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BRINGING THE WORKERS' RIGHTS BACK IN? THE DISCOURSES AND POLITICS OF FORTIFYING CORE LABOUR STANDARDS THROUGH A LABOUR- TRADE LINKAGE

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The Discourses and Politics of fortifying Core Labour Standards
through a Labour-Trade Linkage

Philosophiae Doctor (PhD) Thesis

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TIL MATHIAS & GABRIEL

(Alt har sin pris)

BRINGING THE WORKERS' RIGHTS BACK IN?

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ABSTRACT

Throughout the 1990s the *International Confederation of Free Trade Unions* (ICFTU) conducted a campaign to convince states to institute a *linkage* between the international labour and trade regimes (also dubbed a *social clause*): Trading rights granted to countries *qua* members of the World Trade Organisation (WTO) would be made conditional on their compliance with International Labour Organisation (ILO) core labour standards – i.e., their upholding of the rights that enable workers ‘to claim a fair share of the wealth they have helped to generate’. The proposal was premised on the claim that increasing global competition confers commercial advantages on producers that undercut labour standards, and that this incites a regulatory race to the bottom. With a labour-trade linkage, however, such undercutting would become a commercial liability and presumably unleash a race to the acceptable.

While the campaign was the most wide-ranging in the history of the international union movement, it won limited support: Few trade unions or civil society organisations in the developing world rallied behind it, and developing country governments resolutely refused to make the proposal part of the Doha Round negotiations mandate. However, the question is not if the linkage proposal will return to the international debate, but *when* and on *whose terms*.

The present thesis explores whether and how a labour-trade linkage may help to tackle the challenges that confront labour in developing countries. In so doing, it privileges the viewpoints of activists in Brazil and South Africa. It furthermore pays particular attention to

the challenge of realising agricultural workers' *freedom of association* and *right to collective bargaining* (i.e., 'trade union rights') in the two countries.

The study is organised around three key research questions: First, why were certain influential workers' rights activists lukewarm towards, if not actively opposed to the linkage idea during the 1990s? Second, to what extent are the trade union rights of South African and Brazilian agricultural workers realised, and how may the present situation be accounted for? Third, what would be the properties of a linkage helping to tackle the challenges that confront Brazilian and South African labour, including in agriculture, and to what extent can a linkage thus conceived be accommodated by the international trade and labour regimes?

With regards to the first question, the main finding is that previous attempts at gauging the linkage debate as a showdown between a *liberalist* and an *interventionist* discourse ignores that the strength and sources of linkage resistance owed a lot to a pervasive *counter-hegemonic* discourse. This brings into view the principled and practical problems that would follow if labour rights were to be safeguarded by the fair competition logic of WTO.

As to the second question, the study finds that agricultural workers, in Brazil and South Africa alike, do not organise themselves to any considerable extent, nor are they in a position to meaningfully affect the terms and conditions of employment through collective bargaining. However, the respective case studies highlight quite different reasons for such poor trade union rights realisation.

In the case of Brazil, a corporatist labour relations system in conflict with the relevant ILO conventions plays a considerable role: Significantly, legislation prescribes union monopoly representation in predetermined occupational categories, and this forces agricultural wagedworkers to share trade unions with smallholders. This 'cohabitation' constitutes a significant obstacle to the organisation and collective bargaining of wagedworkers.

South Africa's pluralist labour relations system was borne out of the transition to democracy, is praised by the ILO and trade unionists alike, and the inability of agricultural workers to organise and press collective claims here is not readily attributable to legislation. The fundamental problem relates to enforcement: The system rests on the assumption that progressive labour legislation will suffice to cast rural unions in the role as effective custodians and enforcers of individual workers' freedom of association. But structural features of the agricultural sector collude with union ineptness to prevent this from happening. When individual workers' freedom of association is nevertheless taken to be the reserve of trade unions, that freedom is left *de facto* unprotected.

As regards to the third question, the thesis finds that a linkage helping to tackle the challenges that confront Brazilian and South African labour (i) should be part of a wider internationalist labour compromise that heeds not only the protection of rights but also of jobs in developing countries; (ii) should superimpose ILO rule on WTO (not the opposite); (iii) be premised on the use of targeted and positive trade measures; and (iv) should consider how to give traction to the trade union rights of presently unprotected or unorganised workers. The question of political will of governments notwithstanding, the major obstacles to a labour-trade linkage with such properties reside in the make-up of ILO – not WTO.

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LIST OF INDIVIDUAL PAPERS

Pahle, S (2010): ‘The rise and demise of the social clause proposal in the 1990s. Implications of a discourse theoretical reading’ *Labour History*, Vol. 51, No. 3, pp. 389-410.

— (2011): ‘Out of mind – out of sight? The troubled trade union rights of Brazil’s agricultural workers’

— (2011): ‘Stepchildren of liberation: South African farm workers’ elusive rights to organise and bargain collectively’.

— (2011): ‘Bringing the workers’ rights back in? The complexities of forging an internationalist labour-trade linkage’

1. INTRODUCTION AND OVERVIEW

Throughout the 1990s, the international trade union movement – spearheaded by the *International Confederation of Free Trade Unions*, ICFTU (recently reconstituted as the International Trade Union Confederation, ITUC) – conducted a campaign to convince states to institute a *linkage* between the global trade and labour regimes, often referred to as a *social clause*. According to this proposal, a state failing to comply with its core labour standards obligations *qua* member of the International Labour Organisation (ILO) could lose the trading rights granted to it by other states *qua* member of the World Trade Organisation (WTO).

ICFTU's effort was premised on two key assumptions: First, global trade integration under WTO facilitates a globalisation of production which, in turn, incites regulatory competition – a *race to the bottom*. Second, even when countries have committed themselves to uphold core labour standards, such commitments exert limited countervailing force since the ILO, on its own, has no means with which to enforce compliance with such commitments. In summary: Today's circumstances purportedly confer commercial advantages on producers from countries where core labour standards are undercut. A labour-trade linkage would turn that same undercutting into a commercial liability and thus unleash a *race to the acceptable*.

The social clause campaign was the most wide-ranging campaign in the history of the international union movement. Nevertheless, ICFTU failed to secure sufficient support for the proposal: Most developing country governments were not keen on the proposal, and some were rabidly opposed to it. More strikingly, few trade unions or civil society organisations in the developing world supported it. While ICFTU portrayed the labour-trade linkage as a proverbial *freedom fighter* capable of 'transferring the benefits of trade liberalisation to ordinary people in developing countries', many of the people for whom it was purportedly

devised considered that the linkage was just as much a *terrorist* – ‘a stick with which to beat the third world’.

Research Objective and Questions

The point of departure of the present research project is the impression that ILO’s *fundamental principles and rights at work* and the associated *core labour standards*¹ – despite the apparently modest claims they represent, the nominal consensus amongst virtually all governments about their legitimacy (*qua* principles, at least), and their relevance in the pursuit of a modicum of human dignity and basic needs fulfilment – are widely and routinely violated². In this sense, the linkage proposal addresses itself to problems which are real, significant and extensive. The fact that there are, at present, no global governance mechanisms which serve to align commercial incentives and labour rights protection in any meaningful way, compels a measure of sympathy toward the linkage proposal.

However, on the other hand, the fact that so many actors involved in the struggle for the associated rights have been less than keen on the institution of a labour-trade linkage, compels a solid dosage of caution.

In this spirit, the main objective of the thesis is to explore whether and how a labour-trade linkage may help tackle the challenges confronting labour in developing countries. In this exploration, I privilege the viewpoints of labour activists in *Brazil* and *South Africa* and

¹ ILO’s 1998 *Declaration on Fundamental Principles and Rights at Work* declares that ‘all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership [...] to promote and to realize [...] the principles concerning the fundamental rights which are the subject of those Conventions, namely (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation’ (ILO 1998, para 2). Unlike ‘principles and rights’, ‘core labour standards’ are binding only on ratifying countries, and comprise the body of international labour law (the specific provisions of the Conventions *and* the associated case law) related to core ILO Conventions. The distinction between ‘principles’ on the one hand and ‘core labour standards’ on the other, and its implications on the question of linkage, is discussed in *Bringing the workers’ rights back in*.

² The extent of the problem is reflected in ITUC’s annual global labour reviews (e.g. ITUC, 2010).

pay special attention to the challenge of realising agricultural workers' freedom of association and right to collective bargaining (also known as 'trade union rights') in the two case countries.

The study is organised around three key research questions:

- (i) Why were certain influential workers' rights activists lukewarm towards, if not actively opposed to the linkage idea that surfaced during the 1990s?
- (ii) To what extent are the trade union rights of South African and Brazilian agricultural workers realised, and how may the extent of realisation be accounted for?
- (iii) What would be the properties of a linkage helping to tackle the challenges that confront Brazilian and South African labour, including in agriculture, and to what extent can a linkage thus conceived be accommodated by the international trade and labour regimes?

While it is implicit in the above, the following should be made clear: The focus here is almost exclusively on viewpoints of *workers' rights activists* (comprising trade unionists and others). Hence, readers interested in the viewpoints of governments and business actors will *not* find these perspectives in this thesis. In the same vein it warrants reiteration that, as far as the fundamental principles and rights at work (and associated core labour standards) are concerned, my focus is primarily on the freedom of association and the right to collective bargaining (also known as 'trade union rights'). Again, readers interested in careful exploration of *other* core labour standards – say, the abolition of child labour or the elimination of forced labour (more popular, perhaps for sorry images they may conjure up) –

will need to look elsewhere. It is nevertheless true that several of the linkage-related issues discussed in this thesis *are* germane to all core labour standards.

On Matters within the Scope of the Thesis

Relevance and relation to other research

On a couple of occasions, I have been confronted with the comment that ‘this is yesteryear’s question; the social clause was ousted from the WTO negotiation mandate long ago’. Such an understanding is, as I have argued in both papers *Rise and Demise* and *Bringing the Rights Back In*, misconstrued and indeed misleading (for linkage proponents and detractors alike). Furthermore, the major collection of scholarly literature on the question of linkage was published *after* the proposal was decisively ousted (in 2001) from the current WTO mandate. In academia, then, it seems that the question of linkage is as relevant as ever; scholars measure relevance on a scale that extends beyond the horizon of a WTO negotiation round (even if the current round seems set to last forever and a day).

How does this project relate to that literature? As I write in *Rise and Demise* (p. 389)

There is no dearth of academic engagement with the idea of a social clause. A sizeable amount of scholarly work has engaged with whether a social clause is *desirable*, measured against transcendental referents of the infinitely right, whether conceived of in terms of *economics*, *fairness* or *development* more broadly. While such explorations merit attention, the approach of this paper is different: It is aligned with another camp of studies which have tried to understand *why* the spearhead proponent of an ILO-WTO linkage, ICFTU/ITUC [...] failed to secure sufficient support for the proposal from its own Southern constituents

The same argument applies to the thesis as a whole. In addition I attempt to go beyond ‘why it failed’ questions by re-imagining what a linkage responding to the challenges confronting labour in the case countries – most prominently, the challenge of helping to realise the trade union rights of agricultural workers – would look like; and, furthermore, the thesis explores whether a linkage thus conceived can in fact be accommodated by the international trade and labour regimes.

I concede that the project’s overall *attitude* – the character of its questions; the action research methodology; and its standpoint epistemology (at least in some measure) – is quite typical of a development studies project. The topicality of the project, however, is not. Development studies as a field is, in my view, strangely deficient in research pertaining to global governance and labour. The ‘missing link’ with labour is particularly striking. That the plight and position of labour has become something of a non-subject in a field so utterly devoted to the wellbeing and rights of people, suggests a measure of forgetfulness about the roots of social sciences. Scholars with other disciplinary backgrounds are quick to recall that, in the thinking of nineteenth and twentieth century political and social thinkers (Marx, Weber and Durkheim spring to mind):

the employment relationship is an, if not *the*, essential substrate of social organisation, and that capital/labour conflict is a defining feature of modern politics. Workers’ identification as such and their conflicts in that capacity with employers give rise to unique aspirations, experiences of solidarity and modes of consciousness [...] the worker identity can support ideals of social citizenship and experiences of political inclusion by hitherto exploited and marginalised groups (Klare, 2002, p. 13).

I am sure it can be argued that, in the *developing world*, the employment relationship is less of an ‘essential substrate of social organisation’; the capital/labour conflict less of a ‘defining

feature of contemporary politics'; and that 'workers' identification as such' is less of a source of 'aspirations, experiences of solidarity and modes of consciousness' and so forth. But even if this makes some sense, it hardly suffices as an explanation of, much less a justification for labour's non-status in development studies: Developing countries are not *that* 'underdeveloped', after all.

What is the rationale for using *Brazil* and *South Africa* as privileged sites for the gathering of workers' rights activists' viewpoints and estimations, and for a closer look at the challenge of realising the trade union rights of agricultural workers? The answer is that they are very relevant as case countries: Firstly, Brazilian and South African unions play an increasingly important role within the larger international labour movement, and their opinions and concerns related to the labour-trade linkage idea will surely bear on its future trajectory and fate. Secondly, the relative prominence of agricultural employment and exports in both countries means that they constitute interesting cases for the exploration of trade union rights in agriculture.

What is the rationale for the focus on *agricultural workers*? A commonly heard concern in the linkage debate is that linkage would not have much traction for the very workers whose rights are in the most acute need of protection – namely, those toiling in the often huge *informal* sector and in *atypical* employment relations (labour brokerage; piece-rate-paid domestic workers etc.). This may lead one to think that, in developing countries, workers are either formally employed and enjoy fundamental rights at work (at least in countries which have ratified the ILO core conventions) *or* they are informally employed and are hence beyond the reach of core labour standards. However, the fact of the matter is that a great many of the worlds' workers whose trade union rights are insufficiently protected (much less realised) *are* formally employed – among these, agricultural workers are probably the

majority³. Indeed, if there is any single discernable and very large occupational group of workers in the developing world which could gain from an ILO-WTO linkage, this may well be agricultural workers. Or phrased differently: The linkage's traction on the realisation of agricultural workers' rights is something of a litmus test of its capacity to make a real difference to the destitute and disempowered.

Why the focus on freedom of association and the right to collective bargaining? It owes much to the standard reason – the limited time and resources of the researcher; it is not as if I would *not* want to do research on, say, the elimination of forced labour (a goal which unfortunately remains elusive in global agriculture). And still, there are some good reasons, too. A useful point of departure in this regard is ILO's stated rationale for elevating certain labour standards above others, making them core or fundamental:

the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned, *to claim freely and on the basis of equality of opportunity, their fair share* of the wealth which they have helped to generate, and to achieve fully their human potential (ILO, 1998, preamble; *emphasis added*).

Throughout the thesis I express this rationale in shorthand: 'to enable workers to claim a fair share'. From the above, it may seem that all the fundamental principles and associated core labour standards are equally important for this end. However, there is little doubt that ILO, by virtue of its own history and functioning, renders freedom of association and the right to collective bargaining as the most 'core' of all: While all core labour standards embody principles which all countries must promote and realise by virtue of ILO membership, freedom of association and the right to collective bargaining are the only fundamental

³ In a study commissioned by ILO (ILO, 1996) it is recognised that nowhere in the world are agricultural workers' trade union rights realised to any noticeable extent; in fact, the study considers Brazil to be a positively deviant case; as this thesis shows, this is a tenuous consideration.

principles subject to a special supervisory, tripartite and complaints-based mechanism (namely, the *Committee on Freedom of Association*, CFA) which can scrutinise an ILO member's implementation practices in terms of the full body of relevant treaty law, even if the member has not ratified the conventions in question (C87 and C98)⁴.

On Matters Tangential to the Thesis

I have already mentioned that certain matters (government and business actors' considerations and estimations; core labour standards other than trade union rights), fall outside the scope of this thesis. Here, I want to draw attention to further issues which are not researched systematically by this project: Firstly, the desirability (or not) of core labour standards; secondly, the merits (or not) of the race to the bottom thesis; and, thirdly, challenges associated with labour internationalism. Some reflections on these are necessary since they are tangential to (if not intertwined with) many of the discussions in the thesis, and form part of the broader background on the question of linkage.

The desirability (or not) of core labour standards

Since it has such direct and inescapable bearing on the question of linkage, quite a lot is said in the present thesis about the *feasibility*, as it were, of core labour standards – that is, whether anything *precise and universally applicable* can be said about what freedom of association and the right to collective bargaining actually mean, and whether it can be unambiguously

⁴ As part of the follow up to the 1998 Declaration, the other core labour standards are also subject to a special supervisory mechanism (IDEAs). However, this is neither complaints-based nor tripartite, and whether it has the legal mandate to interpret members' implementation practices in terms of the full body of relevant treaty law is disputed (cf, Alston, 2004; 2005).

established if a ILO member country – not in its individual provisions, policies and actions but in the totality of its efforts – complies with the associated standards⁵.

Much less is said in this thesis about the *desirability* of core labour standards (not to be confused with the desirability of a labour-trade linkage). If one takes core labour standards to be the principles and rights of ILO's 1998 Declaration – and just that: *general principles* – one must either be a very radical relativist or a very authoritarian regime to claim that these are not desirable. (Unsurprisingly, the states least keen on core labour standards are quick to cloak their resistance in relativist talk). Indeed, the universal legitimacy of the principles, *qua* principles, is reflected in the fact that ILO (many members of which are less-than-keen about practising freedom of association – China, Myanmar and Belarus spring to mind) actually conceived of and adopted the 1998 Declaration.

However, if one takes core labour standards to be *not* just these general principles but the *body of international law* related to these principles – a body which comprises the provisions of the related ILO conventions (in the case of freedom of association and the right to collective bargaining: C87 and C98) *and* the associated and very voluminous case law – then the question of desirability becomes very real. As a matter of fact, half of the world's population lives in countries that have *not* ratified either C87 or C98 or both; this itself reflects considerable contention over the desirability of core labour standards. This contention could, in part, be accounted for in terms of political customs which have little to do with the substance of international labour law as such. (One may, for instance, suspect that the US's disinclination to ratify ILO's core conventions is due not to any particular dislike for the substance of international labour law, but rather a deep-seated fear of being bound, even if

⁵ Consider, at this juncture, that the latest updated case law *digest* of ILO's *Committee on Freedom of Association* (ILO-CFA, 2006) comprises no less than 1,120 provisions ('decisions and principles' related to the meaning of freedom of association and the right to collective bargaining); furthermore, that 'the Committee always takes account of national circumstances' and yet 'the freedom of association principles apply uniformly and consistently among countries' (*ibid.*, p. 8).

just nominally, by ILO). Another alternative is that the contention over the desirability of core labour standards may be due to a dislike of the way in which international labour law restrains *capital* (or a government's ability to meddle with how capital and labour organise themselves). Finally and significantly, the contention may be due to a dislike for the way in which international labour law restrains *labour*.

Since this study privileges the perspectives of labour, it is the latter possibility that should concern us here. At first glance, the claim that international labour law could in some way stand in the way of labour might seem counter-intuitive. And yet it can be argued, as does Carraway (2006) that it does, in certain respects:

ILO's understanding of freedom of association is distinctly liberal, which has important implications for the creation of *powerful* as opposed to *free* trade unions. In this liberal conceptualization, many labour regulations that limit union fragmentation and that increase union bargaining power are considered to be violations of freedom of association (Carraway, 2006, p. 211; italics in original; see also Hilgert, 2009 for a comparable argument).

To be sure, the present thesis is no stranger to matter; I touch upon it at several instances and it could be claimed that I, more or less implicitly, advance a certain position on the question of desirability⁶. Yet, it would be misleading to claim that the question of core labour standards' desirability is systematically explored in this thesis.

⁶ For one, taking something for granted (as I tend to do with respect to the desirability of ILO's understanding of core labour standards) is in itself a very strong position. Further, the Brazilian case study shows that regulatory measures which purportedly 'ensure strong unions before free unions' (according to the view of Carraway and Hilgert) may be a problem for certain segments of marginalised labour. That, however, does not mean that representatives of marginalised labour favour legislation in keeping with C87 and C98 (cf. *Bringing the Workers Rights*).

The merits (or not) of the race to the bottom thesis

A useful point of departure for an understanding of the race to the bottom thesis is the concept of *spatial fix* (cf. Harvey, 1982; Herod *et al.*, 2003): The production and realisation of surplus value rely on capital's ability to bring together – through a matchmaking exercise in space and in time – investments, inputs, labour and markets. However, this bringing together is fraught with contradictions: While capital would want to be as mobile as possible (for instance to escape places where trade unions are unduly assertive), it may have considerable sunk cost in that very location of production; *or* it may need to remain in that location if it is to retain access to adjacent domestic consumer markets. *Spatial fixes* are about the way in which capital attempts to resolve such contradictions.

What globalisation does to labour, then, has a lot to do with what it does to the spatial fixing opportunities of capital. The very factors which used to keep capital in place – sunk costs and production *in* a place as a requirement for accessing the consumer market of that same place – are much less pronounced now than in the past. Capital's mobility, not only of *finance* but of *produce* too (in the wake of much reduced barriers to trade) – along with its greatly enhanced logistical-technical capabilities (through the outsourcing of ever greater parts of a production previously integrated vertically, i.e. 'lean' production) – means that the cost-to-benefit ratio of *leaving* a particular place (in the case of, say, conflict with trade unions) is drastically reduced.

Capital may thus engage in an ever more sophisticated, complex spatial differentiation of labour: It can 'reorganise, break up, stretch out labour processes and production chains [...] [in an ever ongoing process] in which rounds of accumulation unfold across the economic landscape, producing in their wake new geographies of production and consumption, and new sets of relationships between places' (Herod *et al.*, 2003, p. 183). The adverse implications of labour's power go beyond the lessened constraints on capital's exit

from any one place. For, whereas in the past an entire value-addition chain would often be compressed into one place, the ‘breaking-up and stretching-out’ entails a hyper-fragmentation *within* single value chains. Consequently, labour is dispersed across numerous points of production in widely different localities, jurisdictions and modes of organising production. This spatial de-concentration obviously reduces labour’s bargaining strength at any one place⁷.

The much-expanded spatial fix repertoire means that transnational capital can readily use place-bound contractors (to which it outsources parts of production) as proxies for cutting labour costs. Moreover, it can play certain local points of production (comprising both place-bound labour *and* capital) against other local points of production. Where labour *is* organised, it is often forced into concession bargaining (i.e. having to accept deteriorating terms and conditions). Unlike in the *Fordist* past, labour’s associational power sometimes detracts from, rather than enhances its structural power:

The effectiveness of labour law strategies are undermined where capital has ways to escape regulated and/or unionised labour markets by shifting businesses or costs to low-wage, uncovered, non-union labour markets [but] these effects can be neutralised or greatly mitigated by political and institutional innovation (Klare, 2002, p.7).

The above quotation makes particular sense from a Northern perspective. In broader multilateral terms the situation may be likened to a prisoners’ dilemma game:

Even in a situation where domestic companies and governments would *want* to uphold core labour standards, they are deterred by global market forces: If the

⁷ This, however, is not the whole story or the universal rule. There are circumstances in which the breaking up and stretching out of labour goes together with increasing structural power of labour – more specifically: workplace structural power – even at apparently small and unimportant nodes (cf. Selwyn, 2007; 2008).

individual producer enforces standards unilaterally, without his competitors doing the same simultaneously, he is sure to be the 'sucker' as his products become more expensive than that of his competitors. This political economy is one of coordination failure and a race to the bottom. The remedy is to organize some labour rights out of the market competition altogether, on a sufficiently high level of governance (*Rise and Demise*, p. 394).

The race to bottom thesis is persuasive. However, there are questions as to whether empirical observation supports it: An OECD report of the mid-1990s found no correlation between labour standards and competitiveness (OECD, 1996); Flanagan (2003) has estimated that almost all international variations in manufacturing wages are due *not* to labour standards, but to labour productivity; furthermore, countries with high wages tend to retain or even expand their shares of international trade. The fact that productivity, rather than labour standards, determines wage costs, and that higher wages are positively correlated with increasing shares of trade, does not lend support to the race to bottom thesis.

There are good reasons, meanwhile, not to take these rebuttals as conclusive evidence against the thesis, for there are considerable methodological problems associated with them – including biases flowing from a focus on aggregates and manufacturing trade; reliance on dubious econometric proxy variables; and a bracketing of the impact of Chinese exports after the country's accession to WTO in 2001. Furthermore, research based on case studies of certain labour intensive industries finds a very real measure of negative regulatory competition between exporters (e.g. Chan & Ross, 2003).

Presume nevertheless, for the sake of the argument that the race to the bottom thesis really *is false* – that it is *not* true that increasing trade leads to a mounting downward pressure on core labour standards. Does that empty the labour-trade linkage of rationale? I think not. It can still make perfect sense to turn a failure to uphold core labour standards – irrespective of

whether such failures have a contagion effect on labour standards elsewhere – into a commercial liability. This also points to why I have not attempted to research the race to the bottom thesis as such in this project: The involved reasoning is neither the beginning nor the end of the linkage rationale. It is bad to be at the bottom, irrespective of how one got there. The question is whether the linkage can make a difference.

Labour Internationalism and its Discontents

Labour internationalism is about the collaboration of labour across borders. Insofar as the linkage proposal itself is a story of failed labour internationalism, the present thesis is indirectly about labour internationalism. As I see it, three kinds of difficulties associated with labour internationalism are pertinent to the question of linkage: First, *the legacy of internationalisms past*: how historical experiences with international collaboration continue to shape expectations and inclinations of different labour constituencies across space; secondly, *the contemporary manifestations of internationalism*: the actual forms of organisation, modes of working and distribution of power within the international union movement (ITUC, in particular); and thirdly, a difficulty which both envelopes and extends beyond the former two, *the ground conditions for internationalism*: the structural contradictions between global capitalism and national political organisation, in particular.

The former two difficulties are hardly considered in this thesis. They could have been. It is conceivable that a careful consideration of the roles played by old grudges and political traits of today's international union movement would make for a very different understanding of the challenges associated with the trade-labour linkage than the ones presented here. Scholarly explorations that place more emphasis on the first two challenges mentioned include Munck (2002), Anner (2001) and Harrod & O'Brien (2002).

The third difficulty (structural contradictions between globalising capitalism and national political organisation) is present in my papers *Rise and Demise* and *Bringing the Workers' Rights Back In* – if mostly by implication. Some more explicit considerations are due here since this has a profound bearing on the question of linkage, a key question being whether the linkage can be construed as a way to overcome that difficulty or would it merely reproduce it?

Again, the notion of spatial fixes is an apt starting point, for spatial fixing is not the exclusive reserve of capital. Workers and unions have their spatial fixes, too, of course.

Portraying capital as the only active agent in the production of global uneven development represents an un-dialectical approach [which] conceives of uneven development as arising simply out of the internal logic of capital. Instead, by seeing workers as actively engaged in the process of uneven development, it becomes possible to link workers' social practices to develop particular spatial fixes of their own, which they perceive to be advantageous to them at certain historical junctures (Herod, 1997, p. 190).

It may be argued that a bigger problem than the vagaries of globalisation are labour's reaction to these. Contrary to intuition, globalising pressures have, in a certain sense, strengthened the national level at the expense of the international: In the wake of globalisation, labour has tended to see the level of nation – where it is relatively better organised – as the most feasible site for struggle (Eder, 2002). Thus,

strategies of national unionism have actually contributed to the negative side-effects of globalisation [...] the national focus has become a liability rather than an asset. The concern for unemployment and the overall pressures of globalisation began to pit

the national unions of advanced industrialised countries against the national unions of developing countries (*ibid.*, p. 179).

If actions taken at the level of the nation had only national implications, this would be a problem for internationalism by virtue of the lack thereof. But actions taken at the level of the nation *do* have transnational ramifications. Using tools to constrain certain spatial fixes obviously affects labour elsewhere. Unions acting nationally are not just on the receiving end – confined within their embattled nations. In this regard, it must be recalled (as an antidote to exaggerated descriptions of a ‘borderless world’) that, during the hegemony of Fordist capitalism, the interests of Northern place-bound capital *and* labour converged around spatial fixes which successfully stymied much South-North trade (at least if measured in gross value of trade) and which remains today. By the late 1990s, an average of 90 percent of all domestic consumption was still produced domestically (*ibid.*, p. 171); this figure is likely to have dropped during the last decade, with China’s formidable export drive. By 2002, trade *between developed* countries still accounted for more than 75 percent of the gross value of global trade (Harrod, 2002, p. 59). In addition, Southern ‘surplus labour’ remains considerably less mobile today than Northern surplus labour was during the nineteenth and early twentieth century – in part because Northern trade unions staunchly oppose immigration, often on openly nationalistic grounds (Eder, 2002, p. 181).

Such patterns lend strength to claims (heard from liberal and counter-hegemonic corners alike) that unions are part and parcel of what is, when all the fine talking is done, a *nationalistic racket*: Northern nation-states remain relatively closed containers within and between which historically unprecedented amounts of wealth (partially accumulated by overt exploitation of developing countries) are being recycled. The role afforded to developing countries and their armies of labour in this racket is that of supplying low value-added commodities and resources which complement, rather than compete with, whatever is already

produced in the global North. While such claims may overstate the purposive aspect of continued uneven development, the power of the nation as frame for thought and action – and its distributional consequences, not least in terms of the spatial fixes governing production and consumption – is considerable.

