He argues that a bogus legal fiction, much like the chattel state of the wife under 19th century "couverture" principles, has been instituted that permits transferring legal liability for (non-criminal) production activities as well as legal entitlement to the proceeds to the employer from the worker or the

workers' representatives. Thus both individual contracting as well as collective bargaining under current conventions are inconsistent with the principles of democracy and the modern liberal state[8].

A version of economic democracy was practiced in Communist Yugoslavia but was disbanded when a multi-party democracy was established in Yugoslavia's successor states (Cohen, 1995). Although some experiments along these lines, of which the Mondragon system in Spain is probably the most famous, have been carried out in liberal democratic countries, it has never achieved the political support to be put in place as the universal system (Dow 2003). When schemes have been proposed that would result in the universal application of economic democracy, such as the Wage Earner Fund scheme that was hotly debated in Sweden for several years, they have met with intense opposition by capital and have not been able to win the support of the electorate (Engelen 2004).

BRINGING ABOUT COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS NORMS

The range of rights identified in the International Bill of Rights that might be considered worker rights is quite large. The five "core labor rights" identified in the International Labor Organization's 1998 Declaration of Fundamental Principles and Rights at Work as human rights are all mentioned in either or both of the Covenants making up the Bill. Those five rights are the "negative" rights to freedom from discrimination, child labor and slavery and other forms of forced labor and the positive rights to freedom of association and the right to organize and bargain collectively. Although the last two rights are frequently combined and presented as a single right, the result produces ambiguity and conflict about their meaning and the duties of states and other actors in complying with them and thus they are enumerated here as five rights.

Additional rights that are identified in the International Bill of Rights are the right to remuneration that provides fair wages and a decent living, safe and healthy working conditions, paid holidays and reasonable working hours, the right to social security, the right of mothers to paid leave during pregnancy and the right to strike.

Other rights that might be considered worker rights in appropriate circumstances are freedom from cruel, inhuman or degrading treatment or punishment and freedom from being imprisoned for failing to fulfill a contractual obligation. Both of these freedoms are often offended in conjunction with forced and child labor. The right to peaceful assembly is closely associated with the right to strike. The range of labor standards, a category of entitlement less fundamental than human rights, established by the ILO is even larger (Leary 1997).

As noted above, the main agency promoting compliance with international labor norms is the ILO. Its major instruments are conventions and recommendations that are adopted at its annual labor conference attended by representatives of labor, business and governments. Member states are required to review conventions with a view towards ratifying them. If ratified they become legally binding domestically. States are also

expected to review the substance of recommendations with a view towards incorporating their principles into domestic legislation.

The ILO has a Committee of Experts on the Application of Conventions and Recommendations that regularly reviews the state of convention ratifications and hears complaints that ratified conventions are being infringed and issues opinions. The resulting body of jurisprudence provides states with detailed guidance on what must be done to comply with international labor law. In addition, there is also a Committee on Freedom of Association, which draws its authority directly from the constitution making its decisions applicable to all member states whether or not they have ratified the relevant conventions. Its jurisprudence closely parallels that of the Committee of Experts.

Although there is a clause in its constitution (Article 33) that provides the ILO with the authority to use whatever measures are deemed necessary to bring about compliance with ratified conventions and with Freedom of Association standards, historically the organization has refrained from using hard sanctions. It has used its Article 33 power in only one case, that of forced labor in Myannmar. Despite its dependence on persuasion and shaming rather than force, the ILO's supervisory machinery is considered to be among the best in the UN system (Leary 1996). Like other international institutions it is, nevertheless, frequently accused of having "no teeth." (Maupain 2005).

The ILO's 1998 Declaration of Fundamental Principles and Rights at Work that identified five core labor rights to be human rights also identified seven (with one more added later) conventions relevant to those rights. The Declaration set up a new promotional process in which the global status of one of the five rights would be reviewed annually with a view towards developing means of making it more effective. Subsequent to the Declaration the International Labor Office put into action a Decent Work program that had as major objectives encouraging ratification of the core conventions and improving compliance with the terms of those conventions. One result was a significant increase in ratifications (Bellace 2001, Freeman 2005, ILO 2004).

The Declaration was the result of a number of events. In 1995 the UN's World Summit on Social Development had heralded the human rights character of the core labor rights and had encouraged the ILO to make a new push to win compliance with them.