A former president of the main US trade union federation, AFL-CIO, has stated that ‘you can’t be a trade unionist unless you are an internationalist [since] substandard conditions anywhere [is] a threat to good conditions anywhere’ (cited in Munck, 2002, p. 171). Munck concludes that this ‘shows that internationalism and self-interest are not incompatible’ (*ibid.*) As the discussions in *Rise and Demise* and *Bringing the Rights Back In* imply, there is something contrived about this, for it obscures the real dilemma that has always haunted labour internationalism: It is hardly possible to use trade to undo substandard conditions ‘abroad’ *and* get enhanced protection ‘at home’ without, at the same time, risking the jobs of workers ‘abroad’. A central argument of this thesis is that a linkage can only come about if proponents flout their ambition concerning the middle part of the foregoing statement (i.e. enhanced protection at home).

Organisation of the Thesis

The individual papers of the thesis by and large correspond to the main research questions: *Rise and Demise* explores why certain influential workers’ rights activists were lukewarm toward, if not actively opposed to the linkage idea during the 1990s; *Stepchildren of Liberation* and *Out of Mind* address the extent to which trade union rights of agricultural workers are realised, and how the extent of realisation can be accounted for, in South Africa and Brazil respectively; finally, *Bringing the Workers Rights Back In* explores what form a linkage helping to tackle the challenges confronting Brazilian and South African labour

might take, and to what extent a linkage thus conceived can be accommodated by the international trade and labour regimes.

In the present thesis introduction, the next (second) chapter is on the *methods* employed in the research project. The third and final chapter is devoted to considerations on theory – with a focus on the questions that span the last three papers of the thesis: To what extent are trade union rights of agricultural workers realised, what accounts for this extent of realisation, and what difference would a linkage make? My search for answers has been greatly impeded by the fact that there is so little literature on the question of organising agricultural workers. Hence, I use the third chapter to synthesise generic theorisations and analytical frameworks with insights derived from the case studies. This synthesis serves as the basis for some modest propositions toward grounded theory formation on the question of organising agricultural workers, and corroborates my propositions (presented in *Bringing the rights back in*) on the extent to and conditions under which a labour-trade linkage will have traction for that particular category of workers.

2. METHODS

On Foundational Assumptions, Perspectives and Choices

I set out with a lengthy quotation from Crotty's *Foundations of Social Research* (1998) because it resonates so well with the sequencing of my own research process:

[In social research] we typically start with a real life issue that needs to be addressed, a problem that needs to be solved, a question that needs to be answered. We plan our research in terms of that issue or problem or question. What, we go on to ask, are

the further issues, problems or questions implicit in the one we start with? What, then, is the aim and what are the objectives? What strategy seems likely to provide what we are looking for? What does that strategy direct us to do to achieve our aims and objective? In this way our research question, incorporating the purposes of our research, leads us to methodology and methods. We need, of course, to justify our chosen methodology and methods. In the end we want outcomes that merit respect. [In non-positivist approaches] our outcomes will be suggestive rather than conclusive. They will be plausible, perhaps even convincing ways of seeing things – and, to be sure, helpful ways of seeing things – but certainly not any ‘one true way’ [...] [we nevertheless must lay our research process] out for scrutiny of the observers; we need to defend that process as a form of human enquiry that should be taken seriously. It is this that sends us to our theoretical perspective and epistemology and calls upon us to expound them incisively (Crotty, 1998, p. 13).

Indeed, I did *not* begin – as the organisation of a typical methods chapter seems to suggest that one should – with an epistemological, theoretical or methodological commitment, but had an apparently discrete problem as a point of departure; this soon spurred a set of questions which compelled me to employ certain methods and theories, which in their turn raise epistemological questions.

By extension, I have organised the presentation below in rough keeping with the sequencing in the quote from Crotty and the way my project has progressed.

‘A problem that needs to be solved, a question that needs to be answered’

I first came across the linkage issue while working outside academia – namely, during my five years’ spell as a policy advisor on economic globalisation in a major Norwegian aid organisation. As many others devoted to social justice, that organisation had some stake in the business of exploring ways of disciplining globalising capital and had for some years worked quite determinedly within the *corporate social responsibility* (CSR) paradigm. However, a

certain fatigue (if not disillusionment) with that paradigm was ascending, and calls for ways of disciplining global capital by way of *inter-state regulation* – as opposed to the *civic regulation* and voluntarism implied by CSR – were heard. This was in the early 2000s, and the public debate on linkage was therefore already on the wane. But given the situation and the nature of my work, it was literally impossible *not* to become interested in the linkage proposal.

The first thing that struck me was the radical divergence in interpretations – that some saw linkage as a *freedom fighter* while others were equally certain about it being a *terrorist*; and, moreover, that those whose struggles were invoked by the rhetoric of proponents, apparently saw so little utility in a possible linkage. I thought that the lack of support for the idea must reflect a failure, on the part of the proponents, to explore and come to terms with the implications and limitations of linkage from the point of view of labour rights activists ‘on the receiving end’ of core labour standards violations, and that exploring this by means of systematic research would be both useful and feasible. Essentially, these early observations are reflected in two key topical threads running through the thesis – one pertaining to the diverging appeals of linkage; and the other (interrelated with but far from co-terminous with the former) pertaining to a linkage’s possible traction.

Methodology and Methods

I have devoted a subsection below to discussing in some detail the *interviewing* that went into the present research project. Here, some general remarks on methods are warranted. The project is built around two main strategies of data collection and analysis: The first research question (analysed in *Rise and Demise*) is addressed through an interpretation of the 1990s debate; it is based almost entirely on secondary data (i.e. available from the research findings of other scholars) and focuses on the perceptions and positions of US and Indian labour rights

activists. The second and third research questions are explored on the basis of semi-structured interviews conducted with South African and Brazilian workers' rights activists, and supplemented with my collation and interpretation of existing research and statistical analysis. There is also a third, somewhat miscellaneous strategy involved, which bears on the third chapter of the present thesis introduction (rather than the papers) – namely, an attempt to synthesise general theory on workers' organising and collective action with the findings from the case studies.

In terms of *methodology*, I should state that, while the project pivots around two cases studies, the project does *not* claim to utilise a *comparative methodology*; while I occasionally contrast the two, the knowledge which this project purports to generate is not derived from comparison. Furthermore, the ground realities of the two countries are not taken to be somehow representative of the situation elsewhere in the global South, nor is it presumed that the perceptions and positions of Brazilian and South African interviewees are representative of those of their peers in other developing countries. The cases involved must be considered as two *independent, embedded case studies*. As stated in the introduction, they are relevant, firstly, in terms of the increasingly important role played by Brazilian and South African unions within the larger international labour movement; secondly, on account of the relative prominence of their agricultural employment sectors and exports. Furthermore, both countries constitute interesting cases for the exploration of trade union rights in agriculture and the traction which a labour-trade linkage may have on that particular labour constituency.

The project revolves around *action research* methodology (supplemented by a *discourse analysis methodology*, in particular with respect to the first paper) insofar as this is taken to mean:

a collaborative approach to research that provides people with the means to take systematic action in an effort to resolve a specific problem; [and that] endorses

consensual, democratic and participatory strategies to encourage people to examine reflectively their problems or particular issues affecting them or their community. Furthermore, it encourages people to formulate accounts and explanations of their situation and to develop plans that may resolve these problems (Berg, 2007, p. 223).

I had little knowledge of, and no specific pre-conceived commitment to action research at the time when I formulated the project's overall objective and research questions. Yet, it seems that such a methodology is a natural consequence of (if not implicit in) the overall objective of the project: Consider the 'problem' to be the realisation of trade union rights; 'people' to be workers (agricultural workers, in particular), 'community' to be the international trade union movement, and 'plan' to be the labour-trade linkage; the present project 'provides people with the means to take systematic action in an effort to resolve a specific problem' in that it helps the international union movement to see more clearly whether and how linkage may help tackle the challenges confronting South African and Brazilian labour.

Further, my project can be said to 'endorse consensual, democratic and participatory strategies to encourage people to examine reflectively their problems or particular issues affecting them' by availing more voice to labour rights activists in the global South – in a certain sense, I attempt to play an interlocutor role between international trade union movement actors who find it difficult to converse about the linkage proposal.

Finally, in terms of 'encouraging people to formulate accounts and explanations of their situation and to develop plans that may resolve these problems' the project is very explicit about exploring what 'their situation' is like; whether 'the plan' in question (i.e. the linkage) is amenable to the problems associated with the problems of their situation, and how that 'plan' should be modified in order to make sense to international and local actors.

However, I do not want to overstate the project's compliance with action research prescripts. Two remarks are warranted: Of course, neither officials at the apex of the international union movement nor workers' rights activists have *asked* me to act as an interlocutor. Further, I can barely claim to have engaged in the kind of spiral process of repeatedly engaging participants-contributors at various stages of the research process, which goes with the textbook meaning of action research. While it is true that I have tried to engage 'individuals traditionally known as subjects as participants and contributors' (*ibid.*, p. 223), and to ensure that interviewees are fully informed about the purposes of the project and that they gain access to its outcomes, it would be pretentious to claim that the project is consonant with the action research ideal of ensuring a 'democratisation of knowledge production and use [and] ethical fairness in the benefits of the knowledge generation process' (*ibid.*, p. 224).

Theoretical Perspectives and Epistemology

The project is not driven or informed by any pre-conceived theoretical or epistemological commitment. I discuss theory at some length elsewhere; a few remarks will therefore suffice here. Note that I think of theories as heuristic devices – binoculars that direct attention toward certain phenomena and their interrelations rather than others. The spirit of this project is to use quite different binoculars at different points. Such a pragmatic and theoretically promiscuous stance means that the aim of the project is not to corroborate the validity nor advance the formation of any one theory; the rationale for engaging theories here is that of trying to see the problem at hand from different angles and distances (But binoculars do give a biased view of reality – so the above has nothing to do with conceiving of theory as value-neutral).

I take the project to belong in the 'modernist' camp of *critical theory* (as opposed to both Marxian and post-modernist camps). This theoretical orientation involves generating

knowledge-by-interpretation not just for the sake of describing and explaining, but for the sake of contributing to change; in their interpretations, critical theorists strive to uncover means of domination-dependence so as to further emancipation (cf. Mjøset, 2001). In this context, it is important to note that I concur with the modernist rejection of the Marxian assumption that class is ontologically true while other social categories and principles of differentiation-stratification are mere false consciousness.

More needs to be said about *epistemology*. Epistemology concerns ‘what knowledge is possible and how one can assure that it is adequate and legitimate’ (Maynard, cited in Crotty, 1998, p. 8) Like other doctoral projects in development studies, the present one is not a theory of science project, nor can I claim to possess much expertise or particular capacity in the department of epistemology. I am neither inclined nor capable of engaging in lengthy discussions about epistemological labels and their respective merits. But to be sure, it is quite clear that this project belongs in the *constructionist* camp⁸ (a very large and multifarious camp which reduces the instructiveness of the label) – as opposed to *objectivist* or radical *subjectivist* camps⁹. It furthermore involves elements of a *standpoint epistemology* that attempts to ‘represent the world from a particular socially situated perspective that can lay a claim to epistemic privilege or authority’ (Anderson, 2010, *para. 1*).

What really warrant attention here are the possible epistemological *problems* that the project gives rise to, and my way of dealing with them. One such problem is that I often

⁸ ‘Meaning is not discovered but constructed [...] different people may construct meaning in different ways even when relating to the same phenomenon [...] subject and object emerge as partners in the generation of meaning (Crotty, 1998, p. 9).

⁹ ‘Meaning comes from anything *but* an interaction between the subject and the object to which [the meaning] is ascribed’ (ibid, p. 9, italic in original). Note that *ontology* is omitted from Crotty’s schema. His argument is that, in social sciences, the need to consider questions of ontology (i.e. whether there is something real which is independent of human perception and classifications etc., and what that is) only arises at some very special occasions, if at all (*ibid.*, p. 10). ‘The existence of a world without a mind is conceivable. Meaning without a mind is not. Realism in ontology and constructionism in epistemology turn out to be quite compatible (*ibid.*, p. 11). The present project operates entirely in the realm of meaning; in keeping with Crotty, I see no point in discussing ontology. The only issue which arguably verges on the ontological – the notion of ‘class-*in-itself*’ – is a problem of epistemology, which I have discussed in the theory chapter.

traverse different epistemological registers within the same analysis. This problem has two aspects, both of which are discussed further in what follows: Firstly, in the overall discussion of the linkage's *pros* and *cons* in terms of tackling the challenges confronting labour, I blend knowledge of different epistemological statuses. Secondly, and related to a specific argument, I propose that diverging interpretations of linkage can be ascribed to the diverging worldviews of different thought-cultures (discourses).

A first sense in which I traverse different epistemological registers in the same analysis has to do with the epistemic privilege offered by different viewpoints. On the one hand, this thesis certainly privileges the viewpoints of workers' rights activists; I assume that aspects of activists' social position grants them superior knowledge – they are the ones who relate every day to the conditions under which the organisation of workers is attempted; furthermore, the linkage proposal cannot attain much political materiality let alone legitimacy, without their support (I discuss the onus on workers' rights activists, rather than workers, below).

On the other hand, what interviewees actually say is just part of the story presented in this thesis: Their perceptions and perspectives often diverge markedly, and the only way of formulating a somewhat cogent account implies the privileging of some interviewees over others. Furthermore, a number of issues may not be satisfyingly understood or explored on the basis of interviewee viewpoints alone, but can only be elucidated by drawing on scholarly accounts and theory. In other words, the social locations of workers' rights activists give rise to diverging perspectives, and the scope of the privilege associated with the particular location is limited. In the end, much hinges on the collation and analysis of the data, which is what I do.

Consider, for instance, the argument (in the next chapter) that the formal labour relations regime has limited bearing on the realisation of trade union rights in the absence of a

‘functional linkage’ with a certain occupational structure. This argument, which is particularly pertinent to the situation in South African agriculture, is certainly not the *viewpoint* of any one interviewee, nor is it just a plausible *interpretation* of several interviewees’ viewpoints: It emerges when my interpretation of a specific context is seen in conjunction with theoretical observations on the decline of workers organising in typical *post-fordist* contexts.

Equally, consider the argument (also espoused in the next chapter) that a crucial obstacle to the realisation of trade union rights of Brazilian farm workers is that an institutional reform permitting them to organise and pursue interests independently of smallholders is accommodated neither by the democratic-differential logic of the dominant historic bloc, nor by counter-hegemonic populist logic. This, too, is not the *viewpoint* of any one interviewee, nor is it just a plausible *interpretation* of several interviewees’ viewpoints.

I consider this blending of knowledge to be an epistemological problem, insofar as the project purports to bring the viewpoints of Brazilian and South African activists to the attention of linkage proponents. Indeed, I would have liked everything in this analysis to be based on the perceptions and positions of interviewees. That, however, has not been feasible.

The second sense in which I traverse different epistemological registers has nothing to do with standpoints and their limits, but instead is about accounting for the epistemologically objective in epistemologically subjective terms. The crux of the argument is that diverging interpretations of linkage are due to different thought-cultures:

Radical divergence does not mean that there is no regulation – no limits, fixity, or reason – involved when people arrive at their different interpretations. I propose we think of such interpretations as somewhat regulated by discourses pertaining to the field at hand, namely, globalization and labour rights (*Rise and Demise*, p. 393).

In such a conception, thought-culture is *discourse-as-structure*, whereas individually uttered interpretations are *discourse-as-agency*. Discourse theory, however, denies that a meaningful distinction between discourse-as-structure and discourse-as-agency may be drawn, since the individual utterance and the discourse (‘an ensemble of ideas, concepts and categorizations’) are mutually constituted. In the ultimate instance, however, this implies a rejection of the cause-consequence, structure-agency and even individual-social binaries.

My argument suggests that one *can* think about discourse without having to dissolve these binaries. While it is true that there is no discourse without discoursing subjects, we must somehow acknowledge that any utterance or idea is not as ‘prior’ as any other. In this sense, I am inclined toward the perspective of *structuration theory* (Giddens, 1984): Structure cannot come about, be reproduced and changed other than by agency; and yet, anyone’s agency is always *bounded* by conditions that are not of one’s own choosing. This perspective not only retains a meaningful *distinction* between structure and agency, but also permits us to conceive of the one as being *prior* to the other – albeit contingent on where in the vortex of time, space and topicality we seek. Feminist pioneers in the late 19th and early 20th century, for instance, rearticulated ideas of citizenship and the individual’s sovereignty in new circumstances, established in the wake of the French Revolution. While this modified existing ideas by invoking them in a new conjuncture, the agency involved was undoubtedly subsequent to, and informed by already established transformations of mind. This illustrates how a particular way of making sense of the world, discourse-as-agency, can be considered to be informed by something prior, discourse-as-structure.

But even if it makes sense to distinguish discourse-as-structure from discourse-as-agency and to posit that one is prior to the other, this does not resolve the epistemological problem involved in my argument – namely, that *explanandum* (that which is explained) and *explanans* (that which explains) belong in different epistemological registers. The former

(diverging interpretations of the meaning of linkage) are *epistemologically objective* phenomena, but are explained with reference to some things (different ‘thought-cultures’) which are wholly *epistemologically subjective* in terms of their names, the specific ideas, concepts and categorisations they comprise, and the boundaries between them (Hacking, *citation*).

Whenever specific articulations – tangible texts existing independently of the researcher – are taken to be articulations of a specific thought-culture whose name and boundary is the artefact of the researcher herself, we are invariably in epistemologically muddied waters (*Rise and demise*, p. 393-394).

It is certainly beyond my theory of science capacity to resolve this problem. I should reiterate that the discourses that I propose to regulate the interpretations of the linkage idea are categorisations of an approximate kind; and the associated claim to truth is very, very modest. At best, these categorisations are, to reiterate Crotty, ‘plausible ways of seeing things – and, to be sure, helpful ways of seeing things – but certainly not any one true way’ (1998, p. 13).

Conceiving of ‘Rights Realisation’

‘Rights realisation’ is a pivotal term in the present thesis. In many regards, it constitutes tricky conceptual terrain and must be handled with considerable care. While the term is in wide and frequent use¹⁰ – no doubt on account of the explosion of human rights based approaches –

¹⁰ A search on *Google Scholar* returns some 124 hits; on *Google*, 3.75 million hits.

what it actually *means*, whether in analytical or juridical terms, is rarely subject to explicit consideration. This may be due to the fact that it is most commonly used in conjunction with what I call *outcome rights* such as the right to food, housing, a living wage etc.¹¹, and as far as these are concerned, its meaning is fairly intuitive: In the case of the right to food, for instance, realisation means the individual rights-holder has *de facto* access to sufficient and appropriate nutrition.

Things are less straightforward with rights such as freedom of association and the right to collective bargaining, which I label as *process rights*. It is clearly more complicated to determine whether the individual rights-holder's freedom of association is realised.

I conceive of rights realisation in *analytical, not juridical* terms¹²: I consider workers' freedom of association and the right to collective bargaining to be *realised* wherever these rights are sufficiently *protected-upheld* by the state and also *exercised* by the workers in question. This, of course, begs the question about what the substance of 'sufficiently protected-upheld' is. Unfortunately (as I discuss in *Bringing the Rights Back In*) there is no way of cogently and succinctly expressing this in both precise and universally applicable terms, owing to the extensive and inchoate international treaty and case law, and ILO's particular mode of adjudication. I propose, however, that the general essence of 'protected-upheld' (forfeiting precision) may be expressed thus: Freedom of association and the right to collective bargaining are sufficiently protected-upheld wherever workers are free, in law and in fact, to form and join organisations of their own choosing; are effectively protected from acts calculated to make them abstain from exercising their trade union rights; and granted

¹¹ But far from exclusively so – Google returns more than 300,000 hits on the query 'rights realisation + freedom of association'.

¹² When ILO talks about member countries' obligation to 'promote and realise' the fundamental principles and rights at work, the conception of *realisation* is juridical. What such a conception implies is nowhere succinctly expressed, but it is reasonable to assume that it diverges quite substantially from my analytical conception.

sufficient means with which to affect, by way of collective actions through trade unions, the terms and conditions of their employment.

Measuring realisation?

In this thesis, I rely on two quantitative measures when discussing realisation: union density rate (related to freedom of association) and the coverage rate of collective agreements (related to the right to collective bargaining). These are clearly more problematic than measures related to the realisation of substantive rights – say, the prevalence of hunger or malnutrition as a proxy for the realisation of the right to food.

There can certainly be circumstances where workers *are* unionised and covered by collective agreements, but it still makes little sense to say that freedom of association and the right to collective bargaining are realised – where, for instance a degree of coercion is brought to bear on workers’ exercise of these rights. In such a case, union density and collective agreement coverage rates distort more than they reveal about rights realisation (cf. *Out of Mind*).

The reverse – that freedom of association and the right to collective bargaining *are* realised despite low union density and collective agreement coverage – cannot be the case, since I conceive of realisation as being both the sufficient protection-upholding *and* exercise of the rights involved. By extension, and this is an important point, a situation with low union density and collective agreement coverage need not imply that the duty-bearing state fails to sufficiently protect-uphold the rights in question: There can be situations where workers *do* consider themselves to be entirely free to form or join organisations without fear of prejudice, but nevertheless do *not* exercise their trade union rights because they possess such sought-after skills and individual bargaining abilities that they deem union membership and activity to be

an unnecessary waste of effort (that is, they resolve to pursue their interest by individualistic means). I propose we label such non-exercise as ‘positive abstention’.

This argument gives rise to an awkward and counterintuitive point: The objective of protecting-upholding trade union rights is not *necessarily* their full realisation; it is, instead, about creating *conditions of possibility* for as many workers as possible. (It is counterintuitive insofar as we tend to think in terms of outcome rights – it would be nonsensical to say that the objective of the right to food, for instance, is not necessarily its full realisation). This points back to the character of trade union rights – namely, that they are process rights; that they are as much collective as individual; and that they avail workers with a means to an end – a means with which workers can attain decent terms and conditions of work by way of organising and pressing claims collectively. As a matter of fact, to posit that full realisation (as I have conceived of it here) is the objective of protecting-upholding trade union rights would not be consonant with ILO’s authoritative interpretation that freedom of association includes the freedom to *not* associate.

However, in a great many cases (such as the circumstances studied here – agricultural wage labour in Brazil and South Africa), it makes no sense to take non-exercise to be a matter of ‘positive abstention’: First, non-exercise is often due to the state’s failure to protect-uphold the rights in question. Second, and of key significance here, non-exercise may well be attributable neither to a failure to protect-uphold nor to ‘positive abstention’, but to what I propose to label ‘negative abstention’. This could be due to circumstances which render workers incapable of, or deter them from exercising their trade union rights – circumstances related to labour market conditions; workforce structures; strategies of unions or employers (albeit of a kind which does not amount to acts of victimisation); and even more subtle and intricate processes related to workers’ social conception of their interests and identities (I discuss this further in the theory chapter). While these factors can certainly be affected by the

actions of the state, they are not readily or unambiguously attributable to any failure on the part of the state to protect-uphold trade union rights as per its obligation under international labour law. A key problem is that of drawing the line between non-exercise that is due to negative abstention on the one hand, and non-exercise that is due to state failure to sufficiently protect-uphold on the other.

On the basis of the above arguments, I may now draw conclusions on the question of realisation measures (union density and collective agreement coverage rates): I propose that these are reasonable proxies for trade union rights realisation wherever the state does not *inflate* them by coercive interference. In most circumstances they may serve as a fruitful point of departure for exploration – but how much and what they say about rights realisation can only be determined by careful consideration of the context in question.

Further caveats

The above complexities give rise to the question: Why bother with *realisation*? As far as the question of linkage goes, would it not be a better research design to concentrate entirely on what it means to sufficiently protect-uphold – this is, at the end of the day, the only part of the equation which a linkage can affect anyway? My response is twofold: Firstly, the very rationale of freedom of association and the right to collective bargaining is to create conditions where workers can, if they deem it necessary, collectively ‘claim their fair share’; being a means to an end, it is the actual realisation of these rights which renders them valuable for the rights-holders. Secondly, to establish what it means to sufficiently protect-uphold (also known as ‘compliance with treaty obligations’) is fraught with considerable problems of its own. We can only gauge the possible traction of core labour standards (fortified by a labour-trade linkage) by first getting an idea of the different factors which bear

on realisation; then pick these apart and see what is left when we come to consider ‘compliance with treaty obligations’.

Insofar as the rationale (if not necessarily the effect) of freedom of association and the right to collective bargaining is to enable workers to ‘claim their fair share’, the *realisation of trade union rights* is closely related to *labour power*. It is important, however, to stress that the two concepts are not in a neat one-to-one relationship: On the one hand, there might be circumstances where trade union rights are *not* realised but where labour nevertheless, through union-based collective action, exercises considerable power *vis-à-vis* capital. This may occur under certain structural conditions: One example is the case of the UK prior to 1979 (cf. Ewing, 2003). Another case is that of grape plantation workers in Pernambuco’s São Francisco valley: While it makes limited sense to say that these workers’ trade union rights are realised (given the impediments of the formal labour relations regime), they nevertheless exert considerable power by virtue of the position unintentionally granted them by the labour process and the character of the global commodity chain in which they are inserted. If these workers were to strike at a particular point in the production cycle, this would send damaging ripples through the grape value chain (the so-called ‘bullwhip effect’) and their employer would lose his business in an instant (Selwyn, 2007; 2008).

On the other hand, we may imagine the inverse relationship between rights realisation and labour power – circumstances in which trade union rights are realised to an ever increasing extent amongst a specific group of workers, while the same group’s actual power *vis-à-vis* employers declines. This is, for instance, conceivable when a relocation threat compels workers to organise, that threat subsequently becomes acute (as a consequence of, say, a new free trade agreement) and workers then need to engage in concession bargaining – even if they are organisationally stronger than before.

The above discussion highlights the fact that the realisation of trade union rights speaks to the question of workers' *associational power* – which is only part of the story on power:

[Associational power is one of the] 'forms of power that result from the formation of collective organizations of workers. This includes such things as unions and parties but may also include a variety of other forms [such as work councils]... Associational power is to be contrasted with what can be termed structural power – power that results simply from the location of the workers within the economic system. The power of workers as individuals that results from the strategic location of a particular group of workers within a key industrial sector would constitute instances of structural power' (Wright, 2000, p. 962).

Wright's distinction between *associational power* and *structural power* is notable, for it reminds us of the limits of trade union rights. Indeed, it points to an element of hyperbole in ILO's aphorism that the guaranteeing of core labour standards 'enables workers to claim a fair share'.

On Interviewees and Interviewing

Selecting Interviewees

A key concern of the present project is about the traction that a labour-trade linkage may have in terms of promoting the realisation of workers' rights; any idea about such traction, however, requires that the challenges that impede realisation are first identified. This gives rise to the following question: Why have I not interviewed *workers*? The answer is two-pronged: the deficit is due partly to a purposive choice; and partly to the fickleness of the research process.

In the process of matching field research to the means at my disposal and the questions at hand, I concluded that my best chance of contributing to the debate would be on the interface of the global and the domestic – an interface which I imagined would require interviews with workers’ rights activists rather than lay workers: I reckoned that I would face considerable problems in terms of ‘translating’ the project’s pivotal issue (core labour standards, trade) into the world of lay workers – and translating their viewpoints back into the language of the project.

However, at the time I took for granted that the extent of trade union rights realisation amongst Brazilian and South African agricultural workers and how to account for it, would have been sufficiently researched by others – and that my interviews therefore could concentrate on the global-domestic interface and the utility of a labour-trade linkage. Unfortunately, the research frontier had not progressed as far as I presumed, and it soon transpired that I had to research the extent of realisation, and its reasons, myself. By then, it was not feasible to redesign the research project and begin to interview workers.

It cannot be disputed that certain aspects of organisational rights – those relating to the experiential side of being subject to acts calculated to deter unionisation, and what sufficient protection against such victimisation would require – are best gauged from the point of view of individual workers. The problem may easily be overstated, though: Foremost, trade union rights are as much the rights of activists and trade unions as they are rights of lay workers; acts of deterrence are visited on activists as much as on workers. Furthermore, the conditions impeding workers’ organisation are presumably well known to trade unionists who do little else but attempt to promote the organisation of workers.

It would be contrived to argue that the position of unionists grants them an epistemic privilege in assessing the strategies and the representativeness of unions. However, the extent of this problem, too, is less than it may seem: *As Stepchildren of Liberation* and *Out of Mind*

illustrate, my exploration is in no way informed exclusively by the perspectives of dominant unions, but is complemented and contrasted with the viewpoints of activists from independent (and non-recognised) unions and NGOs. Such ‘alternative’ viewpoints are not necessarily more representative than those of the dominant unions, in that they may be motivated by turf wars, conflicts between individuals etc. But they *do* represent extant perspectives permitting a meaningful exploration of questions about union strategies and representativeness.

How were interviewees selected? In both case countries, a first tentative sample was composed by soliciting interview opportunities with presumably relevant domestic trade unions and NGOs. Thereafter, further interviewees were identified by respondent-driven sampling:

Snowballing (respondent-driven sampling) is sometimes the best way of locating people with certain attributes or characteristics necessary in the study [...] it involves first identifying several people with relevant characteristics and interviewing them [...] These subjects are then asked for the names (referrals) of other people who possess the same characteristics as they do – in effect, a *chain* of subject by the referral of one respondent of another (Berg, 2007, p. 44).