In 1996 the World Trade Organization came into being and was urged by labor rights advocates to incorporate a "social clause" that would require member states to honor international labor standards as a condition of membership. Asserting a lack of expertise to deal with such issues, the WTO Ministers announced their support for core labor rights but referred the issue to the ILO. (Bureau of Workers' Activities 2000).

ILO standards are designed to apply to states but efforts have also been made to translate those standards into norms for corporations. Indeed, the ILO was one of the first organizations to attempt this when it developed its Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy in 1977. The Organization for Economic Cooperation and Development (OECD), composed primarily of economically

advanced countries, first adopted a set of voluntary Guidelines for Multinational Enterprise in 1976. During the 1980s these instruments fell into disuse but in recent years they have been renewed and revitalized. Both the OECD (2000) and the ILO (1995) have updated their guidelines. The OECD has strengthened them somewhat by providing for a National Contact Point in each country to which complaints of non-compliance may be made. These agencies may attempt to convince the offending company to change its behavior but the Guidelines are still only voluntary (Clapham 2006).

In 2000 the Secretary General of the United Nations announced the initiation of a Global Compact under which multinational corporations would, again voluntarily, endorse a set of environmental and labor standards. With regard to labor the Compact incorporates the ILO's core labor standards. Although voluntary, this initiative placed new moral and political pressure directly on corporations to ensure practices that were compliant with international standards. Initially about 50 corporations signed on to the Compact. That number has now grown to several thousands (Clapham 2006)[9].

In more recent years there has been a move towards more compulsory regulations. In 2003, the UN's Human Rights Commission set up a Sub-Commission on the Promotion and Protection of Human Rights composed of experts from around the world[10]. Its report (Sub-Commission on the Promotion and Protection of Human Rights, 2003), documenting the legal responsibilities of business to comply with human rights standards, produced considerable controversy. Employer spokespersons insisted that legal responsibility for labor standards applied to States but not to business whereas many NGOs insisted that the time had come to hold business to account for its actions. To address the controversy, a Special Representation was appointed by the head of the UN to recommend a solution. In 2006 he issued an interim report stating that the Sub-Commission had engaged in "doctrinal excesses" giving rise to considerable speculation that the UN Norms would not be endorsed by the full Commission rendering their legal status dubious (Ruggie 2006). A final report is due in 2007. The real issue here is whether or not multi-national enterprise accepts moral and political responsibility for human rights violations committed by its units and supply chain. Skeptics fear that "no legal responsibility" means that firms duplicitously sign on to the Global Compact as a public relations gesture with no intention of making serious efforts to live up to the principles it embodies (Baker 2004, Bendell 2004, Adams 2006b).

As part of the international system, the IMF and World Bank acted promptly to incorporate child labor, forced labor and employment equity into their decisions[11]. However, both were slow to embrace trade union rights. Nevertheless, after an extensive investigation of the economic effects of collective bargaining (Aidt and Tzannotos 2002), the World Bank's International Financial Corporation in 2006 issued a new set of standards for loan recipients that required them to comply with ILO standards. With regard to union recognition, in its Performance Standards on Social and Environmental Sustainability the IFC states that:

> clients "will not discourage workers from forming or joining workers' organizations of their choosing or from bargaining collectively, and will not

> discriminate or retaliate against workers who participate, or seek to participate, in such organizations or bargaining collectively. Clients will engage with such worker representatives."

This is strong language that, if fairly applied, will result in the denial of loans to many transnational companies who publicly pursue contrary policies. Notorious, but certainly not alone, among these organizations is the world's largest corporation - Wal-Mart - whose "Manager's Toolbox to Remaining Union-Free" was designed to confront and defeat union organizing efforts (Adams 2005).

Non-governmental organizations have also become active in promoting compliance with international standards. Under pressure from NGOs pursuing an "anti-sweatshop" agenda, multi-national corporations from the early 1990s began to adopt corporate codes of conduct under which they declared their intention "voluntarily" to abide by standards identified in the particular code. These codes most commonly committed the companies to refrain from using child and forced labor and from discriminating but one survey found that the large majority made no reference to freedom of association and the right to organize and bargain collectively (Urminsky 2002)[12]. NGOs were not satisfied with the voluntary declarations but, instead, pushed the firms to submit to outside, neutral investigation of their practices and to publish relevant data that might be verified by outside investigators. This pressure gave rise to a rapidly growing number of independent organizations who took as their task the formulation of codes based on international environmental and labor standards.