Such a sampling strategy has its weaknesses, of course. It is a *non probability* strategy in which the findings may not be generalised to any larger population, and it is vulnerable to hidden biases best avoided even in studies with modest ambitions toward generalisation: In the worst case scenario, the researcher may be locked into a network of people (not discernable to an ‘outsider’) who share a very particular view of the problem at hand and may prevent access to diverging perspectives. I nevertheless employed this strategy because of the need to ‘locate people with certain attributes or characteristics necessary for the study’ – that

is, people with an interest in, knowledge or position germane to the objective and research questions of the project.

Indeed, asking for referrals proved to be a vastly superior strategy compared to that of trying to identify sufficiently interested interviewees on the basis of titles, roles and affiliations drawn from records in the public domain. I also believe that the interviewees included in the first tentative samples were of an adequate number, and held sufficiently diverging positions (in terms of affiliations and geographies) to prevent me getting locked into any particular network of unduly like-minded people.

A complete list of interviews conducted as part of the project – comprising twenty-six in Brazil, thirty-nine in South Africa, and another three interviews with key ITUC staff in Brussels and Geneva – is presented in *Appendix I*. Note that while not all (or even most) of the interviewees are quoted verbatim in the thesis, all are included in the list so as to give a complete overview of all those who may, in some way or another, have influenced the research process and its outcomes.

Conducting Interviews

The interviews that I conducted were semi-structured in the textbook sense:

[The semi-structured interview] involves the implementation of a number of predetermined questions and special topics. These topics are typically asked of each interviewee in a systematic and consistent order but the interviewers are allowed freedom to digress; that is, the interviewers are permitted (in fact, expected) to probe far beyond the answers to prepared standardized questions (Berg, 2007, p. 95).

The complete interview schedule (guide) as it appeared by the time of the later fieldwork (in South Africa) is enclosed as *Appendix II*. Interviews lasted from 45 minutes to four hours, with most being typically in the range of 100 minutes.

However, the above remarks present a less-than-accurate idea about the actual conduct of most of the interviews. The first deviation relates to the extensive range of issues covered in the schedule, and the variable relevance of many questions, depending on the particular interviewee. Early on, I discovered that it made limited sense to go through the whole schedule with every interviewee – in fact, few interviewees, if any, were asked *all* the questions. Instead, I commenced each interview by giving an overview of the topics involved and asking the interviewee to indicate topical areas he/she would be more interested in. Thus, some interviews concentrated on the state and determinants of organising agricultural workers; others focused on the questions related to the labour-trade linkage and the global-domestic interfaces; and a few included all these aspects.

The second deviation relates to the *dramaturgical aspects* of interviewing – aspects which are nowhere to be seen in the schedule itself:

Dramaturgy involves the elements of language of theatre, stagecraft and stage management. [It has to do with *creative interviewing* which] involves using a set of techniques to move past the mere words and sentences exchanged (*ibid.*, p. 91).

I should emphasise that while I asked questions in a systematic and consistent order (within each topical area), my overall way of conducting the interviews was nevertheless far from consistent. For instance, in cases where the interviewee had revealed a certain tendency to support the linkage proposal (in response to an open-ended introductory question), I stated that I would then act *as if* I were someone holding contrary views; and use subsequent follow-

up questions to confront the interviewee with some of the more convincing arguments against linkage. And similarly I took the opposite stance with interviewees of the opposite inclination.

In my view, this ‘enacting’ of an imaginary opponent is ‘a way to move past the words and sentences’: It compels a continuous rethinking and rearticulation of the topic at hand, on the part of both interviewer and interviewee, and helps reveal that which is implicit in, or may be interpreted from, specific utterances. Importantly, such a dramaturgical and pseudo-adversarial technique compels interviewees to corroborate and develop their arguments in the presence of the researcher.

However, such a technique is also a double-edged sword: It is a poor tool for establishing or maintaining the vaunted ‘good rapport’ between interviewer and interviewee. Furthermore, it is conceivable that some interviewees get trapped in the pseudo-adversarial style and start overstating their commitment to a certain position, or keeping certain pieces of knowledge, nuances and complexities of viewpoints to themselves, to the disadvantage of the interviewer.

3. ENGAGING WITH THEORY: ORGANISING AGRICULTURAL WORKERS

The overarching objective of the thesis is to explore the extent to, and ways in which a labour-trade linkage may help tackle the challenges confronting labour in developing countries – with a particular focus on the challenge of realising the trade union rights of agricultural workers. One can readily imagine how such an exploration, even while empirically oriented, could have been guided by general theorisations on the conditions under which agricultural workers can and will organise and press collective claims through trade unions; this would

also narrow down the search for answers to the question about what traction a labour-trade linkage would have on the trade union rights of agricultural workers.

Nevertheless, the individual papers of the present thesis engage with theory, albeit to a limited extent. This partly reflects a resolve on my part to keep *context, activists' perspectives* and *substantive issues* in focus. However, there is a deficit involved, too: Very little academic work (empirical and theoretical) has engaged with the question of trade union rights in agriculture – much less on trade union rights in agriculture in the developing world. The sought-after theorisations that could have informed the exploration are wanting.

It is tempting to speculate that this lack has to do with scholars' dislike of having to explain 'why dogs don't bark' (understandably, they are keener on explaining things that *do* happen). The fact of the matter is: Nowhere do agricultural workers and trade union organisation mesh well together. One of the few scholars who has actually worked extensively with agricultural labour relations confirms that agricultural workers have 'received short shrift in traditional labour studies (...)' and observed that these workers are '*assumed by implication (...)* to be unskilled, poorly unionized, and relatively powerless' (Wells, 1996, p. 6; *italics added*). Still, the very observation that this category of workers is typically deprived and powerless – while we simultaneously surmise the difference that the realisation of trade union rights could make – seems to make it all the more important to not just *assume-by-implication*, but to actually find out what why these particular 'dogs don't bark'.

While there is a huge and interesting body of literature on agrarian politics in the developing world – e.g. the seminal contributions of Scott (1985) and Paige (1975) – its primary focus has been on peasants, and to the extent that it has dealt with (wage) labour relations, it has not concerned itself wage workers' associational power through trade unions. The only significant body of research on agricultural labour relations as such, is that on the

US (and California, in particular). A relatively recent ‘state of the art’ contribution on this research frontier is Miriam Wells’ comprehensive and rich monograph *Strawberry Fields* (1996), which is not only a detailed ethnographic case study of the changing labour processes in strawberry production, but also a comprehensive survey and synthesis of much of the earlier literature on Californian agricultural labour relations at large.

But even Wells’ contribution has limited relevance here. Firstly, this is due to reasons of geography: While the Californian agricultural sector may exhibit traits associated with ‘peripheral’ capitalism, it *is* surely enveloped by a highly developed economy which has played a significant role. There is little doubt, for instance, that the exceptional successes of the *United Farm Workers* (UFW) during the late 1960s and 1970s – including an astounding drive to organise workers; prolific strike activity; and several momentous collective bargaining feats which together changed the economic landscape of rural California, at least for a while – owed much to the ‘double pressure’ leveraged on employers through hugely successful boycotts (of table grapes, in particular) by America’s affluent urban consumers (Wells, 1996, p. 74ff)¹³. It is hardly the case anywhere in the developing world that agricultural unions have, even in theory, recourse to such a source of domestic consumer pressure¹⁴.

¹³ ‘The organisational capacity demonstrated by this boycott was unsurpassed in the history of US farm labour organizing [It comprised] thirty-one large American and Canadian cities and some two hundred smaller communities (...) Estimates of its economic impact (i.e. losses incurred by farmers) in 1969 alone ranged as high as \$20 million’ (*ibid.*, p. 77). The momentum of the boycott campaign owed a lot to its conjuncture with the civil rights movement; in this context, all of ‘liberal’ America was mobilised to defeat chauvinistic and differentiated conceptions of citizenship and secure ‘justice for all’.

¹⁴ It is conceivable that comparable ‘double pressures’ can be created through transnational consumer campaigns, much as numerous ‘corporate social responsibility’ and ethical trading initiatives surely attempt. However, while some such campaigns have improved the terms and conditions for agricultural workers, they have not propped up their associational power to any meaningful extent (cf. Barrientos, *citation*). This underscores the fact that there was a distinct ‘first-world-ish’ element to UFW’s (temporally bounded) success.

The second reason for Wells' limited relevance has to do with her substantive and analytical foci. Her concern is with 'the conditions underlying workers' tendencies to challenge the terms set by employers' (*ibid.*, p. 11), in the moral economy sense (after Scott, 1985). The unionisation of agricultural workers is treated rather like an independent variable which is extant to (but bears on) her subject. The substantive and analytical foci of the present study are quite the opposite, of course: The organising of agricultural workers is the dependent variable – that which requires explication.

In this quest, I therefore turn to theories and analytical frameworks that pertain to conditions under which *workers* (generically stated) organise and press collective claims through trade unions. The fact that these theories do not speak directly to the question of agricultural labour relations (in developing countries) is, of course, a problem. However, this need not imply that available theory lacks relevance. What I do in the present chapter is to discuss theorisations and analytical frameworks, from labour relations theory and elsewhere, against the backdrop of the empirical case studies featured in the thesis. The hope is that this may serve as a modest contribution toward grounded theory formation on the largely under-researched issue of organising agricultural workers. In the concluding section I present eight broad propositions that emerge from the attempted synthesis of generic theory and the case studies. This furthermore serves to corroborate my propositions (presented in *Bringing the rights back in*) on the extent to, and conditions under which a labour-trade linkage will have traction on the realisation of trade union rights amongst agricultural workers.

Thinking with Standard Determinants

In conventional labour relations studies, the waxing and waning of workers' organisation and collective action is most commonly gauged through three indices: The extent of union

membership; the coverage rate of collective agreements; and the prevalence of strike action across a given geography or workforce (Kelly 1997; 1998). According to Kelly, scholarly explorations of variations in these indices commonly pivot around five key factors that I label ‘standard determinants’, namely: (i) labour market conditions; (ii) workforce structure; (iii) state regulation; (iv) employer strategies; and (v) union strategies.

There is considerable scholarly disagreement regarding the relative importance of the respective determinants; indeed, Kelly remarks that scholars often come up with competing explanations of the same phenomenon, each scholar building his/her case around the factor on which he/she specialises. In passing, it may also be noted that the distinction between structural and associational power, which is central to the present thesis, is not in use among such scholars (including Kelly).

The above remarks do not suggest that the standard determinants lack heuristic value or even explanatory power. But they illustrate that the determinants cannot be thought of as neatly separable independent variables: They are nodes in a profoundly interconnected social system, together forming a nexus within which the extent and forms of workers’ collective action are determined. Moreover, it is their possible bearing on labour’s associational power – rather than on unspecified labour power – which is the subject of the discussion below, which deals with each of the standard determinants in turn.

Labour market conditions

Classical economists shared the assumption that the relationship between labour and capital is essentially shaped by the labour market. Marx held that ‘the constant generation of a relative surplus population [by way of replacing labour with capital; pauperising the peasantry through enclosures etc.] keeps the law of supply and demand of labour, and therefore keeps wages in a rut that corresponds to the needs of capital’ (cited in Harrod, 2002, p. 52). In the

same vein, a contemporary scholar such as Giddens, posits that ‘what really distinguishes capitalism as a form of economic system is that labour (power) itself becomes a commodity bought and sold in the market’ (cited in Roberts, 2003, p. 41).

However, the salience of market logics in labour relations can easily be overstated as Polanyi’s (1958) perspectives remind us. In *The Great Transformation* – in which he reviewed the modern capitalist period spanning the dawn of the industrial revolution through depression, fascism, war and the subsequent rise of *Fordism* – Polanyi found labour relations to be a site of a ‘double movement’, involving two opposing organising principles:

The one was the principle of economic liberalism, aiming at the establishment of the self-regulated market [...] using largely laissez faire and free trade as its methods; the other was the principle of social protection aiming at the conservation of man and nature [...] using protective legislation, restrictive associations, and other instruments of intervention (*ibid.*, p. 132).

While capitalism may be inclined towards the *commodification* of labour (and all other factors involved in the accumulation process), this succeeds only up to a certain point at which the pendulum swings back: Society at large, and labour in particular, is inherently disinclined to permit this, for ‘labour is only another name for a human activity which goes with life itself [...] the commodity description of labour is entirely fictitious’ (*ibid.*, p. 72). In a Polanyian perspective, then, labour relations represent a site where market principles are *prevented* as much as they are unleashed by social institutions (some of which do not constitute an *ex post facto* taming of capitalism but persist *despite* it, including feudal forms of coercive labour appropriation). Consequently, the term ‘labour market’ should be used in a metaphorical rather than a literal sense (Harrod, 2003).

However, to concede that the play of bare market dynamics is everywhere impeded by regulation and social institutions, is not to negate the fact that market dynamics play a significant role: The supply and demand of labour – not only of labour in its generic sense, but in terms of variable supply and demand across different industries and skills – certainly bears on organisation. It is plausible to posit, for instance, that a tight labour market is conducive to organisation and adversarial collective action. It suffices to name just one of many possible causal mechanisms: From the point of view of the individual, an abundance of available jobs greatly reduces the risk of being victimised as a consequence of exercising trade union rights.¹⁵

Neither case study in this thesis pays much attention to the labour market as a determinant of organisation. This is so because the focus of the case studies is on associational power rather than structural power; and, related to the former, we may assume that labour market interventions are not among the conditions which states are expected to address under their core labour standards obligations (related to C87 and C98).

However, it seems safe to say that, in the case of South Africa, labour market conditions do have an adverse impact on organisation. Acute job insecurity, paired with a momentous influx of migrant workers – who constitute a sizeable ‘surplus population’ ready to take jobs on virtually any terms – means that few employed inside the farm gates will be inclined to take any action which may prompt the farmer to consider outsiders for their jobs. The case of Brazil is more ambiguous. In certain respects, it represents a ‘sellers’ market’, albeit for all the wrong reasons: The historic and persistent poor conditions of agricultural wage work and the deeply entrenched affection for land ownership, mean that even destitute Brazilians have a distinct disregard for agricultural wage work. Consequently, many

¹⁵ However, this is true only to a certain point: highly skilled labourers in short supply, for instance, have such structural power that they can attain good terms and conditions of employment without having to bother with organising themselves at all (i.e. be inclined towards an *individualistic* approach to labour relations). To reiterate a point made elsewhere: Structural power is not always conducive to associational power.

employers find it difficult to attract labour voluntarily, and often resort to coercive means of labour appropriation (e.g. Chase, 1999).

Meanwhile, what is striking in both case studies is the persistence of social institutions in *defiance* of commodification: Neo-paternalism in South Africa and forced labour arrangements in Brazil. These are, needless to say, institutions that impede the organisation of workers, at least as effectively as the most brute logics of commodification.

Workforce structure

The functional and spatial differentiation of the labour process – across sectors, branches, professions and workplaces – holds the potential of both *lumping* and *splitting* labour, and is therefore central to the question of workers’ organisation and collective action: While all workers belong to a ‘big class’ of labour generic *qua* wage earners, they also belong to numerous ‘small classes’ by virtue of their particular insertion in the functionally and spatially differentiated labour process. The splitting logic was at the heart of Marx’s and Engels’ concern that collective action through trade unions had an essentially conservative bent: Unions would be naturally inclined to focus on and pursue sectional interests to ‘secure the fruits of exploitation for themselves without altering the fundamental relations of the overall system’ (cited in Harrod, 2002, p. 52) ¹⁶.

Whether workers organise themselves and bargain collectively in ‘big’ (undifferentiated) or ‘small’ (differentiated) classes, is crucial to anyone concerned with the

¹⁶ To be sure, Marx and Engels referred to the embryonic trade unions of their time – namely, the narrow and soon-to-be-defunct guild-like *craft unions*, also known as ‘the labour aristocracy’. Later events have confirmed the broader relevance of their concern, however: Firstly, even in the context of mass-based unionism, it remained a central dispute as to whether workers should organise themselves according to profession (craft), or branches (*vide*, the stand-off between AFL and CIO in the US). Under Fordism, with its huge, vertically integrated organisations of production, craft-based organisation would be seen to create undue splitters within branches and companies. Secondly, it became a household doctrine amongst socialist and social democrats alike that, since even mass-based trade unions would be inclined to pursue economic-corporatist interests (which need not encompass all labour and would be intimately tied with the fortunes of employers), the required societal transformations would only come about if strong and militant unions were complemented by *labour parties*.

conditions of *revolution*, of course. The question of organising in ‘big’ or ‘small’ classes is less decisive for the question pursued here, however: It is perfectly conceivable that labour, even if it organises and bargains in highly differentiated segments, can attain very high degrees of organisation and collective agreement coverage across the workforce as a whole. However, in practice, a high degree of segmentation clearly bears on associational power by multiplying the number of unions involved; the number of points at which recognition must be secured; and the number of bargaining relationships. The Brazilian case is an apt illustration of such a problem (even if the ‘segmentation’ in question is due *not* primarily to workforce structure but to the dynamics of cohabitation): The lower the bargaining scales of unions, the more difficult it becomes to take strike actions.

Workforce structure, though, is about more than differentiation across sectors, branches, professions and workplaces. A structural feature with considerable bearing on workers’ organisation is their *spatial concentration* – the number of workers at any one point of production. When cross-tabulated with occupational differentiation, we get four crude point of production types: small sites with considerable differentiation; small sites with little differentiation; big sites with considerable differentiation; and big sites with little differentiation. From the point of view of organising workers, the latter is obviously the most advantageous: It offers economies of scale to unions; increases the likelihood that workers have comparable grievances; and reduces the chance of personalistic ties between employers and some workers.

The South African case confirms that the spatial dispersal of workers, in particular, is a severe impediment to organisation. Much the same applies to Brazil, even if that case study foregrounds how the *variable* workforce structures across different locations within the agricultural branch give rise to variable organisational effects of the cohabitation model: In locations devoted to plantation agriculture – Pernambuco’s coastal areas being the prime

example – the workforce structure colludes with the representational monopoly model to engender strong and militant wage worker organisations. However, in locations with mixed holding sizes and modes of production, the workforce structure and representational monopoly collude to produce unions that are disinclined to organise and bargain on behalf of wage workers.

In the last couple of decades, labour relations research has become increasingly concerned with the rise of *atypical* employment – part-time, non-continuous, leased, self-employed and informal work. While this is less of a trend in agriculture than elsewhere – casual and informal work, related to seasonal shifts in labour demand, always was a key trait in the sector – atypical employment compiles the problems specific to the sector (such as the spatial dispersal of the workforce). Furthermore, as the South Africa case study shows, leased (externalised) work – which obscures who the employer is, with severe ramifications for attribution and the sense of efficacy (see below), and gives rise to the very practical problem of physically locating the worker – may be particularly troublesome in agriculture. The reason is that labour brokers, too, operate in partial informality, without a proper understanding of employer responsibility and are often themselves subject to exploitation. This makes it very difficult to prosecute violations of workers’ trade union rights¹⁷.

¹⁷ *Informal* workers fall outside the scope of the rights to organise and bargain collectively. This non-status does not prevent them from partaking in, say, a strike. However, since their right to protection against victimisation and claims to the terms and conditions set forth in a collective agreement is non-justiciable, they are not very likely to engage in such action. It is also evident that if they are numerous and readily available, informal workers easily ‘out-crowd’ formal labourers and thus undermine their collective action. Many *self-employed* workers are *de facto* employees in that they are entirely dependent on their contractual counterpart for life sustenance. However, they are *de jure* operating in the domain of companies, and are subject to a very different institutional and legal order, including, for instance, contract law and competition law with the associated liabilities. Trade unions’ predominant strategy for overcoming the structural disadvantages of informal and self-employed workers is to shift their status to that of formally employed workers.

State regulation of labour relations

Labour law (the primary, but not the only means of state intervention) regulates three key relationships: Employer-worker; employer-union; and union-worker (Ewing, 2003). The former is about the employment contract itself. To be sure, the employment contract is *the* social institution which worker organisation and pressing of collective claims rely on to attain *de jure* power. In other words: To *have* a contract is crucial. However, the laws that set standards for the *substance* of the contract are much less significant: Barring laws that constrain the employer's ability to freely 'hire and fire' (and therefore reduce the chances of victimisation as a consequence of exercising trade union rights), the substance of employment contracts is basically about outcome rights, whose independent bearing on questions of associational power is significant only in far-fetched theoretical terms.

Meanwhile, laws regulating the *employer-union* relationship are at the very heart of the present thesis. Together with laws pertaining to the *union-worker* relation, this is where the legal basis for the right to organise and bargain collectively is laid: Such laws typically determine

- (i) the right of individual workers to exercise union rights and the means of enforcing this right (includes specifying acts that constitute victimisation and the sanctions against such)
- (ii) conditions under which employers must *recognise unions and grant them certain minimal organisational rights* (such as to access and hold meetings in the workplace, and assist individual workers in disputes with the employer)
- (iii) conditions under which employers must *engage in collective bargaining* with that union; and the legitimate right to strike (and lockout) may be exercised

- (iv) the *scope and coverage of collective agreements* (including extension rules).

In some countries, the union to which the greatest number of employees belongs is deemed to be representative and recognised as a bargaining partner. Elsewhere, bargaining rights are granted ‘on the basis of the union’s traditional role or other flexible tests which do not rest on the union’s [present] ability to canvass majoritarian support in the bargaining unit’ (Raday, 2002, p. 373). Extension rules determine the extent to which collective agreements cover workers other than those who are members of the union that is party to the collective agreement in question.

Specific recognition criteria and extension rules represent incentives that may promote one organisational objective, but simultaneously detract from another. Thus, while the absence of extension rules obviously retards the coverage of collective agreements, it may well induce higher rates of organisation (since only members are covered by agreements). Inversely, lavish extension rules may improve the formal terms of conditions for more workers; however, improved bargaining achievements need not lead more workers to become members since many workers calculate that they can free-ride on the organisational achievements of others (*ibid.*, p. 372).

The Brazilian case points to a related dynamic: The corporatist recognition criteria and extreme extension rules (required in the context of a representational monopoly) translate into relatively high collective agreement coverage. However, since the bargaining roles and outcomes of unions are granted them by the state – not won on the basis of organising an ever larger number of workers (who, when things become critical will be ready to take strike action) – the value of their collective bargaining ability is limited: They rarely compel employers to accept terms and conditions above the legal minimum, and employers routinely

flout collective agreements. In other words: Unions' apparent associational power is tenuous, if not hollow.

With regard to laws that regulate the *union-worker* relationship, one particular type of statutory measure has been the subject of much dispute – namely, 'closed shop' (or 'union security') arrangements which require that all employees are *obliged*, by virtue of being employed at the workplace in question, to pay a union fee to the locally recognised union. Such arrangements are in tension with the freedom of association standards, which according to the ILO, includes the *right not to associate*. However, the rationale of 'closed shop' arrangements is to curb union proliferation and to create financially robust unions. It is partially on these grounds that some scholars allege that international labour law promotes 'free but not powerful' unions (cf. Carraway, 2006; Hilgert, 2009).

The Brazilian system – with monopoly representation in each occupational category and bargaining unit, and a mandatory union tax deducted from every employee's pay by the Labour Ministry (and funnelled back to official unions) – represents an extreme case in which each occupational category is effectively a 'closed shop'. It might be recalled that the bone of contention in the standoff between the official unions (in CONTAG) and the semi-legal *oposicoes sindicais* (in FETAESP) is *not* whether such 'closed shop' arrangements will continue, but whether or not there will be more than one occupational category in agriculture.

Legislation often also specifies the extent to which union leaders must have workers' consent to call a legal strike. One of Thatcher's key means of clamping down on trade union power was to require supermajorities in strike ballots; while the stated rationale was to democratise unions, the effect was to make it exceedingly difficult to take legal strike action (Ewing, 2003).

However, state regulation by means of direct interventions in the relationships between employers, workers and unions is not a *sine qua non* for workers' organisation and

power. The tremendous strength of British unions in the first decades after the second world war came about *without* much interventionist labour regulation¹⁸, illustrating that workers' *de facto* associational power is not a mere function of such regulation.

The above remarks are not meant to downplay the role of the state, though. Rather, they highlight that states shape labour relations – or, in Polanyi's term, curb the extent of *commodification* – and therefore affect workers' ability to forge associational power, by means other than labour law. Keynesian monetary and fiscal policy associated with welfare-statism during the twentieth century is a case in point: For the individual worker, the focus on full employment and the provisioning of universal social security safety nets secured such a measure of independence from wage work (in terms of subsistence) that the material risks associated with organising and adversarial collective action were drastically reduced (cf. Esping-Andersen, 1990).

Unsurprisingly, there is a very strong empirical correlation between such comprehensive *de-commodification* strategies and so-called *social corporatism* (i.e. the inclusion of peak unions and employer organisations in state policy making). However, in part because the two are likely epiphenomena of other determining factors, social corporatist institutions capable of affecting de-commodification cannot be decreed or engineered by discrete policy making feats¹⁹. The South African case is illustrative: Despite the *bona fide* social corporatist institutions crafted as part of the transition compromise – NEDLAC, in particular – very little progress has been made towards any meaningful de-commodification.

¹⁸ Employer-worker relationships were hardly regulated by any labour code; there was *no* such thing as legally protected strike action; and *no* laws or statutes intervened directly in the relationship between employers and unions. Yet, seventy-one percent of the working population was covered by collective bargaining agreements. The state certainly played its part, nevertheless: labour authorities would compel otherwise reluctant industries to engage in bargaining by subjecting non-bargaining sectors to statutory regulation by wage council orders. This amounted to a targeted but indirect use of *bureaucratic discretion* (which was, of course, rolled back by Thatcher) (Ewing, 2003).

¹⁹ The question is, essentially, whether unions fomented *de-commodification* via social corporatism where this has been witnessed; or whether there were historical and contextually specific tendencies to resist commodification in the first place, which also gave rise to strong and legitimate unions capable of claiming and institutionalising meaningful social corporatism.

While COSATU may have secured ‘world class’ labour legislation, the majority of the country’s workers, and almost all of its agricultural workers, remain unorganised and uncovered by collective agreements. This, in part, reflects the fact that dependence on the employer is very real and therefore the subsistence risk associated with adversarial collective action is deemed to be unacceptable.

Employer strategies

Overt ‘union busting’ – strategies aimed at deterring workers from exercising their right to join and participate in the activities of unions such as compiling, exchanging and using blacklists to deny workers’ rights activists employment; and systematic victimisation of employees exercising their rights – is outlawed wherever a modicum of organisational rights are granted. Such strategies may nevertheless persist whenever the enforcement machinery is limited or deficient, as both case studies confirm. Employers may also employ deterrence strategies too subtle to be justiciable

[the neo-paternalist] repertoire that the employer can draw on to *prejudice and victimise* a worker who seeks to exercise her organisation and bargaining rights, stifles recruitment work. Furthermore, since many of the burdens and benefits of employment are not formally articulated but meted out at the discretion of the farmer, it is very difficult to document this kind of prejudicing: ‘The paternalist provisioning of in-kind payments to workers persists – a basket of fruit or a piece of meat every week. The minute the worker joins a union, he can expect to have that taken away [...] Such practices are too subtle to be documented – the farmer will argue it was a gift in the first place and he has the right to withdraw a gift; he’ll come up with a million of reasons why he cannot afford it anymore’ (Cupido, *interview*) (*Stepchildren of Liberation*, p. 19-20).

In the Brazilian case study, I make only cursory mention of typical union-busting strategies of plantation and *latifundio* owners, such as blacklisting. However, I elaborate on the fact that *employer-smallholders* represent a big employer constituency; that wage workers must share trade unions with them, and the adverse consequences this has on organisation and collective bargaining. In this regard, *cohabitation* serves – in effect, if not in intent – as an employer strategy to stymie workers’ organisation.

Union strategies

Most scholarly pieces pertaining to union strategies (reviewed in Heery, 2003) are so ingrained in the crisis of *post-Fordist* unionism that they have limited value for the present purposes. cursory reflection on several currents in the debate is warranted, where this is relevant to the case studies.

Firstly, the *trade union renewal* current posits that there is an inherent tension between workers’ interests and the institutional needs of trade unions, and that the balance of power *within* unions must be shifted so as to ‘liberate workers’ interests from the dead hand of institutional interests’ (Fairbrother, cited in *ibid.*, p. 279). From this perspective, many of the characteristics that others associate with the crisis of unionism (including inability of unions to force their counterparts to bargain at high scales) are seen to stimulate rank-and-file unionism. Centralisation and professionalism are exactly what drain workers’ organisations of vitality, and ultimately of power.

It is not too difficult to find support for this current in the case studies. In the case of Brazil, it is hard to ignore the impression that workers have indeed been under ‘the dead hand of institutional interests’ – this seems to have been particularly true during the dictatorship when CONTAG came to be associated with the rise of *pelegos*. With regard to South Africa,

it may be recalled that FAWU, which is tasked with the job of organising agricultural workers, is described as wholly disinclined and inept.

Secondly, the *union agency* current emphasises that workers interests are *not* given and readily identifiable, but are considered to be ‘opaque and open to redefinition and reinterpretation [...] workers have a broad range of potential and competing interests of which they are conscious to varying degrees’ (Heery, 2003, p. 279). From this perspective, unions are *agents* with a very real scope for choice in terms of which interests to represent. Kelly’s importation of social movement theory into the study of labour relations (1997, 1998), which I return to below, has clear commonalities with this current.

Thirdly, many scholars – also those concerned with unionism in the global South – have embraced a veritable celebration of so-called *social movement unionism*, associated with both horizontal and vertical reorientation of unions (e.g. Eder, 2002; Munck, 2002). From this perspective, unions which ‘side-wind’ beyond the economistic-corporatist interest and ‘upscale’ (to look beyond the employer) are the ones which are likely to prevail and make a real difference. Fairbrother (2008) associates social movement unionism with unions that continue to emphasise the mobilisation of rank-and-file members, but also forge alliances and coalitions in and across communities; experiment with collective action other than strikes and workplace actions; frame demands politically; and formulate transformative visions.

While it must be acknowledged that the enthusiasm for social movement unionism has emerged in the context of discussing the role of trade unions in *national* politics, the case studies highlight the very real danger that such enthusiasm – with its explicit rejection of unionism based on narrow class-based interests – detracts attention from the power asymmetries and disenfranchised workers *within* national union movements. It is something of an irony that COSATU and CUT are considered to be *cause célèbres* of social movement unionism (cf. Eder, 2002).

As far as COSATU's role *vis-à-vis* agricultural workers is concerned, the case suggests that moving beyond the narrow corporatist interest has limited purchase for workers who are poorly organised and incapable of taking collective action of their own in the first place. Social movement unionism may, of course, compel the state to grant workers key outcome rights, and socialise them into a culture of organisation that, in turn, may pave the way for union-based collective action. However, it also detracts from efforts to mobilise workers according to 'small class' logics. On the other hand, it is equally true that the one union which presently makes the most headway amongst farm workers, *Sikhula Sonke*, pursues a strategy which comes very close to the *social movement union* prescript.

Much the same can be said for CONTAG in Brazil. Precisely those of CONTAG's characteristics that are the most problematic for Brazilian agriculture earn CONTAG the label as a *social movement union*. Its very model is about 'side-winding', and it certainly engages more with the state than with employers. But for wage workers, this serves to fudge the distinction between employers and workers and detract from, rather than reinforce, their associational power.

The 'Functional Linkage' Argument

Unlike in the traditional crafts (whose guild-unions would capture the supply of scarce, indispensable skills and achieve countervailing workers' power by regulating labour supply), industrial labour was typically structurally disadvantaged, as skills were endogenous to the firm or otherwise in some measure of chronic oversupply. A central tenet of twentieth century labour law and industrial relations governance was therefore that 'countervailing workers' power' (CVWP) required laws and regulations to prop up the organisation and collective bargaining of labour (Klare, 2002).

However, once the Fordist mode of production and labour processes withered, so did labour law's apparent ability to engender countervailing workers' power, suggesting that it was not so much labour laws *per se* which forged such countervailing power, but their *conjunction* with a certain employment model. Under the conditions of Fordism, labour law casts the union as a permanent feature of the labour process and employment relations which

does not simply enforce a schedule of prices for discrete units of labour (but) monitors the performance of, and enforces compliance with, standards and entitlements [...]. Thus, labour law's core conception of [...] representation is *functionally linked* to the long-term, site-attached model of production (*ibid.*, p. 15).

That there is such a 'functional linkage' between standard labour law and a certain workforce structure does not mean that trade union rights engender associational power only under conditions of Fordism²⁰. But it certainly suggests that the extent of labour law's traction is *contingent* on the workforce structure. Indeed, the functional linkage argument resonates strongly with points of view of South African activists who associate the non-realisation of agricultural workers' trade union rights – despite 'world class' labour legislation – with the presumption that legislation born out of urban labour relations will suffice in agriculture:

²⁰ Klare cites the recent unionisation of 74,000 Californian home-care aides – the single biggest group to have unionised in the US during the last sixty years. In fact, in this case the workforce structure is extremely adverse with an annual employee turnover in the range of 40 percent; workers have to solve their tasks in near total solitude and take their instruction not from any employer but directly from the client; moreover, the home-care aides are dispersed across an area spanning the size of Belgium and with nine million people (*ibid.*, p. 22). But this case has peculiar characteristics: First, it took an immense and historic union effort which spanned more than a decade, cost some USD 20 million, involved home visits to 33,000 workers, and combined hundreds of neighbourhood meetings with the running of a toll-free 800-number. Second, the unions had to bring an employer into existence, literally speaking – and the employer would eventually *let* itself be identified: After years of lobbying, unions succeeded in getting the Californian legislature to authorise counties to establish home care authorities vested with employer responsibility. Finally, the home care aides were working for government in an explicitly not-for-profit scheme, but it remains to be seen what they can achieve in terms of collective bargaining.

it is presumed that trade unions can and will perform two different but interdependent functions once legislation is sufficiently labour-friendly: Firstly, that unions can and will articulate and promote workers' *shared* interests through collective bargaining; and, secondly – being vested with statutory and exclusive rights to serve as vehicles for access to justice – that unions can and will act as *custodians of individual workers' freedom of association*. Indeed, is it reasonable to absolve the state machinery from having to police individual procedural rights *only if* unions do serve as effective custodians of both collective and individual rights (But) even a world class labour code is demonstrably *not* sufficient to cast unions as such custodians (it) fails to account for the very different *structural features* of rural labour relations: Production relations are less formalised and much more deeply intertwined with social reproduction; farm workers are therefore much more vulnerable to *victimisation* when exercising their freedom of association than their urban counterparts, and, correspondingly, less inclined to unionise. Furthermore, the often extreme spatial dispersal of farm workers around thousands of points of production complicates the reach of the unions, and prospective members can only afford to pay the most modest union duties; consequently, rural unions do not raise the revenue required to keep professional and committed staff capable of successfully prosecuting labour rights violations. Whereas the structural circumstances enveloping urban unions lend themselves to a *positive* feedback loop – as successful protection of individual workers' rights compels new workers to organise, and unions' capacity and membership rates soar until successful collective bargaining may be realised – rural unions tend to be trapped in a *negative* feedback loop. Since the labour relations system, at the same time, presumes that unions look after individual workers' freedom of association, the resources of the labour inspectorate are devoted to the surveillance of substantive rights (*Stepchildren of Liberation*, p. 35-36).

Constitution and Contingencies of Interests and Identities

Questions related to the processes by which a group of individuals come to conceive of *interests and identity* as collective are prominent in social movement studies; in this regard, a common point of departure is that ‘identity formation is a prerequisite for mobilisation. In the absence of a self-conscious group, there is no collectivity that can interpret and act upon its situation’ (Houtzager, 2001, p. 38). One might expect that comparable preoccupations are central in studies of labour relations, since, crudely stated, conducive labour laws and workforce structure, for instance, will not make much of a difference to workers’ organisation if the category of workers in question does not conceive of their interests and identities in collective terms²¹.

Yet, preoccupation with the constitution and contingencies of workers’ interests and identities has not been central to labour relation studies. One scholar remarks how much of the literature

treats unions as dynamic and creative in terms of strategy, but static in terms of formation and claims formulation. There is a risk of seeing these (union) politics as a zero-sum game of actors with fixed interests (Haarstad, 2010, p. 11).

Indeed, none of the ‘standard determinants’ identified by Kelly (and discussed extensively above) speak directly to the constitution and contingencies of interests and identities. It is tempting to speculate that this omission has its roots in the convention (after Marx) of taking *class* to be an ontologically true source of differentiation and, eventually, social cohesion and identification. Here, ‘class-*in-itself*’ is not socially constructed but is about the ‘objective material interests’ that flow from a group’s position *vis-à-vis* the means

²¹ This is crude because determinants such as labour legislation and workforce structure do play a role of their own in the formation of collective interests and identities.

of production. To the extent that contingency is involved it has to do with how it becomes a ‘class-*for-itself*’ – that is, a class which is conscious of, and determinedly pursues, these ontologically true interests (e.g. Herring & Agarwal, 2006). A particular Marxian concern has been about the *level of generality* at which class becomes ‘class-*for-itself*’: As previously noted, Marx and Engels worried that the functional and spatial differentiation of labour could give rise to ‘small’ class identity formations at the expense of a ‘big class’ formation.

But, in the context of discussing the organisation and pressing of collective claims through trade unions, the contingency of interests and identities is about more than just the level of generality at which class consciousness forms. Following Kelly (1997; 1998), it is of key importance to explore the conditions under which even a ‘small’ class-*in-itself* becomes a class-*for-itself*. For my own part, I add that it is both possible and fruitful to pursue this question without necessarily accepting the Marxian premise that a class-*in-itself* can be demarcated by way of ontologically true referents: It makes perfect sense to explore why a certain category of workers does not become properly conscious of itself (and presumably therefore does not organise and press claims collectively), even if the demarcation of that category is ultimately a feat of the researcher²².

²² The presumption of ‘objective material interest’ is dubious, of course: The identification of an objective class-*in-itself* must be made either on the basis of certain social epiphenomena of differentiation, or according to some differentiation criteria devised by the observer – in either case the class thus identified is, inescapably, an inherently social construction. Second, objective material interests are presumed to be more valid than other interests. If a group of people is constituted on the basis of subjectively conceived interest other than that vested in the class-*in-itself* – say, ‘we, the *coloreds*’ rather than ‘we, the farm workers’ – are the processes producing the former necessarily more distorting than the latter? In the non-Marxian conception which I pursue, classes-*in-themselves* are taken to be all those categories of workers which (while presently non-articulate) *may* give rise to classes-*for-themselves*. Such categories may be discerned by reference to someone’s purposive attempts at making them into classes-*for-themselves* (as is the case of the Brazilian *opocicões sindicais* and agricultural wagedworkers, cf. *Out of Mind*), or by means of comparison: If agricultural wage workers constitute a class-*for-itself* in, say, California, it makes sense to explore organisationally comparable categories of workers in, say, Brazil or South Africa).

Insights from Social Movement Theory

Kelly (1997, 1998) holds that the deficit in standard labour relations as regards the constitution and contingencies of interests and identities may be overcome by borrowing insights from social movement theory. Note that this proposition concerns the adoption of theoretical and heuristic devices – it must not be confused with debates about the resemblance or not between social movements and trade unions (such as in the aforementioned celebration of *social movement unionism*). I may add that the attraction of social movement theories owes a lot to the fact that these theories try to make sense of collective action *without* the problematic built-in presumptions in labour relations theory – notably, the dubious ontological status it ascribes to class; and its enmeshing in, and therefore blindness toward, the peculiarities of *fordism*. This proves helpful when one is to study conditions of organisation in a post-fordist context (as does Kelly) or the organisation of workers who never had anything to do with fordism at all (as is the case here; see also Houtzager, 2001).

Kelly's point of departure within social movement studies is the seminal work of Tilly (1978) whose carefully grounded theory on social movements represents a certain shift of perspective. Here it suffices to mention three elements of Tilly's theory: Firstly, his focus on how individual *grievances* are transformed into collective interests and identities; secondly, that contextually specific *political opportunity structures* shape the form and extent of organisation and pressing of collective claims; and, thirdly, that the *action repertoire* of a movement is likely to reflect the contextually specific risks of participating in contentious action (if it does not, it will fail to engender much popular mobilisation).

As I outline below, Kelly attempts to import the focus on grievances to labour relations – which I discuss in the context of the case studies. Meanwhile, the cases also illustrate points related to Tilly's *political opportunity structures* and *action repertoire*. With regard to political opportunity structure, it must be noted that it comprises much more than

merely labour law. The analytical utility of the term is neatly illustrated in Houtzager's (2001) study of the rural union movement in Brazil: The dictatorship propped up rural unions in an effort to forge institutional linkages between states and the populace so as to emasculate the semi-feudal power of the regional *coroneis*. While the opportunities flowing from such elite rivalries could only be reaped at the cost of considerable cooptation and organisational disfigurement, it *did* turn the rural union movement into the biggest of its kind in the western hemisphere (if not in the world), and one which can put its considerable organisational capabilities to transformative uses, even if these uses are spatially and temporally bounded from the point of wage workers.

The South African case illustrates the analytical utility of *action repertoire*. Even workers who are cognizant of their constitutionally entrenched rights to organise and press claims through adversarial bargaining may presume that the exercise of these rights is a sure way to jeopardise their jobs, houses and physical security. This highlights how a standard action repertoire might deter rather than compel the organisation of workers in certain circumstances.

In his importation of grievance perspectives into labour relations studies, Kelly highlights how organisation and collective action flow from a 'cognitive liberation' associated with a sense of *illegitimacy, entitlement and efficacy*:

The *sine qua non* for collective interest identification is a sense of illegitimacy, the conviction that an event, action or situation is 'wrong' or 'unjust' because it violates established rules, or conflicts with widely shared beliefs or values [However] it is not enough for employees to feel aggrieved: they must also feel *entitled* to their demands and feel that there *is some chance* that their situation may be changed (Kelly, 1997, p. 406)

The South African case study leaves little doubt that such ‘cognitive liberation’ is yet to occur amongst agricultural workers. *Apartheid* mindsets persist in the countryside: Workers are not easily convinced that their circumstances really are all that illegitimate – and, surrounded by extreme rural poverty and dispossession, they may reckon that many people are afflicted by circumstances much worse than theirs. The ‘cognitive non-liberation’ of Brazilian agricultural workers seems to be of a different kind: They may well consider their circumstances as being profoundly illegitimate, but their rights *qua* wage workers are profoundly obscured by the dominant discourses in agricultural politics, the legal principles of cohabitation, and unions strategies. This situation frames illegitimacy and rights in terms of the struggle for land and family farming, and hence reinforces the wage worker status as negative and transitory.

The interpretation of grievances in terms of illegitimacy, entitlement and efficacy is not something that comes about by itself; it is produced through so-called *collective action frames*. Such frames will typically

identify the most salient feature of the [capital-labour] relationship such as the wage-effort exchange; they supply a set of emotionally-loaded categories for thinking about this exchange in terms of group interests; and they provide a set of categories and ideas that label the interests of one’s group as rights (*ibid.*)

It furthermore seems that collective action frames play a key role in coalescing a set of generally aggrieved individuals into a self-aware social group with a felt collective interest and the three associated catalysts: *Attribution, social-collective identification; and leadership*. Collective action flows most readily from *external, controllable* attributions (as opposed to attribution to circumstances which are of one’s own making or which are beyond anyone’s control). Effective action frames convincingly blame employers for workers’ grievances –

‘reference to market forces will inhibit collective action by failing to identify an agency that can provide an appropriate target’ (*ibid.*, p. 407).

Collective action frames may, furthermore, be more or less conducive to social-collective identification: while attributing blame to them (‘employers’), collective action frames must also compel workers to conceive of injustices and rights in *collective terms* and encourage *collective routes* to redress.

South African agricultural workers may well attribute blame to the action of employers, but their social-collective identifications are inhibited by the conjunction of apartheid legacies and the failure of unions to mobilise both permanent and casual workers, in particular in the Western Cape:

On-farm division of labour is rigidly gendered and racialised: Permanent jobs associated with higher skill, core tasks and access to in-kind provisions are held almost exclusively by *men* and to a very large extent by *coloured men* [...] A failure to straddle the divide between permanent and casual workers may perpetuate racialised labour relations, which is likely to impede the forging of a determined collective agency of farm workers (*Stepchildren of Liberation*, p. 27).

Furthermore, the neo-paternalist relational web seems to privilege individualistic routes to redress amongst permanent workers: Continued partial dependence on in-kind payments granted on the basis of individualistic ties and according to farmers’ discretion, enables farmers to prejudice and victimise workers who exercise organisational rights. Thus neither grievances themselves nor feasible routes to redress are readily conceived of in collectivist terms.

For their Brazilian counterparts, attribution and social-collective identifications are, again, inhibited by the dominant discourses in agricultural politics, the legal principles of cohabitation, and union strategies: While workers may indeed attribute blame to employers,

the predominant collective identification is that of the small people who have to work the land themselves (vs. patrons who own so much land that they don't work it themselves) – not the small people who work the land for a wage.

Importing Insights from Discourse Theory

The importance of leaders in social movement theory flows directly from the focus on collective action frames, because leaders are doing entrepreneurial framing work:

Symbols are taken selectively by movement leaders from a cultural reservoir and combined with action-oriented beliefs in order to navigate strategically among a parallelogram of actors, ranging from states and social opponents to militants and target populations. Most importantly (symbols) are given emotional valence aimed at converting passivity into action (Tarrow, 1998, p. 112).

Discourse theory serves as an antidote to the presumption of individual volition and the focus on leaders' agency which predominate in framing theory; it reminds us that the contingencies involved in the processes whereby a class-*for-itself* comes into being, are often beyond any predetermined and purposive forging of discourse – they are not malleable to 'selective picking of symbols' and 'strategic navigation in a parallelogram of actors'. In fact, the discourse theoretical concept of *articulation* effectively reverses the relationship between actors and discourse:

[Articulation is the process by which] an *ideology discovers its subject* rather than how the subject thinks the necessary and inevitable thoughts which belong to it [...] [articulation describes] the circumstances under which ideological elements come to cohere together within a discourse which do or do not become *articulated to* certain political subjects (Hall, *cited* in Li, 2004, p. 342).

Discourse, then, is not just the medium through which grievances and the aggrieved are expressed – grievances and the aggrieved are *constituted by* discourse, as Laclau’s theorising of political subjectivities illustrates (the discussion below is based on Laclau, 2005; but also informed by Howarth, 1995; Laclau & Mouffe, 1985; and Torfing, 1999).

In Laclau’s conception, the objective world is one of signs; and these signs represent innumerable crisscrossing *differences*. *Some* differences become articulated and give rise to social antagonisms and political subjectivities, while others are rendered socially invisible. This is due *not* to any innate objective materiality of the former, or to any freewheeling volition of leaders, but to the play of discourses²³. *Hegemony* occurs when a particular fixation of meaning – say, the salience of antagonism X rather than Y – has become so thoroughly routinised and naturalised as to be beyond questioning.

Laclau posits that the formation of antagonisms and political subjectivities is governed by two main modes of discursive politics: a splitting *democratic-differential logic*, on the one hand, and a lumping *populist-equivalential logic* on the other. The former logic regulates antagonisms by explicit recognition. A pertinent example is Fordist capitalism: By recognising the capital-labour antagonism and by enfranchising organised labour into the ‘historic bloc’²⁴, thus granting it part of the spoils of the capitalist order, a society-wide bifurcation and rupture was forestalled. Significantly, this would also beget intra-class *differentiation* since variable segments of labour were pulled into differential and specialised bargaining structures. Consequently, different labour claims could be unequally

²³ As in *Rise and Demise*, I take a discourse to be ‘an ensemble of ideas, *concepts* and categorisations that are produced, reproduced and transformed in a particular set of practices and through which meaning is given to physical and social realities’.

²⁴ Laclau follows Gramsci: The ‘historic bloc’ describes a particular inter-class alliance (albeit under the leadership of one of these classes, e.g. the *national* bourgeoisie under Fordist capitalism) whose negotiated interests are reflected in the relations of production, governing institutions and, most importantly, the prevailing ‘common sense’.

accommodated. In terms of class-*for-itself* formation, then, *democratic-differential logic* is associated foremostly with the articulation of political subjectivities of the ‘small class’ kind.

By contrast, the *populist-equivalential logic* elevates *one* antagonism into an all-encompassing dichotomy of *us vs. them*, and aligns (lumps) all other antagonisms on either side of the internal frontier thus created. The consequence is that the always-latent antagonisms amongst ‘us’ are muted, and that a widening of political subjectivity of the ‘big class’ kind becomes possible.

Significantly, the *populist-equivalential logic* pivots around a single, ‘master signifier’ which is tendentially ‘empty’: That is, the master claim is stated in such a way as to *not* make its meaning explicit and unambiguous, for this would reveal the always-latent antagonisms within the widened political subjectivity. The master signifier of the *alter-globalisation* movement, for instance, is that ‘another world is possible!’ While it invokes a grand antagonism and resonates deeply, this claim is empty enough to be able to contain *many* interests and identities: ‘The so-called ‘poverty’ of the populist symbols is the condition of their political efficacy [...] We could say that what the [populist-equivalential logic] wins in extension it loses in intention’ (Laclau, 2005, p. 7). By contrast, the *democratic-differential logic* is organised around innumerable signifiers, each of which is given a negotiated but explicit and unambiguous meaning.

A particular historic bloc may seek to sustain a general systemic equilibrium by way of the *populist-equivalential logic*. However, as the South African case illustrates, such efforts create stability within the dominant bloc only at the expense of fueling societal instability:

The exclusion of subversive blackness certainly helped to unify and sustain the identity of both Afrikaners and the English as white people. It did so only by introducing a dangerous supplement [that of the non-differentiated black ‘other’] which ultimately took its revenge (Torfing, 1999, p. 131)

Alternatively, a historic bloc may sustain a general systemic equilibrium – albeit at the price of continuous but piecemeal changes – by way of continuously accommodating antagonisms as per *the democratic-differential logic*. However, there are clear limits to this logic, too: There will always be numerous ‘disenfranchised’ antagonisms and these may become aligned according to the *populist-equivalential logic* in an emerging counter-hegemonic project.

For the present purposes, the circumstances which permit/impede such counter-hegemonic widening of political subjectivities warrant special mention. That two political subjectivities or discourses are equally disenfranchised from a *democratic-differential logic* perspective is not a sufficient condition for their joint articulation under a counter-hegemonic *populist-equivalential logic*. This is so because ‘structural differential limits’ may cross-cut the internal frontier which is being drawn to expand the political subjectivity. In such circumstances it does not help that the master signifier appears to be empty: When European *neo-nazis* seek to align their demand (for sovereignty of the racially defined ‘*Volk*’) under the same banner as that of radical leftists (sovereignty of the nation-state as opposed to transnational capital) – *anti-globalisation* – the potentially conflicting meanings of that banner are instantly brought to the foreground. The articulation of a widened *political subjectivity* is impeded not just by the instant revelation of the antagonism between the neo-nazis and the leftists; more to the point, it foregrounds the partial *affinity* between the leftist and the hegemonic bloc which renders the attempt to forge an antagonism around the notion of ‘sovereignty’ tenuous.

In South Africa, it seems that the antagonism that demarcates agricultural workers as a category of workers (agricultural wage earners vs. agricultural employers) is cross-cut by a socially more salient antagonism – namely *ethnicity* (colored vs. black vs. immigrant). This is,

in turn, reinforced by ethnicity's confluence with other differentiations: permanent vs. casually employed; and skilled vs. non-skilled labour. This intra-class division, then, constitutes a severe structural differential limit to the formation of broad political subjectivity among agricultural workers (i.e. as a *class-for-itself*). In this sense, the case illustrates how the prevalence of the *democratic-differential logic* of splitting may undermine collective action.

In Brazil, the structural differential limit which prevents agricultural wage workers from becoming a *class-for-itself* is the salience of a antagonism which is more *encompassing* than that of wage workers vs. employers – i.e. the small people who have to work the land themselves vs. patrons owning so much land that they don't work it themselves. Hence, one *cannot* say, as in the South African case, that the emergence of political subjectivity among agricultural wage workers is prevented by cross-cutting *intra-class* antagonisms. In this sense, the case illustrates a *populist lumping logic* and agricultural wage workers are indeed mobilised within a larger political subjectivity. However, this logic also prevents them from being mobilised *qua* wage workers. Wage worker interests and identities are permitted to be articulated neither according to the *democratic-differential logic*, nor by the populist logic of the *via campesinato* discourse (cf. *Out of Mind*)

Conclusion

Propositions on the challenge of organising agricultural workers

The above synthesis of generic theory and case studies findings gives rise to eight generally stated propositions on the challenges of organising agricultural workers. The generalisability of these propositions (beyond the case studies from which they are extrapolated) remains wholly indeterminate, of course. However, in the spirit of grounded theory formation, I present them for others to consider – whether they capture something generalisable about the

organisation of agricultural workers writ large can only be determined by applying them to other case studies to see if they fit:

Adverse non-market relations: While the organisation of agricultural workers is impeded by the commodification associated with labour market dynamics, the persistence of social institutions in defiance of capitalist labour relations – such as on-farm paternalism and coercive labour appropriation – may constitute just as much of an obstacle.

Adverse workforce structures: Certain traits that are characteristic of the workforce structure in agriculture, especially the spatial dispersal of labour, severely impede the organisation of workers. It means that contact amongst, outreach to and trade union recruitment of workers require inordinate efforts.

Vulnerability to atypical employment: Efforts at organising agricultural workers are particularly vulnerable to the spread of atypical employment. Rural labour brokers operate in partial informality, and are often themselves subject to tacit forms of exploitation, which compounds the difficulties of persecuting violations of workers' organisational rights.

Limited traction of law without functional linkage: Even in the context of model legislation for the protection of trade union rights, the absence in agriculture of a 'functional linkage' (i.e. synergies between labour law and workforce structure) means that rural unions are not easily cast in the role of custodians of individual workers' organisational rights.

Misguided enforcement assumptions: The presumption that the policing of individual workers' organisational rights is the sole preserve of trade unions (thus absolving the labour inspectorate from the task), colludes with the former condition to grant employers *de facto* freedom to victimise workers.

Ambiguous effects of social movement unionism: Union strategies associated with social movement unionism ease the organisation of agricultural workers whenever these strategies are brought to bear on social relations at or around specific points of production.

Then union organisation may serve to address a broader range of grievances, and can spread potentially recriminatory roles to more than just a few workers. If, however, the same strategies operate at higher scales, they may detract from the organisation of agricultural workers.

Cognitive suppression: Workers' rights activists consider that agricultural workers, for reasons of social marginality, tend to conceive of their grievances in ways that impede collective action through trade unions. Their conceptions of injustice, rights and efficacy are severely circumscribed.

Not a class-for-itself: Workers will organise together only to the extent that they consider themselves to be a political collective with shared interests. In order for this to happen, the *employer/worker* antagonism must have considerable social salience. In rural social relations, however, that antagonism is often cross-cut by ethnic antagonisms (owing to immigration) or emasculated by other more encompassing antagonisms (e.g. over land ownership).

Linkage Traction

While I do not wish to infer much about the relative importance of the different factors which impede the organisation of agricultural workers, one thing seems certain: The provision of the formal labour relations regime pertaining directly to trade union rights are only one part – and not necessarily the most significant part – of the problem.

Certain apparently minor aspects of formal labour relations regimes may, nevertheless, be quite consequential as far as the organisation of agricultural workers is concerned. The South African case points to one such aspect, namely the resolve, integrity and mode of its enforcement machinery (rather than legislation *per se*) – especially regarding by whom and how organisational rights are upheld. This is where a labour-trade linkage holds some promise

for the organisation of South African agricultural workers and activists. However, such a promise will surely be betrayed unless the crucial implementation principle in international labour law – namely, that a country’s obligation towards core labour standards is as much about putting in place the required enforcement machinery as it is about getting the legislation right – becomes manifest in ILO’s supervisory practices. In the Brazilian case, the traction of linkage is more obvious: To the extent that it would compel Brazil to ratify and implement ILO convention 87, a linkage would wrest agricultural wage workers free of impeding cohabitation model of trade union organisation.

However, I certainly do not want to overstate what a linkage can do to help the organisation of agricultural workers. The synthesis in this chapter has pointed to a number of impediments – including workforce structure; labour brokerage; workers’ utter dependence on employers; and financial frailty of trade unions – that fall outside the remit of core labour standards. Furthermore, some measures that can mitigate some of these problems – such as ‘closed shop’ arrangements intended to boost union income and organisational robustness – are not at ease with the pluralist norms that predominate in international labour law.

Literature

Alston, P. (2004): 'Core labour standards and the transformation of the international labour rights regime' *The European Journal of International Law*, Vol. 15, No. 3, pp. 457-521.

— (2005): 'Facing Up to the Complexities of the ILO's Core Labour Standards Agenda' *The European Journal of International Law*, Vol. 16, No. 3, pp. 467-480.

Anderson, E. (2010): 'Feminist Epistemology and Philosophy of Science', *Stanford Encyclopedia of Philosophy*
Retrieved 14 Oct 2010 from <http://plato.stanford.edu/entries/feminism-epistemology/>

Anner, M. (2001): *The Paradox of Labor Transnationalism: Northern and Southern Trade Unions and the Campaign for Labor Standards in the WTO*. Paper presented to the Annual Meeting of the American Political Science Association; San Francisco, 2001.

Berg, B. (2007): *Qualitative Research Methods for the Social Sciences* (Sixth Edition). Boston: Pearson.

Carraway, T. (2006): 'Freedom of association: Battering ram or Trojan horse?' *Review of International Political Economy*, Vol. 13, No. 2, pp. 210-232.

Chan, A. & R. Ross (2003): 'Racing to the Bottom: International Trade without a Social Clause'. *Third World Quarterly*, Vol. 24, No. 6, pp. 1011-1028.

Chase, J. (1999): 'Trapped workers, urban freedoms and labour control in Brazilian agriculture: Evidence from southwest Goias' *Journal of Rural Studies*, Vol. 15, No. 2, pp. 201-220.

Crotty, M. (1998): *The Foundations of Social Research. Meaning and Perspective in the Research Process*. London: Sage.