One notable private approach is that of New York based Social Accountability International. It has set up a social certification program based on the highly successful ISO 9000 quality management program. SA8000's labor requirements are based on ILO standards. After independent verification by professional firms, SAI issues a certificate that indicates that particular production units of the company seeking certification comply with its standards. To date over 700 units have been certified (http://www.sa-intl.org/). At the time of this writing ISO itself was developing a code to provide guidelines on social responsibility but it will not engage in social responsibility certification (International Standards Organization 2006).

Another type of private organization focuses on particular types of goods. For example, in the United States the Apparel Industry Partnership was initiated by the Clinton Administration. One product of the effort was the establishment of the Fair Labor Association whose function is to certify relevant apparel firms in their entirety rather than units of firms like SAI (O'Rourke 2003). Accusing that organization of not being stringent enough and being controlled by corporations, United Students Against Sweatshops, a national organization in the United States that came into existence in the 1990s, set up the competing Workers' Rights Consortium with no corporate representation. Evaluations of these efforts have found that they are having a positive effect but that it is, at present, relatively marginal (Elliott and Freeman 2003).

Another outcome of NGO pressure is the Global Reporting Initiative. A multi-stakeholder effort, its mission is to provide a set of guidelines to allow organizations voluntarily to report on the economic, environmental and social dimensions of their activities, products and services so that workers, consumers and regulators will be able effectively to evaluate and compare their conduct. Founded in 1997, the GRI organization now works closely with the UN.

A different private approach to bring about compliance with international labor standards has to do with investment. The ethical mutual fund industry has been rapidly expanding although it still makes up only a small portion of all investments (Sturm and Badde 2001). Companies are screened regarding their practices and those found to be performing according to the screening agency's standards are included in the fund. Individual investors concerned with human rights issues may therefore invest consistent with their values. Large pension funds are also beginning to incorporate environment, social and governance (ESG) issues into their decisions. Many of them have begun to take a more active role at annual shareholder meetings pressuring companies to adopt socially responsible practices.

There are at least two distinctly different approaches to screening. The British-based FTSE-4-Good scheme requires that all companies meet minimum standards in order to be included. It incorporates the ILO's core labor standards. Initially to be listed in the index firms needed only demonstrate that they were complying with two of the core standards. However, from the outset the scheme's managers made it known that they intended to progressively increase requirements for inclusion thus accelerating pressure on firms to improve their standards. In order to be included all firms must now demonstrate commitment to comply with all ILO core standards and FTSE is moving towards requiring outside monitoring (www.ftse.com).

The main alternative approach is known as the "best in class" approach (Sturm and Badde 2001, Strandbereg 2005). Under this method there are no minimal requirements. Instead the corporations found to be among the leaders in its industry class is included in the fund. This is the approach used by most ethical mutual funds in the US. Many do have certain exclusions such as tobacco and nuclear power. Otherwise the best in class principle applies. As a result some firms known to openly offend certain labor standards such as active opposition to unions and collective bargaining are included in these funds. Thus, for example, Wal-Mart is held in the portfolios of some ethical funds despite its public stance against unionization and collective bargaining (Mitchell 2005)[13].

Socially responsible investing was recently given a major boost when the United Nations announced a new set of Principles for Responsible Investment that urge financial institutions to take ECG into consideration as a normal part of their activities (Ramstack 2006).

ASSESSMENT

Although a great deal of international activity focused on social, environment and governance issues has been taking place during the last two decades, technologies for measuring the impact of these efforts are still in the development stage.

Until recently, it was commonly thought that slavery had been eliminated. However, although classical, legal and public slavery has been legally banned in most of the world, practices tantamount to slave conditions continue. The ILO estimates that a minimum of 12.3 million people worldwide are victims of forced labor (ILO 2005). Although there are many variations – some of them based in history and cultural tradition - the most common victims are people in poverty and especially women, ethnic and tribal people. People with such traits often find themselves in agricultural and domestic debt bondage. Others are trafficked from their country of origin to more wealthy countries often illegally where, due to debt, fear of being reported to the authorities and not uncommonly threats of violence, they are exploited. Sex trafficking of women and of female children is a large part of the problem. In 2000 the UN adopted a Protocol on Trafficking and in 2001 the ILO initiated a Special Program on Forced Labor that has fostered research and other focused efforts to address particular problems. As a result of these and other efforts there is now more awareness of forced labor. But it is not clear that the practice is subsiding. Despite massive pressure exerted by the ILO and several industrialized countries including the US, forced labor in Myannmar (Burma) by village authorities and by the military has not been effectively ended (Maupain 2005). Without forcefully addressing the poverty, powerlessness and the inability of many developing countries to fund adequate enforcement efforts, making serious progress against forced labor globally will be difficult.