Eder, M. (2002): 'The constraints on labour internationalism: Contradictions and prospects' in J. Harrod. & R. O'Brien (eds) (2002): *Global Unions? Theories and Strategies of Organised Labour in the Global Political Economy*. London and New York: Routledge.

Esping-Andersen, G. (1990): *The Three Worlds of Welfare Capitalism*. Cambridge: Polity Press

Ewing, K. (2003): 'Labour law and industrial relations' in P. Ackers & A. Wilkinson (Eds.): *Understanding Work and Employment: Industrial Relations in Transition*. Oxford: OUP.

Fairbrother, P. (2008): 'Social movement unionism or trade unions as social movements' *Employee Responsibilities and Rights Journal*, Vol. 20 No. 3, pp. 213-220.

Flanagan, R. (2003): 'Labor standards and international competitive advantage' in R. Flanagan & W. Gould IV (eds.): *International Labour Standards. Globalization, Trade and Public Policy*. Stanford: Stanford University Press.

Giddens, A. (1984): *The Constitution of Society. Outline of the Theory of Structuration*. Cambridge: Polity.

Haarstad, H. (2010): Maneuvering the spaces of globalization: The rearticulation of the Bolivian labor movement. *Norsk Geografisk Tidsskrift – Norwegian Journal of Geography*, Vol. 64, No. 1, pp. 9-20.

Hacking, I. (1999): *The Social Construction of What?* Cambridge: Harvard University Press.

Harrod, J. (2002): 'Towards an international political economy of labour' in J. Harrod & R. O'Brien (Eds.). *Global Unions? Theories and Strategies of Organised Labour in the Global Political Economy*. London and New York: Routledge.

Harrod, J. & R. O'Brien (2002): 'Organised labour and the global political economy' in J. Harrod & R. O'Brien (Eds.). *Global Unions? Theories and Strategies of Organised Labour in the Global Political Economy*. London and New York: Routledge.

Harvey, D (1982): *The Limits to Capital*. Oxford: Basil Blackwell

Heery, H. (2003): 'Trade Unions and Industrial Relations' in P. Ackers & A. Wilkinson (Eds.): *Understanding Work and Employment: Industrial Relations in Transition*. Oxford: OUP.

Herod, A. (1997): 'Labour as an agent of globalization and as a global agent' in K. Cox (Ed.) *Spaces of Globalization: Reasserting the Power of the Local*. New York: Guilford, pp. 167-200.

Herod, A.; J. Peck & J. Wills (2003): 'Geography and Industrial relations' in P. Ackers & A. Wilkinson (Eds.): *Understanding Work and Employment: Industrial Relations in Transition*. Oxford: OUP.

Herring, R. & R. Agarwal (2006): 'Introduction: Restoring Agency to Class. Puzzles from the Subcontinent' *Critical Asian Studies*, Vol. 38, No. 4, pp. 323-356.

Hilgert, J. (2009): 'Mapping the Boundaries of Human Rights at Work: Questioning how the ILO Defines Labor Rights and Social Justice' *Labor Studies Journal*, Vol. 34, No.1, pp. 21-38.

Houtzager, P. (2001): 'Collective action and political authority: Rural workers, church and state in Brazil' *Theory and Society*, Vol. 30, No. 1, pp. 1-45.

Howarth, D. (1995): 'Discourse Theory' in Marsh & Stoker (Eds.): *Theory and Methods in Political Science*. Basingstoke: Macmillan.

ILO (2006): *Freedom of Association. Digest on the decisions and principles of the Committee on Freedom of Association and the Governing Body of the ILO*. Fifth revised edition. Geneva: ILO .

- (1998) *Declaration on Fundamental Principles and Right at Work*. Geneva: ILO.
- (1996): *Wage workers in agriculture: Conditions of employment and work*. Geneva: ILO.
- ITUC (2010): *Annual Survey of Violations of Trade Union Rights 2010*. Brussels: ITUC.
- Kelly, J. (1997): ‘The future of trade unionism: injustice, identity and attribution’ in *Employee Relations*, Vol. 19, No. 5, pp. 400-414.
- (1998): *Rethinking Industrial Relations: Mobilization, Collectivism and Long Waves*. London/New York: Routledge/LSE.
- Klare, K. (2002) ‘The horizons of transformative labour and employment law’ in J. Conaghan; R. Fischl & K. Klare (eds.). *Labour law in an era of globalization*. Oxford, OUP.
- Laclau, E. (2005): ‘Populism: What’s in a Name?’ In F. Panniza (Ed.): *Populism and the Mirror of Democracy*. London: Verso, pp. 32-49.
- Laclau, E. & C. Mouffe (1985): *Hegemony and Socialist Strategy*. London: Verso.
- Li, T. (2004): ‘Environment, indigeneity and transnationalism’, in R. Peet and M. Watts (Eds.) *Liberation Ecologies*, Second edition. London: Routledge, pp. 339-370.
- Mjøset, L. (2001): ‘Theory: Conceptions in Social Sciences’ in Smelser, N & P. Bates (eds): *The International Encyclopedia of the Social and Behavioural Sciences*. Elsevier, pp. 15641-15647.
- Munck, R. (2002): *Globalisation and Labour: The New ‘Great Transformation’*. London: Zed Books.
- OECD (1996): *Trade, Employment and Labour Standards: A Study of Core Workers’ Rights and International Trade*. Paris: OECD.
- Pahle, S. (2011a): ‘Stepchildren of liberation: South African farm workers’ elusive rights to organise and bargain collectively’. Manuscript/PhD thesis. NORAGRIC, Norwegian University of Life Sciences, Ås, Norway.
- (2011b): ‘Out of mind – out of sight? The troubled trade union rights of Brazil’s agricultural workers’ Manuscript/PhD thesis, NORAGRIC, Norwegian University of Life Sciences, Ås, Norway.
- (2011c): ‘Bringing the workers’ rights back in? Complexities of forging an internationalist labour-trade linkage’ Manuscript/PhD thesis, NORAGRIC, Norwegian University of Life Sciences, Ås, Norway.
- (2010): ‘The rise and demise of the social clause proposal in the 1990s. Implications of a discourse theoretical reading’ *Labour History*, Vol. 51, No. 3, pp. 389-410.
- Paige, J. (1975): *Agrarian Revolution: Social Movements and Export Agriculture in the Underdeveloped World*. New York: Free Press.

- Polanyi, K. (1958): *The Great Transformation. The Political and Economic Origins of Our Time*. Boston: Beacon (2001 reissue)
- Raday, F. (2002): 'The decline of union power – structural inevitably or policy choice?' in J. Conaghan; R. Fischl & K. Klare (eds.). *Labour law in an era of globalization*. Oxford, OUP.
- Roberts, I. (2003): 'Sociology and Industrial Relations' in P. Ackers & A. Wilkinson (Eds.): *Understanding Work and Employment: Industrial Relations in Transition*. Oxford: OUP
- Scott, J. (1985): *Weapons of the Weak: Everyday Forms of Peasant Resistance*. New Haven: Yale University Press.
- Selwyn, B. (2007): 'Labour Process and Workers 'Bargaining Power in Export Grape Production, North East Brazil' *Journal of Agrarian Change*, Vol. 7, No. 4, pp. 526-553.
- (2008): 'Bringing the social relations back in: (Re)conceptualizing the Bullwhip Effect in global commodity chains' *International Journal of Management Concepts and Philosophy*, Vol. 3, No. 2, pp. 156-175.
- Tarrow, S. (1998): *Power in Movement: Social Movements and Contentious Politics*. Cambridge: Cambridge University Press.
- Tilly, C. (1978): *From Mobilization to Revolution*. Reading: Addison-Wesley.
- Torring, J. (1999): *New Theories of Discourse*. Oxford: Blackwell.
- Wells, M. (1996): *Strawberry Fields. Politics, Class and Work in California Agriculture*. Ithaca & London: Cornell University Press.
- Wright, E. O. (2000): 'Working class power, capitalist class interests and class compromise' *American Journal of Sociology*, Vol. 105, No. 4, pp. 957-1002.

ANNEX I: COMPLETE LIST OF INTERVIEWS

Brazil

Barbosa, Alexandre de Freitas

Interviewed May 12th 2008 in São Paulo (SP)

At the time, Barbosa served as chief researcher at *Instituto Observatorio Social*, a union-based think tank focusing on globalisation and labour rights.

Barbosa, Mario

Interviewed April 23rd 2008 in Brasilia (DF)

Barbosa is special advisor on international relations issues at the Brazilian Ministry of Labour and Employment (MTE)

Bertotti, Rosane

Interviewed May 14th 2008 in São Paulo (SP)

Bertotti is in the leadership of *Federação Nacional dos Trabalhadores e Trabalhadoras na Agricultura Familiar* (FETRAF), the national federation of family-farmers-only unions. She also holds leadership positions in *Central Unica dos Trabalhadores* (CUT) and in *Partido dos Trabalhadores* (PT)

Brito, Leila

Interviewed April 22nd 2008 in Goiania (GO)

Brito is a researcher with *Departamento Intersindical de Estatísticas e Estudos Socioeconomicos* (DIEESE) a union-owned research institute and think tank

Britto, Samuel

Interviewed April 15th 2008 in Brasilia (DF)

Britto is a fieldworker with *Comissão Pastoral da Terra* (CPT), a national church-based NGO that monitors rural conflicts related to labour, land and water

Campolina, Adriano

Interviewed April 28th 2008 in Rio de Janeiro (RJ)

Campolina is director at *Action Aid Brasil*

Cozedey, Carlos Marcio

Interviewed March 12th 2008 in Brasilia (DF)

Cozedey is heading the department of economic affairs at *Itamaraty* (the Brazilian Ministry of Foreign Affairs)

Facco, Luiz Vicente

Interviewed March 11th 2008 in Brasilia (DF)

Facco is international relations secretary at *Confederação Nacional dos Trabalhadores e Trabalhadoras na Agricultura* (CONTAG), the national confederation of [official] rural trade unions.

Felicio, João Antonio

Interviewed May 13th 2008 in São Paulo (SP)

Felicio is international relations secretary at *Central Unica dos Trabalhadores* (CUT), Brazil's biggest trade union central.

Filho, Antonio Lucas

Interviewed April 23rd 2008 in Brasilia (DF)

Filho is national secretary for wage workers in *Confederação Nacional dos Trabalhadores e Trabalhadoras na Agricultura* (CONTAG), the national confederation of [official] rural trade unions.

Freire, Rafael

Interviewed May 5th 2008 in São Paulo (SP)

Freire is secretary of economic and social policy at the São Paulo offices of *Organização Regional Inter-Americana dos Trabalhadores* (ORIT/CIOSL), the regional chapter of ITUC.

Jacobsen, Kjeld

Interviewed May 1st 2008 in São Paulo (SP)

Between 1994 and 1999, Jacobsen was international relations secretary at *Central Unica dos Trabalhadores* (CUT). He presently

works as independent consultant and is an associate of the union-based *Instituto Observatorio Social*.

Marques, Lilian

Interviewed April 11th 2008 in Brasilia (DF)

Marques is coordinator at *Departamento Intersindical de Estatísticas e Estudos Socioeconomicos* (DIEESE) a union-owned research institute and think tank

Mello, Fatima

Interviewed April 29th 2008 in Rio de Janeiro (RJ)

Mello is Director at *Federação de Orgãos para Assitencia Social e Educacional* (FASE), a national development NGO; she is also a Coordinator at *Rede Brasileira Pela Integração dos Povos* (REBRIP), a national network of NGOs working on issues related to globalisation.

Minheiro, Adhemar

Interviewed April 29th 2008 in Rio de Janeiro (RJ)

Minheiro is a researcher with *Departamento Intersindical de Estatísticas e Estudos Socioeconomicos* (DIEESE) a union-owned research institute and think tank

Moraes Silva, Maria Aparecida de

Interviewed May 7th 2008 in São Carlos (SP)

Moraes Silva is a researcher at the Federal University at São Carlos (UFSCAR)

Neves, Elio

Interviewed May 7th 2008 in Araraquara (SP)

Neves is the secretary general of *Federação dos Empregados Rurais Assalariados do Estado de São Paulo* (FERAESP), the federation of wageworker-only unions in the state of São Paulo.

Nogueira, Rose

Interviewed May 15th 2008 in São Paulo (SP)

Nogueira is president of *Conselho Estadual de Defesa dos Direitos da Pessoa Humana* (Condepe), the independent human rights council in the state of São Paulo

Oliveira, Marcos de

Interviewed March 12th 2008 in Brasilia (DF)

Oliveira is an advisor at *Departamento de Estudos Socio-Economicos Rurais* (DESER), a research-oriented NGO working to capacitate family farmers and promote rural reform

Pietricovsky, Iara

Interviewed April 10th 2008 in Brasilia (DF)

Pietricovsky is director at *Instituto de Estudos Socioeconomicos* (INESC), an NGO monitoring public policy and budgets related to development

Pineiros, Joaquin

Interviewed May 6th 2008 in São Paulo (SP)

Pineiros is at the international secretariat of *Movimento dos Trabalhadores sem Terra* (MST)

Pontual, Marcio

Interviewed April 18th in Brasilia (DF)

Pontual is advisor at *Oxfam International, Brazil*

Porto-Gonzalves, Carlos Walter

Interviewed April 29th 2008 in Niteroi (RJ)

Gonzalves is professor-coordinator at *Laboratorio de Estudos em Movimentos Sociais e Territorialidades* (LEMTO), Universidade Federal Fluminense (UFF)

Sakamoto, Leonardo

Interviewed May 9th 2008 in São Paulo (SP)

Sakamoto is director at *Reporter Brasil*, a research-based NGO monitoring practices and policies related to the use of forced labour in agriculture

South Africa

Cupido, Llewellyn

Interviewed March 4th 2009, in Cape Town.

Cupido is an organiser with the COSATU-affiliated *Food and Allied Workers Union* (FAWU) in Western Cape

Damon, Malcolm

Interviewed February 20th 2009 in Cape Town

Damon is director of the *Economic Justice Network* of the Fellowship of Churches in Southern Africa.

Dicks, Rudi

Interviewed March 11th 2009 in Johannesburg

Dicks is director at the *National Labour and Economic Institute* (NALEDI), a COSATU-owned think tank

Du Toit, Andries

Interviewed May 7th 2009 in Cape Town.

Du Toit is researcher-director at *Institute for Poverty, Land and Agrarian Studies* (PLAAS), University of Western Cape.

Ehrenreich, Tony

Interviewed February 27th 2009 in Cape Town.

Ehrenreich is the Provincial Secretary at *Confederation of South African Trade Unions* (COSATU) in Western Cape

Goosens, Boudewijn

Interviewed March 3rd 2009 in Cape Town

Goosens is the director of *Fair Trade South Africa*.

Jacobs, Cameron

Interviewed March 31st 2009 in Johannesburg.

Jacobs is coordinator at the *South African Human Rights Commission* (SAHRC), and is the facilitator-editor of the commission's reviews of the human rights situation of rural dwellers and workers.

Keet, Dot

Interviewed April 30th 2009 in Kalk Bay

Keet is an associate of the *Alternative Information and Development Centre* (AIDC), a research-based NGO devoted to building civil society capacity on poverty and globalisation. She is also an associate researcher-activist of the *Transnational Institute*.

Khumalo, Thulani

Interviewed March 28th 2009 in Johannesburg.

Khumalo is a legal advisor to the *National Union of Food, Beverage, Wine, Spirit and Allied Workers* (NUFWBSAW), an affiliate of the National Council of Trade Unions (NACTU)

Kleinbooi, Karin

Interviewed February 25th 2009 in Cape Town

Kleinbooi is researcher at the *Institute for Poverty, Land and Agrarian Studies* (PLAAS), University of Western Cape.

Makan, Kamal

Interviewed May 11th 2009 in Stellenbosch

Makan is director of *Lawyers for Human Rights*, an NGO providing free legal services to vulnerable, marginalised and indigent individuals and communities

Makgetla, Neva Seidman

Interviewed March 19th 2009 in Johannesburg

Makgetla was formerly the head of policy at COSATU (2000-2006). She is currently sector strategies coordinator at the South African Presidency.

Manageng, Lebogeng

Interviewed April 21st 2009 in Grahamstown.

Manageng is an organiser at the *East Cape Agricultural Research Project* (ECARP), an NGO working to empower rural workers and dwellers in the Eastern Cape.

Marco-Thyse, Sharron

Interviewed May 11th 2009 in Stellenbosch.

Marco-Thyse is director at *Centre for Rural Legal Studies (CRLS)*, a Western Cape NGO working to equip organisations of rural dwellers and workers with legal and political know-how.

Mashiele, Boas

Interviewed March 28th 2009 in Johannesburg.

Mashiele is the secretary general of the *National Union of Food, Beverage, Wine, Spirit and Allied Workers (NUFWBSAW)*, an affiliate of the National Council of Trade Unions (NACTU)

Masuku, Bongani

Interviewed March 31st 2009 in Johannesburg

Masuku is secretary of international relations at the *Confederation of South African Trade Unions (COSATU)*

Mdluli, Ali

Interviewed April 15th 2009 in Durban.

Mdluli is an organiser-negotiator with the COSATU-affiliate *Food and Allied Workers Union (FAWU)* in KwaZulu Natal.

Milford, Herschelle

Interviewed March 3rd 2009 in Cape Town

Milford is director of the *Surplus People Project*, an NGO advocating for pro poor agrarian reform

Mosia, Jonas

Interviewed March 16th 2009 in Johannesburg

Mosia is industrial policy coordinator at the *Confederation of South African Trade Unions (COSATU)*

Naidoo, Lalitha

Interviewed April 20th 2009 in Grahamstown.

Naidoo is director at *East Cape Agricultural Research Project (ECARP)*, an NGO working to empower rural workers and dwellers in the Eastern Cape

Patel, Saliem

Interviewed March 4th 2009 in Cape Town

Patel is coordinator at *Labour Research Service (LRS)* a non-profit labour service organisation specialised in research, dialogue-building, and developmental projects related to the world of the work

Pekeur, Wendy

Interviewed May 5th 2009 in Stellenbosch.

Pekeur is the secretary general of *Sikhula Sonke*, an independent Western Cape trade union.

Pressend, Michelle

Interviewed May 7th 2009 in Cape Town

Pressend is coordinator of the *Trade Strategy Group*, a national network on trade and globalisation

Rudin, Jeff

Interviewed March 6th 2009 in Cape Town

Rudin is national researcher at *South African Municipal Workers Union (SAMWU)*

Sawele, Manene

Interviewed March 11th 2009 in Midrand

Sawele is secretary general of the *National Council of Trade Unions (NACTU)*

Shabodien, Fatima

Interviewed May 5th 2009 in Stellenbosch.

Shabodien is director at the *Women on Farms Project*, an NGO working to empower women working and living on farms in Western Cape.

Shirinda, Shirami

Interviewed December 18th 2009 in Oslo.

Shirinda is a fieldworker and co-founder of *Nkuzi Development Association* (Limpopo chapter), an NGO working to empower farm dwellers and workers.

Schroeder, Ighsaan

Interviewed March 12th 2009 in Johannesburg.

Schroeder is director of *Khanya College*, an NGO working to empower grassroots-based organisations and movements of the rural and urban poor.

Van der Burg, Anthea

Interviewed March 6th 2009 in Cape Town.

Van der Burg heads the parliamentary liaison office of the *Confederation of South African Trade Unions* (COSATU). She was previously associated with the *Centre for Rural Legal Studies* in Stellenbosch.

Vickers, Brendan

Interviewed March 25 in Johannesburg

Vickers is a senior researcher at *Institute for Global Dialogue*, a civil society think tank

Watkinson, Eric

Interviewed March 2nd 2009 in Cape Town.

Watkinson is national coordinator with the COSATU affiliate *Food and Allies Workers Union* (FAWU).

Others

Adu-Amankwa, Kwasi

Interviewed March 24th 2009 in Johannesburg

Adu-Amankwa is secretary general of the Africa regional chapter of *International Trade Union Confederation (ITUC-Africa)*

Busser, Esther

Interviewed April 19th 2007 in Geneva

Busser heads the Geneva liaison office of the *International Trade Union Confederation (ITUC)*

Howard, James

Interviewed April 25th 2007 in Brussels

Howard is director of economic and social policy at *International Trade Union Confederation (ITUC)*

Karaweh, Edward

Interviewed March 28th 2009 in Johannesburg.

Karaweh is the deputy secretary general of Ghana's *Agricultural Workers' Union (GAWU)*

Marceau, Gabrielle

Interviewed April 23rd 2007 in Geneva

Marceau is a member of the cabinet of the secretary general at the secretariat of the *World Trade Organization*

Tayob, Riaz

Interviewed April 20th 2007 in Geneva

Tayob is a coordinator at the Geneva offices of the *Third World Network*

ANNEX II: INTERVIEW SCHEDULE

I. Presenting the Research Project to Interviewees

The research objective is to explore the discourses and politics associated with the proposal of the International Trade Union Confederation (ITUC) to institute a linkage between the international labour standards regime and the international trade regime

I am interested in the perspectives of labour rights activists on whether and how a labour-trade linkage may help tackle labour's challenges here [in Brazil/South Africa].

A special focus area in the research is the challenge of realising agricultural workers' freedom of association and right to collective bargaining, and the role which a linkage may play in this regard.

I take the core of the ITUC proposal to be the following:

- (i) It would somehow link a country's obligations under ILO with its market access rights under WTO
- (ii) The extent to which the individual country acts in compliance with core labour standards would be determined by ILO not WTO
- (iii) ILO's assessments would become an integral part of WTO's trade policy review mechanism and could – in the event that enhanced promotional measures at ILO's disposal had been exhausted to no avail – give rise to trade measure
- (iv) However, the proposal was indeterminate as to the kind and extent of trade measures that linkage would give rise to

Furthermore, my own motivation and point of departure for engaging in this research can be expressed in the following observation:

On the one hand, trade union rights are very widely and routinely violated; there are, at present, no global governance mechanisms which serve to align commercial incentives and labour rights protection in any meaningful way. Taken together this compels a measure of sympathy toward the linkage proposal. On the other hand, a great many actors involved in the struggle for trade union rights in the global South have been less than keen to see a labour-trade linkage instituted, and this compels a solid dosage of caution toward the linkage proposal. I believe that these contradictions and ambiguities warrant research.

II. Linkage: History, Rationale and Utility

Q1: From the top of your head: What do you make of the linkage proposal?

Q2: What do you recall from the linkage debate during the 1990s – what position did you and your organisation take at the time, on what grounds?

Q3: Linkage proponents typically claim that, by making protection of fundamental labour rights a prerequisite for countries wanting to reap the benefits of trade opportunities, a linkage would help vulnerable workers in developing countries claim a fair share of the wealth they help to generate.

What do you make of this?

Q4: Linkage opponents portray the linkage as a stick with which the rich countries would beat the poor for not being sufficiently developed. What do you make of this?

Q5: In your general estimation, would a linkage labour-trade linkage help tackle main challenges confronting labour here?

III. Organising Agricultural Workers

Q6: To what extent are agricultural workers organised and in position to affect the terms and conditions of their employment by way of collective bargaining today?

Q7: How would you, in general terms, explain the current situation?

Q8: Are there aspects of the formal labour relations regime – in terms of both law and enforcement of law – that impede the organisation and collective bargaining of agricultural workers?

Q9: What role do the approaches of trade unions play?

Q10: The formal labour relations regime and the approaches of trade unions aside:
Are there structural and cultural characteristics of the sector that affect the organisation and collective bargaining of agricultural workers?

Q11: Scholarly opinions on the impact of globalisation on the organisation of agricultural workers differ. For instance, some argue that increasing competition makes organisation of workers more difficult. What do you make of this?

Q12: It can also be argued that integration into global value chains eases the organisation of workers since overseas buyers often have a commercial interest in the protection of workers' rights and farmers are susceptible to the concerns of buyers. What do you make of this?

IV. Globalisation and International Labour Relations

Q13: To what extent and how are the most pressing challenges confronting labour here related to globalisation?

Q14: What do workers here stand to gain from your country's membership in the WTO?

Q15: Does the ILO effectively articulate and defend the interests of workers in your country?

Q16: It is often claimed that globalisation leads to ever stiffer competition between developing countries for investments and trading opportunities, and that this drives a global 'race to the bottom' in which governments and companies are reluctant to uphold workers' rights for fear that it will put them at a commercial disadvantage. Is such a reality description fitting?

Q17: It is often claimed that, in the context of an increasingly globalised marketplace, a gain for a worker in the South is very often a loss for a worker in North – and vice versa. What do you make of this?

Q18: Do trade unions in the global North expend political and economic resources in support of Southern workers' struggles when they have no material interests in these struggles themselves?

Q19: It seems that trade unions of the global South are increasingly assertive within the international trade union movement. Is ITUC about to become an instrument of labour in developing countries?

Q20: It is often claimed that WTO seriously constrains the policy space for development, and meddles with developing countries' sovereignty. Is such 'meddling with sovereignty' more wanted in the field of labour relations than elsewhere?

Q21: Let's assume (even if this need not be the case) that linkage proponents in the developed countries are motivated by protectionist concerns. Would you therefore reject the linkage proposal?

VI. Modalities and Traction of Linkage

Q22: ITUC has stressed that in its linkage vision, it will be left to ILO – not WTO, or individual countries – to determine whether a country acts in compliance with core labour standards obligations. How much of a difference does this make?

Q23: Given its tripartite model of representation, any ILO assessment of compliance (which could eventually pave the way for trade measures) would rely on input from worker representatives. Would a linkage therefore strengthen the bargaining hand of workers vis-à-vis employers and the government in this country?

Q24: ITUC was never specific on what kind of trade measures a linkage would permit. A linkage could either be premised on the use of *negative trade measures* (the suspension of most-favoured-nation (MFN) market access on the basis of ILO-proven non-compliance); or *positive trade measures* (granting better-than-MFN market access on the basis ILO-proven compliance); or a combination. Which alternative would be more preferable and why?

Q25: 'Trade measures' can be many different things in terms of depth and extension: One can imagine that trade measures would apply to all exports of a country or only to exports from certain sectors or even branches.

Which alternative would be more preferable and why?

Q26: What is your overall assessment of the difference a labour-trade linkage would make to protection of trade union rights [of agricultural workers]?

Q27: What is your overall assessment of the difference a labour-trade linkage would make to the actual organisation and collective bargaining capacities of [agricultural] workers?

ANNEX III: ILO CONVENTIONS No's 87 & 98

C87 Freedom of Association and Protection of the Right to Organise Convention, 1948

The General Conference of the International Labour Organisation,

Having been convened at San Francisco by the Governing Body of the International Labour Office, and having met in its Thirty-first Session on 17 June 1948;

Having decided to adopt, in the form of a Convention, certain proposals concerning freedom of association and protection of the right to organise, which is the seventh item on the agenda of the session;

Considering that the Preamble to the Constitution of the International Labour Organisation declares "recognition of the principle of freedom of association" to be a means of improving conditions of labour and of establishing peace;

Considering that the Declaration of Philadelphia reaffirms that "freedom of expression and of association are essential to sustained progress";

Considering that the International Labour Conference, at its Thirtieth Session, unanimously adopted the principles which should form the basis for international regulation;

Considering that the General Assembly of the United Nations, at its Second Session, endorsed these principles and requested the International Labour Organisation to continue every effort in order that it may be possible to adopt one or several international Conventions;

adopts this ninth day of July of the year one thousand nine hundred and forty-eight the following Convention, which may be cited as the Freedom of Association and Protection of the Right to Organise Convention, 1948:

PART I. FREEDOM OF ASSOCIATION

Article 1

Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without

previous authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

Article 7

The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Article 9

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 10

In this Convention the term **organisation** means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

PART II. PROTECTION OF THE RIGHT TO ORGANISE

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

PART III. MISCELLANEOUS PROVISIONS

Article 12

1. In respect of the territories referred to in Article 35 of the Constitution of the International Labour Organisation as amended by the Constitution of the International Labour Organisation Instrument of Amendment 1946, other than the territories referred to in paragraphs 4 and 5 of the said article as so amended, each Member of the Organisation which ratifies this Convention shall communicate to the Director-General of the International Labour Office with or as soon as possible after its ratification a declaration stating:

a) the territories in respect of which it undertakes that the provisions of the Convention shall be applied without modification;

b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

d) the territories in respect of which it reserves its decision.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of subparagraphs (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 16, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 13

1. Where the subject-matter of this Convention is within the self-governing powers of any non-metropolitan territory, the Member responsible for the international relations of that territory may, in agreement with the government of the territory, communicate to the Director-General of the International Labour Office a declaration accepting on behalf of the territory the obligations of this Convention.

2. A declaration accepting the obligations of this Convention may be communicated to the Director-General of the International Labour Office:

a) by two or more Members of the Organisation in respect of any territory which is under their joint authority; or

b) by any international authority responsible for the administration of any territory, in virtue of the Charter of the United Nations or otherwise, in respect of any such territory.

3. Declarations communicated to the Director-General of the International Labour Office in accordance with the preceding paragraphs of this Article shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications it shall give details of the said modifications.

4. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

5. The Member, Members or international authority concerned may, at any time at which this

Convention is subject to denunciation in accordance with the provisions of Article 16, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

PART IV. FINAL PROVISIONS

Article 14

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 15

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratifications has been registered.

Article 16

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 17

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification

communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 18

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 19

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 20

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 16 above, if and when the new revising Convention shall have come into force;

b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 21

The English and French versions of the text of this Convention are equally authoritative.

C98 Right to Organise and Collective Bargaining Convention, 1949

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals concerning the application of the principles of the right to organise and to bargain collectively, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this first day of July of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Right to Organise and Collective Bargaining Convention, 1949:

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to--

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2

1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 6

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of Article 35 of the Constitution of the International Labour Organisation shall indicate

--

a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification;

b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

d) the territories in respect of which it reserves its decision pending further consideration of the position.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of subparagraph (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 11, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 10

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 4 or 5 of Article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.

2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

3. The Member, Members or international authority concerned may, at any time at which this

Convention is subject to denunciation in accordance with the provisions of Article 11, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Article 11

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 12

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 13

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 14

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 15

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides,

a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 11 above, if and when the new revising Convention shall have come into force;

b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 16

The English and French versions of the text of this Convention are equally authoritative.

The rise and demise of the ‘social clause’ proposal in the 1990s: implications of a discourse theoretical reading

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The international labour movement’s campaign to fortify the International Labour Organization’s (ILO’s) core labour standards by way of a World Trade Organization (WTO) social clause failed in the 1990s. Many purported beneficiaries of such a clause conceived of the proposal as a proverbial ‘terrorist’ rather than a ‘freedom fighter’. Reappraising debates in India and the USA, this paper understands the failure in terms of discursive struggles played out both within national contexts, and in the transnational domain. It is argued that previous attempts at unpacking the debate have employed too simplistic discursive schema and paid insufficient attention to its transnational dynamics. The international union movement can only advance the ILO–WTO linkage idea by acknowledging, coming to terms with and addressing the concerns of a pervasive counter-hegemonic discourse.

Introduction

Concern for the often miserable plight of the world’s working people is constitutive of globalization critiques and of momentous fads such as fair trade labelling and corporate social responsibility. Notwithstanding commendable progress in a number of individual cases, consumer action and corporate voluntarism are notoriously feeble vehicles for change, and can not be expected to yield any systemic impact in terms of helping to uphold labour rights across the wider global expanse. Systemic impacts seem to require mechanisms that align commercial incentives and rights protection in a structural way. Such structural alignment has indeed been the objective of the international union movement’s hitherto failed attempts to link the International Labour Organization (ILO) and World Trade Organization (WTO) regimes via a so-called ‘social clause’, which would make exporting country’s enjoyment of market access rights in overseas markets somewhat conditional on its observance of ILO obligations.¹

There is no dearth of academic engagement with the idea of a social clause. A sizeable amount of scholarly work has engaged with whether a social clause is desirable, measured against transcendental referents of the infinitely right, whether conceived of in terms of economics,² fairness³ or development more broadly.⁴ While such explorations merit attention, the approach of this paper is different. It is aligned with another camp of studies⁵ that have tried to understand why the spearhead

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proponent of an ILO–WTO linkage, International Confederation of Free Trade Unions/International Trade Union Confederation (ICFTU/ITUC)⁶ – while undertaking ‘the most wide-ranging [campaign] in the history of the union movement’⁷ – failed to secure sufficient support for the proposal from its own southern constituents, and from southern civil society more widely.

The above positioning does not mean that I pretend to engage in the debate as unpartisan observer. Given the dearth of convincing alternatives, I believe a careful exploration of whether and in what way WTO could be made instrumental in the quest for core labour rights to be worthwhile, but the mere espousal of my own substantive opinions is likely to make less of a difference than an effort to enhance the understanding of why the very people supposed to benefit from the social clause have been lukewarm if not alien to the idea. Such understanding will be imperative for the future quest for ILO–WTO linkage. No matter when and under what circumstances the social clause proposal is brought back into inter-state debate and negotiation, it will invariably come up against very stiff resistance and unless the union movement manages to forge ‘strength through unity’ within its own ranks, the quest will certainly flounder.

The first part of the paper offers a brief history of social clause attempts, leading up to its final demise as the current WTO negotiation mandate was agreed on in 2001 Doha Ministerial Conference. The second part contends that the social clause feud cannot be properly understood without due attention to discursive politics and outlines how discourse theory may be employed to this effect. This approach informs the subsequent critical appraisal of the most comprehensive empirical study of the social clause campaign to date, Gerda van Roozendaal’s monograph *Trade Unions and Global Governance* (2002). By way of revisiting some of the perceptions and arguments that characterized the debate in India, I question whether Van Roozendaal’s way of unpacking the debate – namely, as a struggle between an interventionist and a liberalist discourse on globalization and workers’ rights – fully captures the discursive politics that defeated the proposal.

Resonant with issues raised in the second section, the third section explores the transnational dynamics of the campaign. While studies of discursive politics within specific polities are certainly necessary, I argue that it is just as important to emphasise how such dynamics spill across polities. This perspective allows me to suggest that the ICFTU’s failure cannot be accounted for in terms of insufficiently grafting the campaign on the points of view of southern labour alone. The fact that the most powerful northern unions – the US peak federation AFL-CIO (American Federation of Labor–Congress of Industrial Organisations) in particular – were not credibly wedded to the ICFTU’s position and strategies, seem to have been just as decisive.

In the fourth section of the paper, I attempt a more explicit discussion of what the ramifications might be for the international union movement’s quest for ILO–WTO linkage. Most scholars reviewing the rise and demise of the social clause proposal in the 1990s conclude that core labour standards now ought to be fortified elsewhere than in the WTO. I question this conclusion, suggesting that the failure, rather than of signifying the end of any ILO–WTO linkage, may help the union movement identify key zones and dynamics of contestation, both substantively and in process terms.

A repeated call – falling on deaf ears

The issue of linking trade and labour standards emerged as early as in the 1890s, when the US and British governments enacted bilateral trade laws to ban import of products made with prison labour. Attempts at a multilateral instrument have antecedents as far back as the 1948 *Havana Charter* of the stillborn International Trade Organization (ITO) which included a clause requiring members to ‘take whatever action that may be appropriate and feasible to eliminate [unfair labour] conditions within its territory’,⁸ but the ITO was eclipsed by the General Agreement on Tariffs and Trade (GATT), and while GATT’s general exception clause (Art XX) permitted restrictions on importation of goods made with prison labour, it made no mention of countries’ obligations concerning labour rights.

The Uruguay Round (1986–94) controversially expanded the ambit of the multilateral trade regime into a number of trade-related issues – ‘aspects of the production process that are intrinsic to the production of goods and services for trade, but in themselves do not constitute. . . tradable entities’⁹ – such as specifying states’ obligations regarding enforcement of trade related intellectual property rights (TRIPS) and protection of inter-state investor rights [TRIMS (agreement on trade related investment measures) and partly GATS]. This expansion seemed to suggest that the time was ripe for a social clause. On several different occasions, the USA and France proposed the establishment of a WTO working group on the issue. In 1990 a US proposal received support from the EU, Canada, Japan, the Nordic and some East European countries, but still failed to produce a favourable ministerial decision as developing countries feared that a working group would lead to a multilateral instrument that would be used for protectionist purposes.¹⁰ The USA tried to strong-arm a working group reference into the end-of-round Marrakech Ministerial Declaration but developing countries’ resistance was unrelenting.

In preparation of the first WTO Ministerial Conference in Singapore (1996), the USA again proposed that a working group be established. Just as before, a great majority of developing countries opposed the proposal fiercely. In his plenary statement, Brazil’s minister said that ‘the protection of core labour standards [must not] be utilized as a “scapegoat” to deal with the problem of structural unemployment in the developed economies’.¹¹ The Indian minister made clear that even if the proposal was for the establishment of a working group, there could be no doubt about what proponents would like this to lead to: ‘We do not see any purpose in bringing this subject into the WTO except possibly to use trade measures to enforce labour standards, if not now, then at a future date’.¹² Eventually, the 1996 *Singapore Ministerial Declaration* (Art 4) concluded:

We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard we note that the WTO and the ILO secretariats will continue their existing collaboration.¹³

The chances for a social clause being negotiated in the upcoming round were, once again, greatly decimated, but the ICFTU was heartened by the fact that this was the first time governments had pledged, in a multilateral trade treaty, their commitment to core labour standards. Moreover, WTO members had mandated ILO to conclusively identify the meaning of 'core labour standards'. In June 1998, ILO successfully adopted the *Declaration on Fundamental Principles and Rights at Work* (hereafter, ILO, 1998), whereby the following labour standards were deemed fundamental: freedom of association and the right to collective bargaining, the elimination of all forms of forced and compulsory labour, the effective elimination of child labour, and the elimination of discrimination in respect of employment and occupation.¹⁴

Proponents might have thought that this clarification altered political circumstances sufficiently to turn the fortunes of the social clause around. Before and during the failed 1999 *Seattle Ministerial Conference*, the USA continued touting the working group idea. The interpretation that the Seattle breakdown was in some part caused by this insistence is certainly an exaggeration. In fact, a proposal for a discussion group, drafted by Costa Rica, was actually on the table as the ministerial conference broke down.¹⁵ The assumption that this reflected any change in developing countries' determination to reject the issue was proven equally erroneous. In fact, as the working group idea was flouted once again at the 2001 *Doha Ministerial*, a leading developing country such as India seemed more recalcitrant than ever: 'We firmly oppose any linkage between trade and labour standards. The Singapore Declaration had once and for all dealt with this issue. We should firmly resist negotiations in this area; it is not desirable, now or later. We consider them Trojan Horses of protectionism.'¹⁶ Consequently, the Doha Declaration, which sealed the mandate for impending negotiations, merely referred back to the Singapore Declaration.

The discursive politics of the social clause: beyond dichotomy

It is difficult to make much sense of the rise and demise of the social clause proposal without paying due attention to discursive politics. *Prima facie* characteristics of the feud compel such attention. One seemingly singular policy proposal was inscribed with radically different meanings by people that otherwise share concerns about human and workers' rights in the context of deepening globalization. While some saw it as a proverbial 'freedom fighter' which would 'transfer the benefits of trade liberalisation to ordinary people in developing countries',¹⁷ others were equally certain about it being a 'terrorist', 'a stick with which to beat the third world'.¹⁸

That people conceive of seemingly same politics in very different ways is not unusual. Yet the divergence here is quite remarkable. This is in no small part due to the fact that the social clause was and remains a largely unspecified policy idea. It has no previous incarnation or multilateral forefather, and thus no manifest outcomes against which various judgements could be made. Moreover, the proposal resonates with deeply contentious issues of multilateral market governance. Hence, the social clause brings to mind a phantom that everyone has heard of and most believe to hold great power, in one way or another, but no one has ever seen. This warrants an appraisal in keeping with the central preoccupation of discourse theory, since the

signifier – the name itself, e.g. ‘social clause’ – has no inherent property that determines how it is translated into signified – the meaning, e.g. ‘freedom fighter’ or ‘terrorist’ – the question is how diverging meanings are created.

Radical divergence does not mean that there is no regulation – no limits, fixity, or reason – involved when people arrive at their different interpretations. I propose we think of such interpretations as somewhat regulated by discourses pertaining to field at hand, namely, globalization and labour rights. A discourse is here understood as ‘an ensemble of ideas, concepts and categorizations that are produced, reproduced and transformed in a particular set of practices and through which meaning is given to physical and social realities’.¹⁹ This conception of discourse is akin to Geertz’s famous conception of cultures – webs of meaning that human beings have suspended themselves in. Inspired by this terminological kinship, I use ‘thought-culture’ as an alias for ‘discourse’. Thought-cultures command what Hajer calls routinized cognitive commitments;²⁰ they compel a certain interpretative drift of their own. Consequently, they play a key role when people render the world meaningful – for instance, when they render meaning to a signifier such as the ‘social clause’.

Approaching the social clause debate as discursive politics is not quite the same as undertaking an argumentative study,²¹ since a discursive politics approach explores how arguments are articulations of more comprehensive thought-cultures. This is an important distinction. First, an argumentative approach may well assume that arguments are a mere means by which people express and further their interest. A discursive politics approach certainly agrees that people do articulate and promote their interests through language, but the relationship between interest and language is not straightforward as interest itself is conceived of in language. Second, and related to the former point, discourse is intimately related to identity. It is by being interpellated by and articulating discourse that actors become socially differentiated, and the discourse is enlivened and takes on political significance.

This does not mean that any one actor is therefore swayed by or identify with a single discourse only. Any place or issue in social life is sought imbued with meaning by multiple discourses, just as any one actor is interpellated by multiple and variable discourses depending on context and role of the moment, but the extent to which any one discourse holds sway over an actor’s way of giving meaning to the world may nevertheless vary. Some actors may collate insights form different thought-cultures when relating to a phenomenon, drawing on discourses as repertoires. Others may tend to conceive of the phenomenon in terms of a singular discourse, suggesting a high degree of identification with a specific thought-culture.

Few would take issue with the statement that discourse, in the general sense, does regulate the way people make meaning of actions, but to actually identify, name and demarcate the specific discourses in play in any particular field is a considerably more contentious affair. Then, ‘discourse becomes an *entity that the researcher projects onto reality* in order to create a framework for the study [consequently, discourses are] objects that the researcher constructs, rather than objects that exists out there, ready to be identified and mapped’.²² Hence, whenever specific articulations – tangible texts existing independently of the researcher – are taken to be articulations of a specific thought-culture whose name and boundary is the

artefact of the researcher herself, we are invariably in epistemologically muddled waters.

However, it seems rash to give up altogether the attempt of trying to understand people's diverging problem definitions as articulations of different thought-cultures. Most readers will readily agree that there is a liberalist thought-culture out there and that this thought-culture compels people to make routinized interpretations on the basis of often implicit assumption relating to efficiency, methodological individualism and utility maximization. Most readers will also agree that while liberalism is exceptionally influential, it is not the only comprehensive and pervasive thought-culture there is. Still the epistemological problem remains, so the researcher's inferences about the relationship between articulations and thought-cultures should be subject to considerable doubt.

Van Roozendaal's monograph suggests that the debate about trade and labour rights can be understood as a struggle between two discourses – an interventionist and a liberalist one.²³ From this point of departure she explores whether the international union movement – which she associates with the interventionist discourse – was successful in terms of imposing their problem definition and favoured problem closures onto politics both in domestic domains (USA and India) and in international institutions [OECD (Organisation for Economic Co-operation and Development), ILO and WTO] during the 1990s.

The substantive kernel of the interventionist discourse is the competitive deregulation thesis. Most of developing countries' production activity is integrated in buyer-driven commodity chains; here, buyers are relatively few and coordinated, while producers are numerous and poorly coordinated. This structures global economic bargaining in a very unfortunate way from the point of view of labour since the fierce competition on the supplier side may compel producers and governments to flout core labour standards in order to gain or retain competitive edge.

Even in a situation where domestic companies and governments would want to protect labour rights, they are deterred by global market forces. If the individual producer enforces standards unilaterally, without his competitors doing the same simultaneously, he is sure to be the 'sucker' as his products become more expensive than that of his competitors. This political economy is one of coordination failure and a race to the bottom.²⁴ The remedy is to organize some labour rights out of the market competition altogether, on a sufficiently high level of governance. Whereas the free market situation tends to confer market advantages on exporters that flout core labour standards, a social clause would penalize these exporters and thus induce a race to the acceptable.

The liberalist discourse posits a very different view on the global political economy. The idea that there is any such thing as a race to the bottom is itself challenged. The main tenet of the liberalist discourse is that overall global welfare and its relative distribution, improves with the rolling-back of politically motivated market interventions, not by introducing new interventions. Indeed, what is likely to make the greatest difference to labour's plight is a genuinely liberalized world economy in which labour too would move freely across borders. It is readily recognized that the prospects for such liberalization is extremely slim. Nevertheless, free trade in mere goods is structurally beneficial for labour since trade integration

lends itself to factor price equalization and thus a gradual convergence in labour standards. Indeed, the assumption is that the attainment of rights is a function of welfare growth, not the opposite.

Furthermore, labour standards cannot be conceived of as externalities (which justify market intervention). The worker herself is an agent who sells her services in the marketplace and she is capable of calculating whether or not the market value of the work opportunity outweighs the fact that a certain bundle of rights and benefits do not follow. Market interventions, in general, are vulnerable to capture by narrow interests and exploitation in contravention of the common good. A social clause would be exceptionally vulnerable to such capture since it will tempt northern unions to regulate away the comparative advantage flowing from developing countries' labour abundance.

Van Roozendaal concludes that, in the case of the USA, international trade unions were fairly successful in terms of imposing their interventionist problem definition and favoured problem closures on domestic politics. In the cases of the OECD and ILO, their successes were mixed. However, in the case of India, they were utterly unsuccessful, and strikingly so with regards to the Indian trade unions. Indeed, from early 1995 and onwards, Indian newspapers had printed 'a slew of editorials that, by and large, opposed the worker's rights clause, arguing that it was motivated by bad faith and was not in the best interest of India'.²⁵ Most were articulations resonant with the liberalist discourse, for example: 'Here is protectionism in a new garb aiming to strike at the main competitive advantage of the poorer countries, namely their relatively cheap labour'.²⁶ Many trade unionists, too, articulated concerns in keeping with the liberalist schema:

Developed countries are using the so-called social clause as a weapon to deny us market access in their part of the world and to prohibit the entry of our products into their markets.²⁷

The attempt to introduce a social clause... is essentially to introduce unilateral protectionist barriers to multilateral trade.²⁸

The developed countries... indulge in protectionism of their self-interest in the name of fixation on labour standards, child labour, human rights and environmental concerns, unilaterally to hit the labour-intensive and traditional sectors of developing countries.²⁹

Van Roozendaal takes the main feature of the social clause debate in India to be 'the absolute agreement between trade unions, employer's organisations and the government'³⁰ and concludes that 'the claims of the coalition against the social clause were the same as the claims of the neo-liberals'.³¹

Conceiving India's broad opposition to the social clause in terms of a liberalist problem definition may be to overstate the case, especially since it ignores a fact noted by herself, namely, that trade unions were at pains to make clear that their social clause rejection was 'totally different from that of the government since it involves the rejection of the WTO/GATT'.³² Indeed, the Indian debate comprises a plethora of anti-social clause articulations that, *prima facie*, sit at considerable unease with liberalist schema:

We don't see the WTO as an impartial body; it's highly political body and there is a definite agenda behind that. It represents the interests of big corporate capitalism. We don't see anything to be gained by labour standards to be operated by a body that is essentially a tool of corporate capitalism.³³

By hijacking its [ILO's] functions, the imperialist countries in fact want to completely neutralize the might of workers and enable the transnationals to call the shots through WTO.³⁴

[O]n some points employers and workers do not differ, because the main problem is with the multinationals. The social clause is an attack on the country. We did unite with the local capitalist in fighting the imperialist and making demands. It is to save our economic independence.³⁵

Rather than asking if such 'not-so-liberalist' blips suggest that resistance to the social clause was partly owing to a thought-culture wholly different from the liberalist one, Van Roozendaal seem to interpret these blips as mere rhetoric with which to cloak that unions were now acting in total (and thus purportedly embarrassing) concert with the their domestic class enemies and the state. True, the Indian government had certainly followed a determined strategy to close ranks on the issue, both among developing country governments and domestic political players. Through the *Dehli Declaration* (January 1995), the Indians had convinced G77 ministers that the social clause would 'negate the benefits which the liberalization of trade is intended to bring about, thus aggravating further... the existing problem of unemployment and distress'.³⁶ Moreover, the government also convened the Standing Labour Committee and put forward a resolution 'asking for a unified stance the government, unions and employers opposing a workers' rights clause [which] passed unanimously'.³⁷ A newspaper reported that the Indian Government's intention was to 'destroy the moral underpinnings of the social clause idea which has enabled Western democracies to sell it to their electorates'.³⁸

I nevertheless contend that the Indian trade unions' way of articulating their opposition can be seen neither as variation over an essentially liberalist theme, nor be reduced to a rhetoric with which to cloak their cooptation. Some of the most vocal Indian unions remained affiliated with the communist-leaning World Federation of Trade Unions (WFTU) rather than ICFTU. Consequently, they had not taken any part in any of the organizational processes leading up to the social clause proposal, nor been systematically exposed to the interventionist discourse. Notably, the WFTU's own process of arriving at its determined opposition to the social clause had little to do with any close consideration of the social clause proposal itself, and a lot to do with the fact that the WFTU 'is opposed to *all* attempts to institutionalise international relations through institutions such as the WTO... because it considers such bodies to be agents of imperialism'.³⁹

It is precisely those kinds of assumptions that seem to have shaped the articulations of the Indian unions. They owe little to the liberalist discourse, even if 'protectionism' – the characteristic liberalist shorthand for whatever is 'bad' – was tossed into arguments every once in a while. I propose that we rather consider the opposition of the Indian unions to be shaped by a globally pervasive counter-hegemonic thought-culture.⁴⁰

Note that, to dub union articulations as counter-hegemonic only makes sense as long as our frame of reference is the global discursive domain, where liberalism is hegemonic. If the frame of reference were to be the Indian discursive domain – where a deeply engrained anti-imperialist and nationalist thought-culture shapes articulations and positions across the entire political spectrum – then anti-social clause

articulations are rather ‘hegemonic’,⁴¹ as was poignantly implied by a rare social clause proponent in the Indian debate:

It is being borne home with every action of the government that *national interest* means only the interest of the minority rich... Is it not the height of hypocrisy that our government should consider linking equal wages to men and women with trade to be against the interest of the nation? Is it not revealing that it considers giving a guarantee to stop child labour as harmful to our country?⁴²

The point here is that, while unions’ anti-social clause articulations could be seen to uphold a regrettable *status quo* at home, they nevertheless evoke ideas, concepts and categorizations which, against the global reference frame, may be dubbed ‘counter-hegemonic’.

In the counter-hegemonic schema, political intervention in the market is considered a prerequisite for labour rights attainment. Indeed, the very idea of a benevolent market is questioned. Hence, the problem is not that of market intervention itself – as in the liberalist thought-culture – but rather who intervenes and on what terms. While the social clause may point to the right problem, it points to the wrong place. WTO is taken to facilitate the institutionalisation of big corporations’ interests, aided by a few friendly and powerful governments – its putative democratic vocation is little more than crust of niceties on top of capitalist-imperialist domination logics.

Imperialist countries are seen to preside over a toolkit – both furnished by and readily available to big business – which perpetuates global inequality and exploitation. First, this pertains to the political process of negotiating new trade laws. Rich countries can afford to exert undue pressure on developing country governments through threats and side-payments. Second, the same goes for the enforcement of trade law. The WTO’s compliance mechanism, retaliation authorized through dispute settlement procedure, is only useful to those countries with the biggest market power. Indeed, the core intention of the sponsors of WTO is the overall betterment of capital’s bargaining power *vis-à-vis* government and labour. It is therefore a contradiction in terms to seek to bring labour rights protection into its ambit.

Does it matter whether we take Indian unions’ articulations against the social clause to be odd deviations from an essentially liberalist schema, or articulations of a *counter-hegemonic* thought-culture in its own right? I think it does. If we stick to the former reading, as Van Roozendaal does, we might conclude that, if only the liberalist concern could be placated, the social clause quest would be greatly facilitated, but in terms of understanding discursive politics in India’s civil society and the fervour of opposition, this would be to ignore the elephant in the room.

Transnational dynamics: standing on the wrong foot, in wrong corners?

The lukewarm if not hostile reaction in India suggests that the positions and tactics of ICFTU must have had a protectionist slant. However, a closer look at the ICFTU campaign lends very little support to such a suspicion. While it is true that the social clause was the brainchild of ICFTU’s northern members, and that the confederation conducted the campaign in a lopsided way, ill-suited in terms of creating any genuine

southern union ownership,⁴³ there is very little in the ICFTU proposals⁴⁴ that explains the *bête noir* role that social clause proposal was given.

The confederation sought to make sure that the social clause mechanism would fortify the ILO rather than surrender its competence to the WTO, emphasising that the ILO would be vested with the power to adjudicate – by way of a revamped trade policy review mechanism (TPRM) in the WTO⁴⁵ – whether a member was observing its ILO obligations or not. Moreover, before any action within the ambit of the WTO could come about, the ILO would have had to make two consecutive negative reviews and exhaust a greatly improved programme of promotional assistance to the violating member to no avail. So, the argument that the social clause would be tantamount to have WTO ‘hijack ILO functions’, had no support in what the main advocate had actually suggested. Furthermore, ICFTU’s proposals also approached the question of sanctions with great care – perhaps too much care. In fact, the very word ‘sanction’ was circumvented altogether. It merely stipulated that ‘trade measures’ would be a last resort.

Such caution failed to make an impression on social clause opponents. As the 1990s wore on the campaign came under increasing critique. The onslaught became particularly acute in the run-up to the 1999 Seattle Ministerial Conference. In fact, the social clause proposal had the very dubious honour of forging an unlikely coalition between the worst of enemies in the globalization debate, epitomized in the *Third World Intellectuals and NGOs Statement against Linkage* (TWIN-SAL).⁴⁶ Signatories included a number of neo-classical economists on the one hand⁴⁷ and prominent alter-globalization intellectuals and activist on the other.⁴⁸ It made clear that:

The demand for a linkage is the result of an alliance between two key groups: politically powerful lobby groups... whose moral face is little more than a mask which hides the true face of protectionism... they stand against the trading and hence against the interests of developing countries, in fact advancing their own economic interests, and they need to be exposed as such... On the other hand, there are morally-driven groups that genuinely wish for better standards... While not deceptive and self-serving, they are nonetheless mistaken and must be rejected... to prevent a contamination of their own moral agenda.

What had been an effective discursive coalition between liberalist and counter-hegemonic articulations in the Indian debate was now reinforced by a strange bedfellow’s coalition in the transnational domain, including thinkers of all hues, non-governmental organizationa (NGOs), and transnational capitalist mouthpieces such as the Geneva-based International Employer Organization. Yet its critiques had very little to do with the main advocate’s proposal. As a senior staff member of the ITUC notes:

From the very outset we were highly aware of the extent to which the fear of protectionism could obstruct progress. This is very clear if you go back and look one of our major documents at the time, ‘The need for dialogue’ [1994]. It was written for the very purpose of pre-empting critique on the protectionist issue, and it should have foreclosed the TWIN-SAL kind of reaction, had they just cared to study our position honestly.⁴⁹

Protectionist fears were nonetheless vindicated. Once the debate is gauged in terms of its broader transnational dynamics, it becomes clear that some of ICFTU’s most influential northern constituents were seen to propagate a social clause idea that had little resemblance with the carefully devised positions of the ICFTU. By the mid

1990s, the peak union federation in the USA, AFL-CIO, already had a lengthy track-record of successfully advocating for protectionist acts ‘designed to lessen the effects of “unfair” foreign competition on US firms’.⁵⁰ Such protectionist advocacy had its roots in the 1974 Trade Act’s Section 301 which enables the US President to restrict imports whenever these can be deemed to constitute ‘unfair’ trade practices.⁵¹ The meaning of ‘unfair trade’ is unequivocal: it describes what an exporter’s practice does to competing US firms. Its rationale has nothing to do with what the exporters’ practice does in his domestic domain, let alone to his workers, but this unequivocal rationale would soon become less than obvious. Soon ‘fair trade’ would be used to denote something very different – namely, fair trade labelling schemes which conjure up images of people being treated decently at the bottom of otherwise long and unruly global commodity chains. It was precisely in the context of such discursive ambiguity that unions opted to go by way of a revision of the Trade Act’s Section 301 to get the labour rights issue into general US trade policy. While the popular connotations of ‘fair trade’ were adrift in the direction of ‘fair trade as upholding workers’ rights’, the policy rationale of Section 301 remained just as unequivocal as before – it was about ‘fair trade as fair competition’. Whether it was a shrewd calculated move to play on the ambiguity of ‘fair trade’, is beside the point since the campaign rhetoric of US unions was openly protectionist. As congressmen Pease and Gephardt successfully drove the union-backed campaign to amend Section 301 through Congress in the late 1980s, AFL-CIO commented that:

Changing trade law and policy to provide timely and predictable relief to workers and industries *injured by imports* are long overdue. America’s fair trade laws must be strengthened to address new discriminatory commercial practices.⁵²

The campaign eventually culminated in *The Omnibus Trade and Competitiveness Act* of 1988. The President’s authority under Section 301 was extended, vesting him with power to use trade sanctions against trading partners failing to respect what was deemed as fundamental workers’ rights.⁵³ The *Omnibus Act* has an inherent protectionist slant not only because Section 301 can only be invoked in the case of proven material injury on US companies, but also because of the standards it deems ‘fundamental’ – minimum wages, in particular – forces direct cost-increases on southern producers.