The exploitation of children also continues to be a problem in many parts of the world. In 2004, the ILO estimates that 218 million children were being exploited for their labor of which some 126 million were in jobs considered to be hazardous such as working in mines or with toxic chemicals. Among the most objectionable forms of child labor are those into which children are forced to engage in sex and drug trafficking and being compelled to act as soldiers. Nevertheless, progress against the exploitation of children is being made. In recent years intensive efforts by a range of international agencies have had positive results. The number of child laborers has fallen significantly and the decrease among those engaged in the worst forms has fallen even more steeply. As a result of these gains the ILO felt confident enough to entitled its latest report on the issue: "The End of Child Labor: Within Reach." (ILO 2006).

Women, visible minorities, aboriginal people and other groups have created movements that have produced a strong global norm against discrimination and have succeeded in having governments take action intended to eliminate it. Nevertheless, de facto and sometimes outright discrimination based on gender, race, aboriginal status, disability and other traits continues to exist and racial discrimination, according to the ILO, may actually be on the increase (ILO 2003).

New concerns have been raised about discrimination based on age, HIV/AIDS and sexual orientation. Although women have made substantial advances in several countries, on a

global basis being a woman is still a significant handicap in the world of work. Substantial gender wage gaps persist in many countries and women are more highly represented than are men in the least well-paid and least secure jobs.

Multiple discrimination – possessing several traits that attract discrimination - is a condition that locks people into chronic poverty. Although laws against discrimination are critical the ILO notes that they have failed to eliminate the practice. Among the needed remedies are improved enforcement, education, training and employment services and better data to monitor what is taking place. The ILO also notes that stronger labor organizations committed to and capable of not only negotiating improvements but also monitoring compliance would be a valuable asset in the campaign against discrimination. Unfortunately, victims of discrimination often experience strong opposition when they attempt to organize and bargain.

Perhaps the least well protected of the core labor rights is the right to organize and bargain collectively. Although the overwhelming majority of the nations of the world have either ratified the two relevant ILO Conventions (numbers 87 and 98) or have pledged to honor the “principles” underlying them, the limited available information suggests that “many workers feel that exercising their right to join a union poses risks to their employment and fear that collective bargaining representation will lead to conflicts.” (ILO 2004, p. 56). From the early 1980s union membership and collective bargaining coverage has fallen significantly.

In its 2004 document “Organizing for Social Justice” the ILO reports that a number of countries have responded favorably to its Decent Work campaign and have ratified the relevant conventions. It also reports on a number of technical efforts it has made to promote not only legislation but also better administration and more acceptance of these rights. Although the report concludes that, “on balance” the global picture is “encouraging,” in fact the most recent data on union membership indicate continuing decline in most of the surveyed countries including the US, UK, Australia, Japan, the European Union as a whole and several Eastern European countries (Visser 2006).

A better measure of compliance with international norms is collective bargaining coverage which indicates the number of people who enjoy workplace representation whether union members or not. Unfortunately, the ILO’s collective bargaining coverage data are for a single point in time and thus say nothing about the direction of change. Nevertheless, they do clearly indicate that the large majority of the world’s workers have no collective representation. Except for Europe, the norm is for a significant majority of working people to be excluded from employment decision-making. “The disturbing reality,” the ILO notes, “is that in many parts of the world and in a number of economic sectors, freedom of association and the right to collective bargaining are not respected.” (ILO 2004, p 21). Noticeably absent from the ILO’s current work is any indication of urgency with respect to the declining respect for collective labor rights in highly developed countries such as Canada and the US who have the wealth and administrative capacity to quickly comply but not the political will.

CONCLUSION

At the international level those expert in labor and human rights issues have reached a strong consensus that core labor rights are fundamental human rights on which all of the world's people should be able to rely. In addition the human rights character of core labor rights has a strong foundation in philosophy and religious theory. Not only states but also individuals and corporations and other units of society have a moral and political responsibility to honor those rights. As a result of the activity that has been taking place over the last few decades that consensus is being diffused into society more generally. But there is still a long road to travel before aspiration and reality align.

References

Abouharb, M. Rodwan and David L. Cingranelli, Human Rights and Structural Adjustment, The Impact of the World Bank and IMF. Cambridge, Cambridge University Press, forthcoming 2007.

Abrahamsson, Bengt and Anders Broström, The Rights of Labor, London, Sage Publications, 1980.

Adams, Roy J., Industrial Relations Under Liberal Democracy, Columbia, University of South Carolina Press, 1995.

Adams, Roy J., "On the Convergence of Labour Rights and Human Rights," Industrial Relations/Relations Industrielles, vol. 56, No. 1, 2001, pp. 199-203.

Adams, Roy J., "Voice for All: Why the Right to Refrain from Collective Bargaining is no Right at All," in Gross, James A. ed., Workers' Rights as Human Rights, Ithaca, ILR Press, 2003

Adams, Roy J., "Organizing Walmart, the Canadian Campaign," Just Labor, vol. 6 and 7, Autumn 2005, pp. 1-11.

Adams, Roy J., Labor Left Out, Canada's Failure to Protect and Promote Collective Bargaining as a Human Right, Ottawa, Canadian Centre for Policy Alternatives, 2006.

Adams, Roy J., "America's Union-Free Movement in Light of International Human Rights Standards," in Block, Richard N., Sheldon Friedman, Michelle Kaminski and Andy Levin, eds., Justice on the Job, Perspectives on the Erosion of Collective Bargaining in the United States, Kalamazoo, Michigan, W.E. Upjohn Institute, 2006b.

Aidt, T. and Z. Tzannatos: Unions and Collective Bargaining: Economic effects in a Global Environment (Washington, DC, World Bank, 2002).

Alchian, Armen and Harold Demsetz, "Production, Information Costs, and Economic Organization," American Economic Review, vol. 62, No. 5, 1972. 777-95.

Atiyah, P.S., The Rise and Fall of Freedom of Contract, Oxford, Oxford University Press, 1985.

Atleson, James, "International Labor Rights and North American Law," in Howard-Hassmann, Rhoda and Claude E. Welch, Jr., eds., Economic Rights in Canada and the United States, Philadelphia, University of Pennsylvania Press, 2006.

Baker, Jim, "Labor and the Global Compact, The Early Days," in Malcolm McIntosh, Sandra Waddock, and George Kell, eds.,Learning to Talk: Corporate Citizenship and the Development of the U.N. Global Compact, Sheffield, U.K., Greenleaf Publishers, 2004. 168-182.

Bellace, Janice, "The ILO Declaration of Fundamental Principles and Rights at Work." International Journal of Comparative Labor Law and Industrial Relations, vol. 17, no. 3 Autumn 2001.

Bendell, Jem, "Flags of Inconvenience? The Global Compact and the future of the United Nations, in McIntosh, et al., Learning to Talk: Corporate Citizenship and the Development of the UN Global Compact, Sheffield, UK, Greenleaf, 2004. 146-167.

Bureau for Workers' Activities, ILO Declaration on Principles: A New Instrument to Promote Fundamental Rights," Geneva, ILO, 2000.

Clapham, Andrew, Human Rights Obligations of Non-State Actors, Oxford, Oxford University Press, 2006.

Cohen, Lenard J. Broken Bonds: Yugoslavia's Disintegration and Balkan Politics in Transition. Boulder, Colo.: Westview, 1995.

Compa, Lance, Unfair Advantage, Workers' Freedom of Association in the United States Under International Human Rights Standards, New York, Human Rights Watch, 2000.

Dow, Gregory, Governing the Firm: Workers' Control in Theory and Practice, Cambridge, Cambridge University Press, 2003.

Ellerman, David, Property and Contract in Economics, the Case for Economic Democracy, Oxford, Blackwell, 1992.

Ellerman, David, "The Democratic Firm: An Argument Based on Ordinary Jurisprudence, Journal of Business Ethics, Vol. 21, Nos. 2-3, September 1999, 111-124

Elliott, Kimberly Ann and Richard B. Freeman, Can Labor Standards Improve Under Globalization? Washington, D.C., Institute of International Economics, 2003.