The protectionist rhetoric of AFL-CIO continued into the 1990s. Attempting to block the NAFTA (North American Free Trade Agreement) negotiations, the federation stated that ‘a free trade agreement with Mexico, a country where wages and social protections are almost non-existent when compared to our own, simply *invites disaster for US workers*’.⁵⁴ Such articulations were replicated in the context of the multilateral Uruguay Round negotiations, too. The Labor Advisory Committee (LAC) warned the government that, without a social clause, ‘American workers would be exposed to competition with people working at the lowest conditions, [and] American jobs would then disappear’.⁵⁵ Moreover, the LAC stressed that denial of workers’ rights should be conceived of a ‘subsidy’ in GATT/WTO (and, by likely extension, subject to anti-dumping and countervailing measures). Towards the end of the Uruguay Round, ICFTU found it difficult to mobilize southern support for its social clause proposal. But when ‘ICFTU asked the Americans to reconsider unilateral provisions on worker’s rights, [the request was] not well received by AFL-CIO’.⁵⁶

After the Singapore Ministerial Conference, American unionists might have realized that the quest for a protectionist escape clause was a spent force.⁵⁷ They might even have pondered whether such a quest was outright inimical to the quest for social clause along the ‘fair trade as upholding workers rights’ rationale, but the AFL-CIO certainly remained the most visible and ardent social clause advocate, and cajoled the Clinton Administration to keep pushing for a WTO working group during the late 1990s. Given the past rhetoric of the US unions and the character of the legal instruments they had engineered in the unilateral context, there could be little doubt as to what was in store if the US proponents got a social clause of their liking into WTO.⁵⁸

It is safe to assume that the precise character and full extent of the protectionist advocacy of the US unions was not directly legible for southern unionists, but it is easy to imagine that it was so indirectly, through the mediation of activists and epistemic communities straddling the North–South spatial divide. It is probably not a coincidence that the harshest and most vocal social clause critics in the 1990s were Indian academics working in the USA. Jagdish Bhagwati’s role merits particular attention here. He served as ‘freelance’ advisor to the Indian government in the context of GATT/WTO negotiations,⁵⁹ and he put considerable effort into chronicling and disclosing the US politics of linking trade and workers’ rights. So, Indian unions’ unrelenting conviction about the protectionist motive behind the social clause method may owe quite a lot to Bhagwati’s transnational interlocutor role. This role becomes particularly impressive in the case of the TWIN-SAL statement, which he initiated and drafted. Courting fierce globalization critiques to sign a statement drafted by one of the staunchest and most visible defenders of globalization, attests to shrewd discursive brokerage.

It seems as if US unions had given the idea of linkage such a bad name that, no matter how carefully ICFTU phrased its own proposals, it had to be a steep uphill battle. US protectionism lent itself to the only frame amplification⁶⁰ that could have brought convergence between the liberalist and counter-hegemonic discourses – namely that the social clause was essentially a North vs South conflict. The implication this had for WTO negotiations can readily be described in terms of two-level bargaining dynamics.⁶¹ As protectionist aspirations of the northern unions reverberated across polities, southern actors swayed by otherwise opposing thought-cultures arrived at converging problem definitions. In countries such as India, this allowed for a seemingly society-wide coalition against the social clause. Consequently, southern negotiators could convincingly argue that the social clause would fall entirely outside of their domestic ‘win sets’.

These dynamics choked the ICFTU’s attempted frame amplification, namely, that the social clause would impede the global race to the bottom, thereby curbing multinational businesses the opportunity to exploit North–South and South–South competition, and would provide unions a lever with which to check or use of the same competition by domestic elites as an excuse for faulty labour rights protection. If these ways of thinking about the social clause had come to the foreground, the argument of southern governments that the social clause was not in their ‘national interest’ would have met with considerable suspicion in the domestic domain and made it much harder to ‘destroy the moral underpinnings of the social clause idea’ as India intended with the *Dehli Declaration*.

If the strength of the social clause resistance can only be understood in terms of a convergence between two very different discourses, then there is more than a fear of protectionism to the matter. While the liberalist and counter-hegemonic interpretations are provoked by self-interested behaviour of northern unions, they still arrive at their respective rejections from very different vantage points. Liberalist articulations reject the trade–labour link because of a purist commitment to the very same commercial logics that the US unions wanted to invoke – that of ‘fair trade as fair competition’; but they conceive of labour rights as an anomaly that would impede fairness by lending itself to protectionism. Counter-hegemonic articulations, however, reject the trade–labour linkage for the very opposite reason – a deep-seated dislike for the ‘fair trade as fair competition’ logics altogether. The protectionist inclinations of northern unions just go to show how ill-suited and divisive it would be to let the commercial logics of ‘fair trade as fair competition’ safeguard these rights. Having to countenance labour rights abuses by way of proving the commercial costs that such abuses incur on someone else’s business, in another part of the world, is taken to be a profound perversion.

The above demonstrates that apparent agreement may mask deep-seated differences of thought-culture. Just as Van Roozendaal overstates the extent to which linkage opposition can be ascribed to a liberalist discourse, her assumption that articulations in favour of linkage may be ascribed to a singular interventionist discourse is tenuous, too. True, various claims may converge in support of largely unspecified signifier such as ‘the social clause’ and act in a discursive coalition. Supportive articulations may nevertheless be arrived at from very different vantage points. Whereas US unions pursued a social clause that would invoke the commercial logics of ‘fair trade as fair competition’, the ‘morally-driven groups that genuinely wish for better labour standards’ were typically concerned with ‘fair trade as upholding workers’ rights’, and therefore uninterested in, if not alien to, the logics of fair competition. In terms of implications, the two vantage points are highly divergent. Where the former implies that the operating procedures and commercial logics of the WTO are to be superimposed on labour rights issues, the latter might imply quite the opposite: that certain ILO adjudications would permit the suspension of the WTO’s standard operating procedure.

Implications for the ILO–WTO linkage quest

Many scholars reviewing the rise and demise of the social clause proposal conclude that, while there is a case for linking trade and core labour standards, such linkage now ought to be pursued elsewhere than in the WTO.⁶² True, the quest for a protectionist WTO social clause is utterly exhausted, but is that the only variety there can be? If ICFTU’s problem description has merit – namely, that today’s global political economy incites a race to the bottom and that the establishment of an inviolable labour rights floor is illusive without a mechanism to countenance competitive deregulation – linkages in bilateral and regional trade agreements are unlikely to tackle the problem at hand. Key exporters, whose non-compliance is thought to drive the race to the bottom, are unlikely to become party to any bi- or regional treaties with effective workers’ rights clauses in them. Hence, even exporters that are bound by such agreements will have good reason to tacitly detract from

their obligations. Their tariff rebates may be conceived as off-set by compliance costs that extant competitors do not have. Furthermore, compliance costs are certainly incurred on production destined for markets where no tariff rebate is on offer and in these markets the compliant party is outright disadvantaged *vis-à-vis* the non-compliant competitor. Competitive deregulation, by principle, cannot be overcome in a piecemeal fashion.

While social clause proponents have sulked in their quiet corners for a while, their long-term determination has not ceased. Some peripheral WTO members have already made clear that they want negotiations on the issue after Doha,⁶³ and the US Democratic Party is poised to raise the issue again.⁶⁴ The mood may be shifting in some southern unions. After China's WTO accession, the view that China is the proverbial black hole toward to which the South–South race to the bottom gravitates is increasingly common – the ITUC claims that even 'INTUC [Indian National Trade Union Congress] has now moved its position because they have become increasingly worried about China'.⁶⁵ A survey of opinions among both northern and southern trade unionists found that, while there still is considerable unease about instituting a linkage at the level of WTO, 'over time, extant union opposition to [the principle of] linkage has decreased significantly and is now, for all practical purposes, non-existent'.⁶⁶ Therefore, the return of the social clause to the WTO seems to be a question of 'when, and on whose terms', rather than 'if'. In order to escape a mere reiteration of the 1990s' debacle – which would forever demote the social clause idea to the dustbin of history – the union movement must fundamentally re-narrate the social clause idea and recalibrate its campaigning.

Identifying what an internationalist social clause should actually look like is a crucial task in this regard. The demise of the 1990s suggests that rallying behind a somewhat open-ended proposal is not a good idea. Open-endedness leaves a lot to the imagination. The problem is that whoever is well versed with WTO negotiations knows quite well what to imagine. Recall that the US government (at the behest of AFL-CIO) never proposed anything more specific than a WTO working group, yet most observers readily knew what to make of it. Consequently, the union movement is unlikely to impose its own problem definitions on the debate without, at the same time, presenting a quite specific vision of problem closure so as to leave relatively less to the all-too-obvious imagination. From early on, it needs to be very clear what a social clause will not look like, and constituents must be wedded to such a vision.

Arriving at any such vision of problem closure can of course only happen by way of an inclusive and deliberative process within union movement itself. Still, the above exploration gives some indications as to the whereabouts of an internationalist position. The debate of the 1990s seems to have shut some doors and opened some. First, the 1996 Singapore Declaration (reaffirmed in Doha) prohibits WTO members from using labour standards for protectionist purposes, and from questioning the comparative advantage that flows from abundance of labour in developing countries. Second, ILO1998 made clear what labour standards can be deemed 'fundamental' and these are, notably, of such a nature that their realization *per se* does not nullify the general comparative advantage of developing countries.

The suggestion that such 'process rights' need not raise labour cost at all – as was suggested by an OECD report⁶⁷ – is inconsequential. If workers' process rights were

indeed effectively protected across the multilateral expanse, workers' collective agency would certainly be emboldened and their wage claims would be more assertive. It is still true that the ILO1998 renders unwarranted any fear that core labour standard compliance means a nullification of general comparative advantage of developing countries *vis-à-vis* rich countries. The assumption that the North–South factor price differences ceases to exist because southern child and forced labour is systematically fought against and workers' rights to exercise collective agency is properly protected, is a gross underestimation of wealth differences across the North–South divide.

True, there are exporters whose competitive edge (and governments whose political position) do rest on systematic labour rights violations – for these, an ILO-WTO linkage will rightly be conceived of as a menace, but such opposition should be no worry to social clause proponents.

Meanwhile, none of the above will appease fears of protectionist utility of a WTO social clause for it merely suggests that the effective observance of core labour standards by developing countries itself will not nullify their comparative advantage, but the cost of observance is just one part of the equation. The more pressing question is whether the enforcement method used to police such observance can be exploited for protectionist purposes. It is quite obvious that, if the Section 301 may be used to suspend US market access rights of, say, Indian textiles, the suspension itself offers temporary protection for the US apparel industry and harms Indian exports, quite irrespective of whether India's eventual observance of ILO1998 will nullify the comparative advantage of its apparel industry.

To some extent, such concerns were reflected in ICFTU's past proposals. WTO trade measures against a specific member could come into consideration only if two consecutive ILO reviews – aligned with and integral to a revamped TPRM – had found a member faulty of taking appropriate steps to uphold core labour rights. This would deny any individual WTO member the opportunity of making its own opportunistic decisions about another member's observance of ILO commitments. Notwithstanding that it would increase the politicization of ILO's monitoring and assessment and equip ILO with levers that a sizeable part of its membership would rather do without – such a mechanism would come some way in securing that the workers whose very rights were to be safeguarded would have a hand on the lever themselves. First, ILO would be incapable of making any meaningful adjudication regarding the relevant government's observance of ILO obligation without the input from representatives of the putatively violated workers themselves. Second, the workers would allegedly be represented in the union caucus at the International Labour Conference that would have to adopt the adjudication.

The ICFTU has said very little about what trade measures could come of use. Therefore, despite the checks that a reformed TPRM would offer in terms of determining when a member could be deemed in violation of its ILO1998 obligation, there was nothing in the suggestion to foreclose recourse to trade measures according to the logic that the US unions had touted all the while: denial of workers' rights should be considered a 'subsidy' and be liable to trade retaliation through anti-dumping and countervailing measures.

This is exactly the logic that a re-narrated social clause must foreclose. If not, any claim as to its purported internationalist character will lack credibility, and will

merely reinvigorate the ‘liberalist cum counter-hegemonic’ discursive coalition. The trade union movement should therefore take as its very point of departure that a prospective social clause cannot serve as the pretext for invoking the ‘fair trade as fair competition’ instruments that states normally take recourse to when justifying their suspension of WTO market access obligations – namely, those regarding anti-dumping or countervailing measures. These have an inherent protectionist quality.⁶⁸ In an early appraisal, an ILO report⁶⁹ identified GATT 1994 Art XXIII (the Nullification and Impairment Provision) as a potential legal gateway for a social clause, on the grounds that it is fairly robust against protectionist use and hence would placate liberalist fears. However, as I have made clear above, internationalist modalities must do more than merely foreclose protectionism. It must also respond to the counter-hegemonic claim that it is perverse to let the commercial logics of ‘fair trade as fair competition’ safeguard these rights and, in this respect, Art XXIII is just as ill-suited as any anti-dumping or countervailing measure. The claimant party must still demonstrate that its industries have suffered material injury as a consequence of core labour standards violations elsewhere.

The only WTO instrument which is neither protectionist nor premised on the ‘fair trade as fair competition’ logic is GATT 1994 Art XX, the general exception clause, which allows a member country to suspend its market access commitments to another member in the event that this is necessary in order to protect public moral, human or animal life or health. This provision may be seen to cover core labour standards to the extent that these are deemed to be human rights.⁷⁰ Thus, a credible internationalist linkage might specify that trade measures would only be permissible in the event that two consecutive ILO reviews (aligned with revamped TPRM) had found a member at fault in taking appropriate steps to observe core labour standards, and only according to the rationale of and to the extent permitted by Art XX. Such a social clause vision would placate the worst protectionist fears and represent a certain acknowledgement of counter-hegemonic concerns. Furthermore, the union movement should consider seriously whether a social clause could oblige WTO members to grant better-than-most-favoured-nation (MFN) market access terms to developing country members that are found, through consecutive ILO reviews, to have taken progressive measures with regards to core labour standards.⁷¹

Pursuing a truly internationalist social clause is a *sine qua non* for the ILO-WTO linkage quest – without it there will certainly not be any ‘strength through unity’. This premise also holds obvious implications for how the union movement relates to the banal fact that WTO negotiations are undertaken by governments. The past social clause advocacy of the US government shows that the most willing governments need not be the most capable champion of the cause. Indeed, the union movement may only incite a sufficiently different discursive politics and dynamics by grafting its campaigning on constituent unions whose commitment to the internationalist position is beyond dispute, and capacitate these to compel their governments to champion a social clause. In fact, discursive politics of the past suggests that the USA is a more fitting target of a social clause campaign than it is an aide. Targeting the USA could be construed as entirely warranted in light of the poor US track record in terms of ILO ratifications and often dismal labour rights practices in agriculture, a sector accounting for sizeable US exports.

This would certainly leave a large number of intricate substantive concerns of southern unionists and labour rights advocates unanswered, including the depth, coverage, and duration of sanctions; how to shield the workers that will be adversely affected by last-resort sanctions; and how to avoid the fact that the social clause invites window dressing exercises in visible export sectors and drives labour rights abuses underground through increasing sub-contracting and deformalization. Moreover, none of the above would undo the fact that, for most southern trade unions, a social clause – no matter how appropriate its design – would have very limited instrumentality in terms of responding to the challenges unions themselves deem to be the most pressing: the massive job losses in ailing manufacturing sectors, and the failure of emerging sectors to produce decent work opportunities.

In fact, many southern unionists consider their northern comrades to be adversaries in the battle over these key challenges, particularly in the context of the highly North–South-bifurcated WTO negotiations over manufacturing tariffs. Here, southern unions are staunchly aligned with their domestic capitalists and governments in a call for a modicum of industrial policy space, while northern unions are equally supportive of their domestic capitalists' and governments' demand for deep market access. Few southern unionists see much point in committing to an international campaign for labour standards if it is not accompanied by a commensurate commitment, on the part of their northern comrades, to retain and create jobs in the global South. As a prominent Brazilian unionist put it: 'What good is it for me to have the right to negotiate collectively if I don't have a job?'⁷²

Even in the event that all these intricacies could be dealt with through an inclusive internationalist process in the union movement, those most beholden to the counter-hegemonic discourse would still not support the international union movement's quest for an ILO-WTO linkage. Recall that actors such as the World Federation of Trade Unions are opposed to all attempts to institutionalise international relations through what they deem to be imperialist institutions. In fact, the more credibly internationalist the social clause proposal becomes, the stiffer their resistance will be, since the social clause's ability to endow the WTO with undeserved legitimacy will be seen to increase commensurately. The very contemplation of WTO instrumentality – even if this instrumentality is about the ILO-authorized suspension of WTO commitments – is irreconcilable with the very identity of altermondialism with its deep-seated fear and loathing of 'reformism'. This should not concern the international union movement. Its efforts should instead be directed to those numerous constituents that are compelled by the counter-hegemonic discourse but who, at the very same time, are open to the pragmatic exploitation of the existing institutional order – if nothing else, while they wait for their counter-hegemonic revolution.

Conclusion

This paper has argued that the emergence and the defeat of the social clause proposal in the 1990s must be understood in terms of discursive politics. A phantom that most had heard of but no one ever seen, the social clause was never inscribed with sufficient substance to withstand considerable interpretative drift at the behest of different thought-cultures on globalization and workers' rights. Reappraising the

debates in India and the USA, I have argued that previous accounts wrongly reduced articulations of the debate to be an expression of either interventionist or liberalist thought-culture, failing to identify and acknowledge the role of a pervasive counter-hegemonic thought-culture.

Indeed, a key dynamic of the debacle was that the social clause idea resonated negatively with this counter-hegemonic discourse. This paved the way for a rare convergence of liberalist and counter-hegemonic articulations, and thus for the forceful and widely held assumption that the social clause was really a ‘terrorist’ rather than a ‘freedom fighter’. The ICFTU, the main social clause advocate, was well aware that it had to frame the proposal so as to preclude certain interpretations, and made it very clear that the tripartite ILO would determine when a country was observing core labour standards – and thus serve as the agency to authorize trade measures in the last instance.

This fell short of preventing massive resistance from within union ranks and in southern civil society at large. It left open to the imagination whether last-resort trade measures would imply that the WTO’s constitutional purpose of securing ‘fair trade as fair competition’ – defined and enforced on the basis of its members very unevenly distributed bargaining and sanctioning capacities – would be superimposed on labour relations. US unions’ openly protectionist rhetoric made such fears all the more warranted. It served to choke the frame amplification that the international union movement was attempting and spurred the rare alignment of the liberalist and the counter-hegemonic discourses.

The rise and demise of the social clause idea in the Doha Round holds important lessons for the international union movement. The idea can only be pursued further on the basis of ‘strength through unity’ and this requires a re-narration based on southern unionists concern. It is safe to assume that this would rule out any linkage based on the WTO’s ‘fair trade as fair competition’ logic and that it will have to be part of a larger compromise on workers’ solidarity. Consequently, the international union movement will face the very difficult task of convincing mighty northern unionists that the pursuit of protectionist gains and of deep manufacturing market penetration in the global South, is outright inimical to an ILO-WTO linkage.

Notes

1. Proposals have been consistently indeterminate. Indeed, such vagueness has played a considerable role in fomenting the discursive politics discussed in this paper.
2. For example, Bhagwati, ‘Trade Liberalisation’ and ‘Afterword’; Martin and Maskus, ‘Core Labor Standards’; Barry and Reddy, *International Trade*.
3. See, e.g., Gross, ‘A Long Overdue Beginning’.
4. See, e.g. Dessing, ‘The Social Clause’.
5. Van Roozendaal, *Trade Unions*; Hensman, ‘World Trade’; Kolben, ‘New Politics of Linkage’; Anner, ‘Paradox of Labour Transnationalism’.
6. In 2006, the International Confederation of Free Trade Unions (ICFTU) merged with World Confederation of Labour (WCL) to form a new mega-confederation, the International Trade Union Confederation (ITUC) with some 166 million members.
7. ICFTU, *Building Workers’ Rights*, 76.
8. Quoted in Charnovitz, ‘Promoting Higher Labor Standards’, 170.
9. Wilkinson, ‘Labour and Trade-related Regulation’, 166.
10. Van Roozendaal, *Trade Unions*, 17.
11. Lampreia, ‘Brazil’s Statement’.

12. Ramaiah, 'India's Statement'.
13. WTO, *Singapore Ministerial Declaration*.
14. The Declaration makes clear that members, 'even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organisation, to respect, promote and realize... the fundamental rights which are the subject of these Conventions' and that the rights mentioned are considered 'fundamental to the rights of human beings at work, irrespective of level of development of individual member States'. There is, nevertheless, considerable disagreement as to what this means in practice. Universality is not the same as uniformity, and there exists no agreement as to how one can determine whether a member is acting in observance of obligations or not (see Van Roozendaal, *Trade Unions*, 44ff); also Alston, 'Facing Up to the Complexities'.
15. Anner, 'Paradox of Labour Transnationalism', 15.
16. Maran, 'Statement of the Honourable'.
17. ICFTU, *Enough Exploitation is Enough*.
18. Third World Network's Martin Khor quoted in Green Left Weekly, 'IMF/WB/WTO – Fix it or Nix it?'
19. Hajer, *Politics of Environmental Discourse*, 44.
20. Ibid.
21. For attempts at organising the social clause debate in argumentative taxonomies, see Griffin, Nyland and O'Rourke, 'Trade Unions'; and Kolben, 'New Politics of Linkage'.
22. Jorgensen and Phillips, *Discourse Analysis*, 144.
23. Van Roozendaal, *Trade Unions*, 50–68.
24. The obvious commonalities between the race to the bottom and a prisoners' dilemma game are discussed by Cooke, 'Exercising Power'; and by Chan and Ross, 'Racing to the Bottom'.
25. Kolben, 'New Politics of Linkage', 236.
26. *The Hindu*, 23 January 1995, quoted in Kolben, 'New Politics of Linkage', 237.
27. Central Trade Unions Organisations of India Appeal, 1995, quoted in Van Roozendaal, *Trade Unions*, 124.
28. Centre of India Trade Unions (CITU), quoted in Kolben, 'New Politics of Linkage', 245.
29. INTUC, in Kolben, 'New Politics of Linkage'.
30. Van Roozendaal, *Trade Unions*, 113.
31. Ibid., 131.
32. Ibid., 132.
33. CITU, in Kolben, 'New Politics of Linkage', 250.
34. CITU, in van Roozendaal, *Trade Unions*, 125.
35. All India Trade Union Congress (AITUC), in van Roozendaal, *Trade Unions*, 126.
36. Kolben, 'New Politics of Linkage', 239.
37. Ibid., 235.
38. Ibid., 240.
39. Griffin, Nyland and O'Rourke, 'Trade Unions', 476 (emphasis added).
40. The webpages of 'Our World is Not for Sale' (OWINFS) at <http://www.ourworldisnotforsale.org/index.asp>, attest to pervasiveness of such a thought-culture, and to the relative consistency of interpretative drift across singular articulations pertaining to different policy areas. What I would term a coherent counter-hegemonic reading on the social clause debate may be found in Chenoy and Chenoy, 'Introduction'.
41. I owe thanks to an anonymous reviewer who made me aware that it makes little sense to dub union articulations as counter-hegemonic in the Indian discursive domain.
42. Swaminadhan, quoted in Chenoy and Chenoy, *Labour, Environment and Globalization*, 56–57.
43. Anner, 'Paradox of Labour's Transnationalism'.
44. ICFTU, *International Workers' Rights*.
45. Supplementing member countries' own notifications, the WTO undertakes such reviews of members' trade policies every second, fourth or sixth year (the frequency being decided by the member's share of world trade).

46. TWIN-SAL, 'Statement against Linkage'.
47. *Inter alia*, Bhagwati, Srinivasan and Panagariya.
48. *Inter alia*, Walden Bello and Nicola Bullard (Focus on the Global South), Kristin Dawkins (IATP) and Oswaldo Sunkel.
49. James Howard, interview, 25 April 2007 in Brussels.
50. Van Roozendaal, *Trade Unions*, 74.
51. 'Section 301 (d) is the principal statutory authority under which the United States may impose trade sanctions against foreign countries that maintain acts, policies and practices that violate, or deny US rights or benefits under, trade agreements, or are unjustifiable, unreasonable or discriminatory and burden or restrict US commerce'. Quoted in Luce, 'Case for International Labour Standards', 6.
52. Quoted in Van Roozendaal, *Trade Unions*, 91 (emphasis added).
53. Along with the core labour standards of ILO1998, standards for minimum wages, hours of work, and occupation health and safety were included.
54. Van Roozendaal, *Trade Unions*, 83.
55. *Ibid.*, 94.
56. *Ibid.*, 95.
57. ITUC's James Howard recalls that, in the Singapore to Doha interval, 'AFL-CIO was consistently careful to frame its argument so as to *not* come across as protectionist'. Interview, Brussels, 25 April 2007.
58. Indeed, AFL-CIO continued to exploit Section 301's 'fair trade as fair competition' rationale. As late as in 2004–2005, the federation compelled the US government to invoke Section 301 to restrict imports from China so as to rectify the 'unfair advantage' China enjoys because of its persistent workers' rights violations.
59. Van Roozendaal, *Trade Unions*.
60. Frame amplification is 'the clarification and invigoration of an interpretive frame that bears on a particular issue, problem, or set of events' – Snow et al., 'Frame Alignment Processes', 469.
61. Cf. Putnam, 'Diplomacy and Domestic Politics'.
62. Hensman, 'World Trade'; Kolben, 'New Politics of Linkage'; Anner, 'Paradox of Labor Transnationalism'.
63. In his address to the plenary of the Sixth WTO Ministerial on 14 December 2005, the Norwegian Minister said: 'As we look ahead beyond this round, we must not be afraid of addressing new issues. Proposals have been put forward to include ILO standards in future WTO negotiations. Norway supports the idea, which is backed by labour unions, of promoting coherence between the work of the WTO and the work of the ILO.'
64. Von Bülow, 'Networks of Trade Protests', 18.
65. *Ibid.*, 493.
66. Griffin, Nyland and O'Rourke, 'Trade Unions', 490.
67. OECD, *Trade, Employment and Labour Standards*.
68. These instruments would require that margins associated with the 'social dumping' or 'exploitation subsidy' may be calculated to stipulate the non-compliance money value, and this would be fraught with difficulties. Moreover, their application would require that 'material injury on the importing party' could be proven. See Lim, 'Trade and Human Rights' for a discussion.
69. *Ibid.*, section 5.
70. Office of the High Commissioner for Human Rights (OHCHR), *Human Rights and World Trade Agreements*.
71. Barry and Reddy, *International Trade*, suggest that one may place more emphasis on positive sanctions. However, a mechanism based exclusively on positive sanctions would have limited effect. Then, all countries would be granted MFN anyway, and the tariff rebate would have to be very large to seriously offset continued race to the bottom logics. The scope for huge nominal tariff rebates into rich country markets are considerable in agricultural trade, but quite limited in trade of manufactured goods.
72. Kjeld Jacobsen of Central Unica dos Trabalhadores (CUT), quoted in Anner, 'Paradox of Labour Transnationalism', 21.

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References

- Alston, Philip. 'Facing Up to the Complexities of the ILO's Core Labour Standards Agenda'. *The European Journal of International Law* 16, no. 3 (2005): 467–80.
- Anner, Mark. 'The Paradox of Labor Transnationalism: Northern and Southern Trade Unions and the Campaign for Labor Standards in the WTO'. Paper presented to the 2001 Annual Meeting of the American Political Science Association, San Francisco, 2001.
- Barry, Christian, and Sanjay Reddy. *International Trade and Labour Standards: A Proposal for Linkage*. New York: Columbia University Press, 2008.
- Bhagwati, Jagdish. 'Trade Liberalisation and Fair Trade demands: Addressing the Environmental and Labour Standards Issue'. *The World Economy* 18 (1995): 745–59.
- Bhagwati, Jagdish. 'Afterword: The Question of Linkage'. *The American Journal of International Law* 96 (2002): 126–34.
- Chan, Anita, and Robert Ross. 'Racing to the Bottom: International Trade without a Social Clause'. *Third World Quarterly* 24, no. 6 (2003): 1011–28.
- Charnovitz, Steve. 'Promoting Higher Labor Standards'. *Washington Quarterly* 18, no. 3 (1995): 167–90.
- Cooke, William. 'Exercising Power in a Prisoner's Dilemma: Transnational Collective Bargaining in an Era of Corporate Globalisation?' *Industrial Relations Journal* 36, no. 4 (2005): 283–302.
- Dessing, Maryke. 'The Social Clause and Sustainable Development'. ICTSD Resource Paper no. 1/2001. Geneva: ICTSD, 2001.
- Green Left Weekly. 'IMF/WB/WTO – Fix it or Nix it?' *Green Left Weekly*, no. 402, 19 April 2000.
- Griffin, Gary, Chris Nyland, and Anne O'Rourke. 'Trade Unions and the Trade–Labour Rights Link: A North–South Union Divide?' *The International Journal of Comparative Labour Law and Industrial Relations* 19, no. 4 (2003): 469–94.
- Gross, James. 'A Long Overdue Beginning: The Promotion and Protection of Workers' Rights as Human Rights'. *Workers' Rights as Human Rights* 1, no. 4 (2003): 2–27.
- Hajer, Maarten. *The Politics of Environmental Discourse. Ecological Modernization and the Policy Process*. Oxford: Clarendon Press, 1995.
- Hensman, Rohini. 'World Trade and Workers' Rights: In Search of an Internationalist Position'. *Antipode* 3, no. 3 (2001): 427–50.
- ICFTU. *Building Workers' Rights into the Global Trading System*. Brussels: ICFTU, 1999.
- ICFTU. *Enough Exploitation is Enough: A Response to the Third World Intellectuals and NGOs Statement Against Linkage (TWIN-SAL)*. Brussels: ICFTU, 1999.
- ICFTU. *International Workers' Rights and Trade: The Need for Dialogue*. Brussels: ICFTU, 1994.
- ILO. *Declaration on Fundamental Principles and Right at Work*. Geneva: ILO, 1998.
- Chenoy, John, and Anuradha Chenoy. 'Introduction'. *The Social Clause as an Ideology*. Cape Town: AIDC, n.d.