Engelen, Ewald, "The Rise and Fall of the Swedish Wage Earner Funds: A Cautionary Tale," Paper presented at a conference on Using Pensions for Social Control of Capitalist Investment, The Havens Centre, University of Wisconsin-Madison, June 2004. Available at website: http://www.havenscenter.org/real_utopias/rup2004.htm.

Ewing, Keith, International Trade Union Rights for the New Millenium, London, Institute of Emploment Rights, 2000.

Freeman, Anthony G., "ILO: A Case Study in Mainstreaming Human Rights," in Michael Windfuhr, ed., Beyond the Nation State: Human Rights in Times of Globalization, Uppsala, Global Publications Foundation, 2005.

Fudge, Derek and John Brewin, Collective Bargaining in Canada, Human Right or Canadian Illusion? Black Point, Nova Scotia, Fernwood Publishing, 2005.

Gernigon, B., A. Odero and H. Guido, "ILO Principles Concerning Collective Bargaining," International Labor Review, vol. 139, no. 1, 2000. 33-66.

Gewirth, Alan, The Community of Rights, Chicago, University of Chicago Press, 1996.

Gould, Carol C., Rethinking Democracy, Freedom and Social Cooperation in Politics, Economy, and Society, Cambridge, Cambridge University Press, 1988.

Guttman, Amy, "Freedom of Association: An Introductory Essay," in Guttman, Amy, Freedom of Association, Princeton, NJ, Princeton University Press, 1998.

Howard, Rhoda E., and Jack Donnelly, International Handbook of Human Rights, Westport, Connecticut, Greenwood Press, 1987.

Hannum, Hurst, "Human Rights," in Joyner, Christopher C., ed., The United Nations and International Law, Cambridge, Cambridge University Press, 1997. 131-154.

International Financial Corporation, Performance Standards on Social and Environmental Sustainability, Washington, D.C., IFC, 2006.

International Labor Office, Organizing for Social Justice, Geneva, ILO, 2004.

International Labor Office, A Global Alliance Against Forced Labor, Geneva, ILO, 2005.

International Labor Office, Time for Equality at Work, Geneva, ILO, 2003.

International Labor Office, The End of Child Labor: Within Reach, Geneva, ILO 2006

International Standards Organization, ISO and Social Responsibility, Geneva, ISO, 2006

Leader, Sheldon, Freedom of Association, London, Yale University Press, 1992.

Leader, S.L., "Inflating Consent, Inflating Function, and Inserting Human Rights", in Human Rights and Capitalism in J. Dine and A. Fagan, eds., Edward Elgar Publishing Ltd, 2006, pp. 28-47.

Leary, Virginia, "Labor," in Joyner, Christopher C. ed., The United Nations and International Law, Cambridge, Cambridge University Press, 1997. 208-231.

Leary, Virginia, "The Paradox of Workers' Rights as Human Rights," in Compa, Lance and Stephen Diamond, eds., Human Rights, Labor Rights and International Trade, Philadelphia, University of Pennsylvania Press, 1996.

Locke, John, An Essay Concerning Human Understanding, 1689 (available on line at http://www.ilt.columbia.edu/publications/digitext.html).

Macklem, Patrick, "The Right to Bargain Collectively in International Law: Workers' right, Human Right, International Right? in Alston 2005.

Mitchell, Jeannine, "Social Investing Can Create Corporate Change," The Straight Goods, February 3, 2005.

Maupain, Francis, "Is the ILO Effective in Upholding Workers' Rights?: Reflections on the Myannmar Experience," in Alston, Philip, ed., Labor Rights as Human Rights, Oxford, Oxford University Press, 2005.

O'Rourke, Dara, "Outsourcing Regulation: Analyzing Nongovernmental Systems of Labor Standards and Monitoring," The Policy Studies Journal, vol. 31, No. 1, 2003. 1-29.

Peetz, D., "Decollectivist Strategies in Oceania", Relations Industrielles/Industrial Relations, Vol. 57, no. 2, Spring 2002, 252-281.

Pateman, Carole, Participation and Democratic Theory, Cambridge, Cambridge University Press, 1970.

Paust, Jordan J., "Human Rights Responsibilities of Private Corporations," Vanderbilt Journal of Transnational Law vol. 35, 2002. 801-825.

Ramstack, Tom, "U.N. initiative pushes morality in investments," The Washington Times, May 10, 2006

Rubin, Neville, Code of International Labor Law, Cambridge, Cambridge University Press, 2005.

Ruggie, John, "Promotion and Protection of Human Rights, Interim Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises," United Nations Commission on Human Rights, 22 February 2006.
(on line at http://www.globalpolicy.org/reform/business/2006/02srsgreport.htm)

Stanley, Amy Dru, From Bondage to Contract, Cambridge, Cambridge University Press, 1998.

Strandberg, Coro, The Future of Socially Responsible Investment, Vancouver, Vancity Credit Union, 2005.

Sturm, Andreas and Michael Badde, Socially Responsible Investment by Pension Funds: A State-of-the-knowledge Report, Geneva, International Labor Organization, 2001.

Symonides, Janusz, Human Rights: Concept and Standards, Paris, UNESCO, 2000.

Sub-Commission on the Promotion and Protection of Human Rights, "Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights," Geneva, U.N. Commission on Human Rights, 26 August 2003 (E/CN.4/Sub.2/2003/12/Rev.2).

Therborn, Göran, "The Rule of Capital and the Rise of Democracy," New Left Review, vol 103, 1977, 3-41.

Urminsky, Michael, "Self-Regulation in the Workplace: Codes of Conduct, Social Labelling and Socially Responsible Investment," Geneva, ILO, 2002

Visser, Jelle, "Union Membership Statistics in 24 Countries," Monthly Labor Review, vol. 129, no. 1, January, 2006, 38-49.

Wal-Mart, A Manager's Toolbox to Remaining Union Free, n.d. (available on line at www.ufcw.org).

Wheeler, Hoyt N., "Employee Rights as Human Rights." Bulletin of Comparative Labour Relations, vol. 28, pp. 9-18, 1994.

White, Stuart, "Trade Unionism in the Liberal State," in Guttman, Amy, Freedom of Association, Princeton, NJ, Princeton University Press, 1998.

[1] I would like to thank Michael Urminsky, David Cingranelli, David Ellerman and Jim Atleson for their comments on an earlier version of this article.
[2] Politically and morally the "obligation erga omnes" standard is unquestionable. However, its legal effect on private actors is currently the subject of international debate and controversy. See, e.g., Clapham 2006, Ruggie 2006.
[3] This notion, attributed to John Locke, is noted by Abrahamsson and Brostöm 1980)
[4] Ellerman (2005) argues that this consideration is irrelevant. Entering into a contract of subjection is equally problematic both when the contract is long-term and short-term.
[5] This list does not exhaust the trade union rights of workers. For example, ILO principles require that trade union representatives not be disadvantaged because of their union work. For a more comprehensive list of trade union rights see Ewing 2000
[6] According to the ILO tripartite dialogue at the national level has been more firmly introduced than has collective bargaining at the firm and industry level. Collective bargaining coverage rates have not yet moved to Western European levels in many Central and East European countries but in most rates are already comparable to those in much of the world. See http://www-ilo-mirror.cornell.edu/public/english/bureau/inf/features/05/socialdial.htm.
[7] Gewirth does leave open the possibility that collective bargaining under certain circumstances might be an adequate means of securing worker freedom and dignity. After noting that workers' control results in a loss of freedom for capitalists he goes on to say "This is not necessarily to say that the freedom of capitalists entrepreneurs must be completely rejected, but short of a system of economic democracy, it must at least be curbed or moderated, as is done in social-democratic countries by labor unions or codetermination." (p 169).
[8] Ellerman confirmed this interpretation in a personal e-mail message sent to the author on May 22, 2006.
[9] The Global Compact has not been entirely free of criticism. Several NGOs have expressed concerns that several corporations known to have violated the principles have signed on to the Compact as a public relations ploy and that the UN's engagement with such firms might compromise its independence and integrity (Bendell 2004).
[10] In 2006 the Human Rights Commission was converted to a Human Rights Council
[11] Recent research on the loan requirements of the IMF and World Bank indicates that they have had a significant detrimental impact on social welfare in the countries where they have been imposed. Pressure by NGOs has caused these institutions to change many of their practices. See Abouharb and Cingranelli 2006.
[12] Of 258 codes investigated only 40 made reference to both freedom of association and the right to bargain collectively.
[13] A telephone interview with a staff member of Canadian-based Ethical Mutual Funds in June 2006 indicated that their strategy is to confront Wal-Mart at shareholder meetings and other forums rather than divesting the company's stock.