- Chenoy, John, and Anuradha Chenoy, eds. *Labour, Environment and Globalization*. CEC: Dehli, 1996.
- Jorgensen, Marianne, and Louise Phillips. *Discourse Analysis as Theory and Method*. London: Sage, 2002.
- Kolben, Kevin. 'The New Politics of Linkage: India's Opposition to the Workers' Rights Clause'. *Indiana Journal of Global Legal Studies* 13, no. 1 (2006): 225–59.
- Lampreia, H.E. Luiz F. 'Brazil's Statement to the Ministerial Conference, Singapore 9–13 December 1996'. WT/MIN/(96)/ST/8. http://www.wto.org/english/thewto_e/minist_e/min96_e/st8.htm (accessed 2 February 2008).
- Lim, Hoe. 'Trade and Human Rights: What is at Issue?' *Journal of World Trade* 35, no. 2 (2001): 284–8.
- Luce, Stephanie. 'The Case for International Labour Standards: A Northern Perspective'. IDS Working Paper 250. Brighton: IDS, 2005.
- Martin, Will, and Keith Maskus. 'Core Labor Standards and Competitiveness: Implications for Global Trade Policy'. *Review of International Economics* 9, no. 2 (2001): 317–28.
- Maran, M. 'Statement by the Honourable Murasoli Maran, [India's] Minister of Commerce and Industry'. Ministerial Conference, Doha, 9–13 November 2001. WT/MIN(01)/ST/10. http://www.wto.org/english/thewto_e/minist_e/min01_e/statements_e/st10.pdf (accessed 2 February 2008).
- OECD. *Trade, Employment and Labour Standards: A Study of Core Workers' Rights and International Trade*. Paris: OECD, 1996.
- OHCHR. *Human Rights and World Trade Agreements. Using General Exception Clauses to Protect Human*. Geneva and New York: Office of the High Commissioner for Human Rights, 2005.
- Putnam, Robert. 'Diplomacy and Domestic Politics: The Logics of Two-Level Games'. *International Organization* 42 (1988): 427–60.
- Ramaiah, B.B. 'India's Statement to the Ministerial Conference, Singapore 9–13 December 1996'. WT/MIN/(96)/ST/27. http://www.wto.org/english/thewto_e/minist_e/min96_e/st27.htm (accessed 2 February 2008).
- Snow, David, Burke Rochford, Steven Worden, and Robert Benford. 'Frame Alignment Processes, Micromobilization and Movement Participation'. *American Sociological Review* 51 (1986): 464–81.
- TWIN-SAL. *Statement against Linkage*. 1999. <http://www2.bc.edu/~anderson/twin-sal12.pdf> (accessed 2 February 2008).
- Van Roozendaal, Gerda. *Trade Unions and Global Governance: The Debate on a Social Clause*. London: Continuum, 2002.
- Von Bülow, Marisa. 'Networks of Trade Protests in the Americas: The Roles of Labor and its Allies'. Paper presented at the Congress of the Latin American Studies Association, Montreal, 2007.
- Wilkinson, Rorden. 'Labour and Trade-related Regulation: Beyond the Trade–Labour Standards Debate'. *British Journal of Politics and International Relations* 1, no. 2 (1999): 165–91.
- WTO. *Singapore Ministerial Declaration*. 1996. http://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm (accessed 2 February 2008).

OUT OF MIND – OUT OF SIGHT?

The Troubled Trade Union Rights of Brazil's Agricultural Workers

ABSTRACT

This paper explores the extent to which Brazilian farm workers' *freedom of association* and *collective bargaining* rights are realised and how the extent of realisation may be accounted for, with a particular emphasis on the role played by the formal labour relations system. High proliferation, bargaining activity and membership of rural unions mask the fact that the realisation of wage workers' trade union rights is uneven and shallow. Brazil's *corporatist* labour relations system forces agricultural wage workers to share monopoly unions with smallholders. Since the smallholders' interests tend to compete or even conflict with those of wage workers, rural trade unions are commonly disinclined to organise wage workers or articulate and pursue their interests effectively. It would be facile, however, to attribute the organisational dislocation of wage workers to the premeditated agency of smallholders. Instead, the perpetuation of the disadvantageous model of union organisation can be attributed to historically rooted agrarian conflicts whose dominating discourses and exigencies background the question of agricultural wage workers' trade union rights.

KEY WORDS

Brazil; agricultural workers; trade unions; CONTAG; core labour standards

INTRODUCTION

The Brazilian outback is a vast universe of multitudes and contrasts. Its bounties – which make Brazil the world’s largest exporter of soy, sugar, beef, coffee, orange juice and tobacco (Welch, 2006, p. 35) – seem infinite. But so do its crude inequality, violence and contention. This paper explores the place and plight of *agricultural wage workers* in this immense theatre of accumulation and struggle. These workers are hardly out of sight in any literal sense, constituting an army of some 4.8 million men and women, scores of whom may be seen in the early morning hours on the outskirts of sprouting rural towns, waiting for farmers’ lorries to pick them up, or walking along highways in search of a *fazenda* where labour is in demand. But, as this paper details, agricultural wage workers remain peripheral in the mindsets dominating Brazil’s rural politics. This situation has compromised their trade union rights, and their organisational strength is wholly incommensurate with their actual numbers.

Given Brazil’s ascendance as a leading exporter of food, commodities and agrofuels, and the increasing popular attention paid to the developmental effects of agricultural trade, it stands to reason that there is a sizeable scholarly engagement with farm workers’ outcome rights – in particular, with the all too common violations of such, including poor working conditions and the high prevalence of forced labour (Novaes & Alves, 2007; Biondi *et al* 2009; Chase, 1999). There is also a sizeable and very rich body of work on the character and trajectory of Brazil’s rural union movement. Most contributions relate to the particular institution of corporatism in the countryside, which I label the *cohabitation* model, and which compels diverse categories of people making their livelihoods in agriculture (smallholders, family farmers, tenants, squatters and wage workers) to organise together in shared unions. Some scholars have focused on how corporatism and *cohabitation* have rendered the rural union movement hamstrung as a vehicle for affecting substantial agrarian reform (e.g.

Medeiros, 1997; Thomaz Jr., 1997; Santos, 2007); others have explored the rural union movements' vitality and militancy at particular conjunctures or places despite the clientelistic trappings of corporatism (Maybury-Lewis, 1994; Pereira, 1997; Houtzager, 2001; Welch, 1995, 2006, 2009).

However, few studies have been devoted to the specific question of how *cohabitation* affects the organisation and collective bargaining of wage workers. This paper offers a modest contribution toward expanding, systematising and updating knowledge on this topic. My emphasis is on *cohabitation*'s bearing on agricultural wage workers' freedom of association and right to collective bargaining. These jointly constitute the first of four universally acclaimed *fundamental principles and rights at work*¹ whose guarantee, in the words of the International Labour Organisation (ILO), 'is of particular significance in that it enables the persons concerned, *to claim freely [...] their fair share* of the wealth which they have helped to generate' (ILO, 1998, preamble, *emphasis added*).

Three important remarks ought to be made at this juncture. First, the emphasis on trade union rights amounts to a concern for workers' *associational* power, which should be considered as complementary to their *structural* power – consider, for instance, Selwyn's study of how the bargaining power of grape workers in Pernambuco owes much to certain characteristics of the global commodity chain into which they are inserted (Selwyn 2007, 2008). Labour power (or, in ILO's aphorism, 'ability to claim a fair share') is a composite of both associational and structural power, and the present paper considers only the former².

Secondly, and related to the above, trade union rights are *process rights*. This, however, does not detract from the concern for outcome rights, such as fair wages and decent conditions of work, for trade union rights are essentially a means to an end: If realised, they

¹ The other core labour standards are: Elimination of all forms of forced and compulsory labour; elimination of child labour; and elimination of discrimination in respect of employment and occupation (ILO, 1998).

² The distinction between *associational* and *structural* power is made by Wright (2000).

help workers claim and enforce fair wages and decent work conditions. Indeed, if outcome rights are *not* won through (or at least backed up) by the grounded struggles of workers, they easily degenerate into mere paper rights.

Thirdly, the focus here is primarily on the formal labour relations system. To be sure, this is neither the only possible nor a particularly comprehensive approach to the realisation of trade union rights. Realisation is understood here to be about the extent to which the rights in question are both *protected* – *upheld* by the state – and *exercised* by the rights holders themselves. Whether workers actually exercise their rights is not just a reflex of rights protection but is contingent on factors beyond the scope of the formal labour relations system – *inter alia* workforce structures; non-justiciable yet compromising employer strategies; and the subtle processes through which workers conceive of their interests and identities³ – which are only cursorily considered here.

Alongside interpreting and collating the latest available statistics and insights from existing literature, my exploration is decisively informed by the viewpoints of Brazilian trade union and human rights activists, which were gathered through a series of qualitative, semi-structured interviews conducted during 2008. The focus on activist perspectives means that I do not pretend to convey a picture free of perceptions, positions and agendas of politically motivated actors. Furthermore, the sample of quoted interviewees is quite small⁴.

In the first part of the paper I explore the extent to which one may consider agricultural workers' trade union rights to be realised. I argue that Brazil's formal labour regime, with its overarching corporatist principle of *unicidade sindical* (union unity) places *prima facie* constraints on such realisation. Its application in agriculture is marked by the

³ The work of Kelly (1997, 1998), while related to the challenges of organising workers in a *post-fordist* (and thus industrial) context, comes some way in providing a framework for a more comprehensive approach.

⁴ Research for this paper was conducted as part of a doctoral project on labour rights, trade and global governance, comprising interviews with 25 union and human rights activist across Brazil. Only a few of these are directly pertinent to the present topic and cited here. Full names and affiliation details of cited interviewees are listed under References.

peculiar *cohabitation* model already mentioned. While this has not prevented organisational proliferation, a broad membership base and quite extensive bargaining activity of rural unions, I contend that such quantitative measures are deceptive: Characteristics of rural unions' organisation and bargaining patterns, as well as very poor terms and conditions of agricultural wage work, suggest a distinctly shallow and uneven realisation of trade union rights.

The second part of the paper explores the practical-political implications of the *cohabitation* model as regards wage workers' organisational rights. Taking account of the amorphous nature of the smallholder class, I argue that wage workers' relationships with 'employer-smallholders' and 'family farmers' respectively, are qualitatively different. The former is one of outright *conflicting interests*, as the smallholders are themselves employers, while the latter relationship is one of *competing interests*. Such conflicting and competing interests come some way in accounting for the shallow and uneven realisation of wage workers' trade union rights.

The third part of the paper explores the circumstances which gave rise to and which have sustained *cohabitation*. It would be facile to consider that its perpetuation is simply a matter of someone's interest in keeping wage workers from organising and pressing collective claims. Instead, discourses and exigencies associated with historically rooted rural conflicts – more specifically about land and how to use it; and the plight and position of *agricultura familiar* (family farming) – have forced the question of *cohabitation*'s effects on wage workers' organisation and pressing of collective claims to the background. In this sense, agricultural wage workers' troubled trade union rights exhibit the 'collateral damage' of larger, more encompassing struggles over Brazil's agrarian development.

1. REALISATION OF TRADE UNION RIGHTS AMONG AGRICULTURAL WORKERS

Livelihoods in Brazilian Agriculture

By 2006, there were some 17 million livelihoods in Brazil's agricultural sphere, of which 4.8 million were *wage jobs*. In absolute terms, there were more wage jobs than in 2001, but fewer than in 1990 and 1981. Furthermore, wage labour's share of agricultural livelihoods had fallen significantly: It accounted for 28 percent in 2006, against 37 percent in 1990 (see table 1 below). Furthermore, most wage jobs were still *informal* ones, with the rate of formality at 33 percent – just a couple of percentage points higher than the rate of the late 1990s. Half of all agricultural wage jobs in 2006 were full-time jobs (DIEESE, 2008).

TABLE 1: LIVELIHOODS IN BRAZILIAN AGRICULTURE 1981-2006 (IN MILLIONS)

	1981	1990	2001	2006
Total no. of rural livelihoods	13.3	14.18	15.92	17.26
Employers	.46	.66	.50	.52
Smallholders	4.05	4.37	4.19	4.37
Non-remunerated	3.91	3.91	3.85	3.56
Subsistence producers	-	-	2.90	4.04
Wage workers	4.87	5.24	4.47	4.77

Source: Adapted from DIEESE (2008: 103). Prior to 2001 subsistence producers were not counted in a separate category; and rural populations in Rondonia, Acre, Amazonia, Roraima, Pará and Amapá were not included in censuses.

During the 2000s, the number of smallholder livelihoods increased. This, however, does not reflect any marked improvement of the conditions under which smallholders sustain their livelihoods, as the period since 1990 has seen deep liberalisation and restructuring. This has squeezed smallholders in terms of access to both land and product markets – the associated ascendance of *agronegocios* (agribusiness) has entrenched Brazil's iniquitous structural traits.

By the mid-2000s, the bottom 75 percent of Brazilian farmers held a meagre 12 percent of arable land, while the top 2 percent held nearly half of all arable land – the most pronounced land concentration seen since the agrarian question emerged in the 1950s (Welch, 2006, p. 49). The ascendance of *agronegócios* is not associated with any increase in the number of wage jobs either, reflecting that the land use associated with *agronegócios* is generally unfavourable to employment. Allegedly, large-scale commercial farming generates one job for every fifty-seventh hectare, while smallholder agriculture generates one for every seventh hectare (Campolino, *interview*).

Key features of Brazil's Labour Legislation

Brazil's labour relations system – often considered *fascist* in its pre-1988 incarnation – has proven itself extraordinarily resilient (Lang & Gagnon, 2009). Its bedrock is the *Consolidação das Leis do Trabalho* (CLT), a compilation of labour laws passed between 1930 and 1943. While the 1988 constitution rid the system of its most repressive features, it remains distinctly *corporatist* – i.e. the state continues to play a crucial role in determining how labour may organise itself.

Constraints on labour's autonomy are entrenched in the following four, interwoven features (drawing on *ibid.* and O'Connell, 1999; ITUC, 2009; IBGE, 2002; and ILO, 2009): First, through the principle of *unicidade sindical* (union singularity), the state vests a singular union organisation with rights to represent *all* workers of a given occupational category (as defined by the state), in each territorial remit and level. In all of agriculture, there is just one occupational category: *trabalhador rural* (rural worker). Thus, there is one official union – a *sindicato dos trabalhadores rurais* (STR) – for each municipality; one official union federation for each state, and one confederation for all of Brazil. Recognition is not granted on the basis of the extent to which workers are actively affiliated with the union organisation in

question. Second, unions are *not* granted formal recognition at the level of the individual workplace.

Third, the state deducts a mandatory *contribuição sindical* (union tax) from the monthly wages of *all* employees, and the revenue is distributed back to the recognised unions, federations and the confederation, commensurate with the number of workers within their respective occupational-territorial remits. Fourth, recognised unions (and employers' associations) have an automatic legal *right* and *obligation* to *bargain* on behalf of all workers in their occupational-territorial remit. Bargaining remits follow those of *unicidade sindical*: *Convencões coletivas* (collective conventions) may be negotiated at the level of municipality, state or nation. Furthermore, recognised unions may also descend on individual workplaces to bargain *accordos coletivos* (workplace agreements) on the behalf of workers there.

General Implications for Freedom of Association

There are, in a somewhat simplified overview, two key aspects to freedom of association: *Freedom to* associate with or form a union of one's choice; and *freedom from* victimisation when exercising union rights. The principle of *unicidade sindical* clearly contravenes international legal standards in the former sense (Brazil has not ratified the ILO Convention 87). Workers are free to decide whether or not to join the official union, but the monopoly of representation in each occupational-territorial domain means they are denied more than one real option. True, workers may form and join *oposições sindicais* (contending unions) and these may be granted some statutory rights by their home states. But recognised unions may freely challenge their legality in federal courts, and courts tend to revoke the legality of *oposições sindicais*, which forces them into a precarious existence without funding or statutory protection (Neves, *interview*).

The constraint on freedom to choose is particularly pronounced in agriculture. The perennial problem for urban labour is that the occupational categories for union recognition are too specific, creating vertical splits within sectors and preventing broader class cohesion. The application in agriculture tends toward the opposite: With just one very broad occupational category, *trabalhador rural* (rural worker), wage workers, smallholders and landless producers may not form or join *separate* recognised unions. The fact that a third of all rural unions are semi-legal *oposições sindicais* (DIEESE, 2008, p. 154) attests to the grievance this spawns.

Law provides for extensive protection of an individual's right to organise in unions without victimisation or prejudice. In practice, however, freedom from victimisation is seriously undermined by the non-recognition of workplace unions: While rural employers 'are very hostile, blacklisting is common and workers have to join unions in secret' (ITUC, 2009, p. 4), less than 10 percent of rural unions have *any* meaningful representation in local workplaces whatsoever⁵, so unions are not able to survey workplace labour relations and forestall victimisation. Victimised workers must therefore seek *ex post facto* redress through the labour courts. However, such access to justice is but a distant dream: with a backlog of literally millions of cases, it takes *an average* of 6 years to arrive at a court resolution (US-BDHRL, 2009).

General Implications for Collective Bargaining Rights

Unlike in pluralist labour regimes, where a union typically has to qualify for statutory bargaining rights by being *sufficiently representative* in terms of its membership share in the affected workplace or sector, a recognised union in Brazil automatically has the statutory right to bargain on behalf of its constituents. Moreover, it has a statutory *obligation* to do so – even

⁵ Only 19 of 3,911 rural unions had formal representation at workplaces in 2001, and just 367 had representation in workplace commissions for health and safety (IBGE, *Sindicatos: Indicadores Sociais 2001*, p. 160).

if this is a largely unenforceable ‘best endeavour’ obligation. Whatever the union achieves in *collective conventions* shall be extended to *all* workers within its territorial remit – that is, even to non-unionised workers and workers actively affiliated with non-recognised *oposições sindicais*. *Workplace agreements* formally extend only to workers actively affiliated with the bargaining union; nevertheless employers typically extend the agreed terms to all workers of the relevant occupational category. Stalled collective bargaining processes are settled by *dissídios*, binding arbitrations issued by labour courts.

Legislation distinguishes between *not-abusive* and *abusive* strikes. Strikes are not abusive as long as collective bargaining remains unsettled and no *dissídio* has been issued; dismissals during such protected strikes are automatically rendered unfair. As of 2004, a labour court *dissídio* may only be issued if solicited by *both* employers and employees. Yet, unilaterally solicited *dissídios* persist in some states.

Trade Union Rights Realisation: Contradictory Appearances

Union proliferation in the Brazilian countryside is significant. By the time of the last comprehensive union census (2001), there were no less than 3,910 rural unions. In average terms, more than two-thirds of *all* Brazilian municipalities have a rural union and few are mere paper unions: Two-thirds claimed more than 1000 actively affiliated members; half claimed that more than 60 percent of all the workers in their occupational-territorial remit are actively affiliated members. In fact, unions organised more than 9 million *active* members, translating into a union density of 47 percent amongst all people earning their livelihoods in agriculture (IBGE, 2002). Amongst *wage workers*, the union density in 2006 was 24.4 percent (DIEESE, 2008). In comparative terms, this rate of agricultural worker unionisation is high ⁶.

⁶ Data on rural union density in developing countries are not easily available. Research by the author suggests that union density in South African farm workers is below 5%, while it is in the vicinity of 20% in Ghana (Pahle, 2011). Union density in Indian agriculture is below 5% (ILO, 1996, p.58).

While the 2001 survey lists all collective bargaining agreements reached in agriculture that year, it specifies neither the absolute number nor relative share of farm workers covered by such instruments. However, given the structural-territorial rigidities of *unicidade sindical* and *cohabitation*, I have used data from the survey and elsewhere to make an estimation of coverage rates as shown in *Appendix I*. Although based on crude statistical averages and some assumptions open to challenge⁷, it indicates that *every second* formally employed farm worker is covered by either a collective convention or a workplace agreement; this rate is consistent across the regions considered.

However, once calculated against the baseline of formally *and* informally employed, coverage rates fall dramatically: In the south-eastern region, with a high 46 percent formality rate, *every fourth* farm worker is covered by a collective instrument. Elsewhere, only *every tenth* farm worker is covered. Notably, 23 percent of rural unions accounted for all bargaining activity during 2001 (DIEESE, 2007, p. 186).

Quantitative measures such as *union density* and *collective agreement coverage rates* must be approached with considerable caution (Compa, 2003). They surely say something about proliferation, the membership base, and the bargaining activity of unions. But how well do they capture the actual extent to which farm workers' freedom of association and right to bargain collectively are realised? I suspect that they tend to mask more than they reveal.

In terms of principles, *prima facie* traits of the formal system must compel suspicion: *Unicidade sindical* constrains workers' freedom of association, and the compulsory tax arrangement means union income depends on state recognition rather than active membership. Consequently, union activity is based on presumed rather than genuine representation, and on statutory rights partially de-linked from actual mobilisation of workers. Moreover, lavish extension rules inflate the collective agreement coverage rates much beyond actual membership.

⁷ See methodological notes to Appendix I.

The substantive terms and conditions of agricultural work also contradict the impression that wage workers have the sort of organisational clout that union density and collective agreement coverage would suggest. The 2008 monthly minimum wage of 415 *reais* (appr. US\$240) is reported to ‘*not* provide a decent standard of living for a worker and a family’ (US-BDHRL, 2009, section 6) – and yet, two out of three male workers, and a staggering nineteen out of twenty female workers, earn the *minimum wage or less* (DIEESE, 2008, p. 130). Poor average remuneration is due, in part, to the many farm workers who are neither unionised nor covered by collective agreements. However, even in states considered to have a tradition for collective bargaining, such as Goiás and São Paulo, unions fail to claim anything like ‘a fair share’. In Goiás, ‘collective bargaining typically produces wages floors above the minimum salary, but only marginally so’ (Brito, *interview*). Moreover, employers routinely violate bargaining agreements: ‘It’s a game of double standards: On payday, the great majority of workers don’t get what was agreed in collective bargaining’ (*ibid.*). In São Paulo, workers have had to accept increasingly inhumane productivity demands. In the 1980s, cane cutters organised strikes to protest that they were required to cut six tons of sugarcane a day; by the 2000s, workers were required to cut at least *twelve* tons per, or risk being blacklisted (Welch, 2006, p. 46). In this daily effort, the worker now makes some 133,000 machete hits, walks 9 km, and carries the twelve tonnes on his back. The attendant exhaustion means that serious injuries are rife and deaths occur (Biondi *et al.*, 2009).

The above evidence suggests a degree of shallowness in wage workers’ organisational clout. Such shallowness is underscored by the high prevalence of violence and forced labour. Allegedly, ‘some 200 rural trade unionists were killed in the Brazilian countryside during the last decade’ (Filho, *interview*). It is a chilling illustration that Elios Neves – the prominent unionist in São Paulo’s sugarcane and orange plantation area cited repeatedly in this paper – was attacked by hooded gunmen and shot in the head, but miraculously survived (Motta,

2009). Some 7,000 known cases of slavery were denounced across Brazil in 2008, more than a *six-fold increase* since 1999 (CPT, 2009). However, this only refers to actually denounced cases – at least 25,000 people are presumed to be held captive in forced or compulsory labour in Brazil at any time (ITUC, 2009). Meanwhile, pronounced regional variations indicate unevenness of union outreach to and commitments towards agricultural workers. In the states of Sao Paulo and Pernambuco, the 2008 prevalence of slavery was relatively low and *all* captive workers were liberated. Meanwhile, in the northern states, *every thirty-fourth* farm worker in 2008 was a slave, and only half of the denounced cases had lead to liberation by the year's end (CPT, 2009).

This apparent shallowness and unevenness of trade union rights realisation may be attributable to universally applicable traits of Brazilian labour legislation, such as the non-recognition of workplace unions and workers' consequent vulnerability to victimisation. However, as I argue in the following section, the *cohabitation* model in agriculture seems to have considerable explanatory power.

2. IMPLICATIONS OF *COHABITATION*

Direct Conflict with 'Employer-smallholders'

In the following discussion I focus on the ground-level implications of cohabitation, detailing some dynamics which seem to stymie the realisation of agricultural wage workers' union rights: Who exactly are the other constituents with whom wage workers must share unions; in what ways are their interests complementary to, competing or conflicting with those of wage workers; and how does this shape union action?

The national confederation of agricultural workers (CONTAG) divides its membership into the following categories: *pequenos proprietarios* (smallholders); *arrendatarios* (lessee, tenant); *parceiros* (partner of a smallholder), *posseiros ou ocupantes* (squatter or occupant), and *assalariado* (wage worker) (DIEESE, 2008, p. 153). This, however, does not accurately reflect the main political groupings within rural unions. As I elaborate later, it makes limited sense to construe smallholders as one political category: Farmers thus labelled are similar in that they *own* the land they cultivate, and in that their lands are too small to render them *fazendeiros*. Furthermore, the category is bifurcated into a conservative and a radical camp. Radicals identify themselves as *agricultores familiares* (family farmers) whose definitional characteristic is that the ‘unit of production’ (i.e. farm) is so modest in terms of size and production activity that the owner family accounts for most if not all labour required on the farm⁸.

The point to note at this juncture is that CONTAG leaves the individual state federation to determine the upward size limit of a ‘smallholder’ so that the category tends to comprise both family farmers *and* employer-smallholders:

In São Paulo, for instance, the category of ‘smallholder’ includes farms that are medium-sized in terms of employment. In branches such as horticulture, the farmer may essentially decide whether to be classified as an ‘employer’ or a ‘worker’ [and join a trade union]. This mixed representation of employers and workers is a big problem (Neves, *interview*).

⁸ The demarcation line is somewhat blurred. One source associates an *agricultor patronal* – the opposite of a *agricultor familiar* – with “a holding larger than the owning family may exploit with use of own labour and machinery” (DIEESE, 2008, p. 263); another defines a ‘family farm’ as a holding where 80% of labour requirements are accounted for by the family members themselves (Filho, *interview*). Moreover, the ‘family farm’ category is often associated with a *conta propria* (self-account) livelihood type used in censuses, i.e. an independent producer without *permanent* employees (DIEESE, 2008, p. 122).

The extent of the problem (wage workers sharing unions with employer-smallholders) depends on the location in question and the history and composition of its agricultural production modes. In most of Pernambuco's coastal sugar zones, for instance, large-scale commercial agriculture has banished smallholder agriculture and most municipal unions therefore preside over a homogenous constituency: Wage workers are typically employed at plantations and organised by official trade, while farmers organise themselves in rural employer unions.

However, wherever or not an official union has a sizeable share of employer-smallholders in its remit, a great number of wage workers are represented by the same organisations as their employers, as is often the case in the municipalities of Brazil's south-eastern and southernmost states. There is a very real danger, then, that such unions, which preside over mixed constituencies, are *not* particularly inclined to forcefully articulate and pursue wage workers' interests. And indeed: A mere 23 percent of unions engage in any collective bargaining on behalf of wage workers (DIEESE, 2007, p. 186) – despite their automatic right and obligation to do so.

Even when unions *do* engage in bargaining, the conflicting interests of different constituent groups compel them to engage in highly circumspect bargaining strategies which undermine the organisation and pressing of collective claims of wage workers. The situation of sugar workers in São Paulo's Ribeirão Preto sugar zone is telling: Cane cutters working for the *Cosan* mill in the municipality of Araraquara are organised by the break-away state federation of *wage-workers-only* unions (FERAESP) and have secured a minimum monthly wage of R\$550. Meanwhile, workers at the *Cosan* mill in the nearby Ourino municipality, who are organized by the CONTAG-affiliated federation of official unions (FETAESP), have a minimum wage of R\$450/month – twenty percent less for the same work, for the same company, in the same state (Neves, *interview*). The significant difference is due to the fact

that, whereas the Araraquara mill is subject to a municipal collective convention, the Ourino mill is subject to a workplace agreement only. Allegedly, CONTAG-FETAESP has not pursued a municipal collective convention because

One of its more influential so-called smallholders happens to be farming sugar cane himself, so they want to check cane cutters' salaries across their remit and opt for specific workplace agreements only. That's how the *contagist* model suffocates wage workers (*ibid.*).

A first and obvious effect of such a premeditated strategy of aiming for lowest-scale bargaining is that only workers at plantations and big *fazendas* – and *not* workers employed by patron smallholders – are covered by collective agreements. But it also has an adverse impact on the workers actually covered by collective agreements: It multiplies the number of bargaining processes and counterparts and this renders broad-based strike action unlikely. It is this fragmentation effect that accounts for the unequal bargaining clout of sugarcane cutters at Cosan's Araraquara and Ourino mills. Indeed, CONTAG's national secretary for wage workers concedes that 'the logics that our São Paulo affiliates follow is simply wrong – you cannot get the workers to take joint action against the millers with all these different *accordos*' (Filho, *interview*). He claims, however, that official unions in São Paulo are a case apart in this respect, pointing to Pernambuco unions which got 'more than 100,000 workers to strike and paralysed all mills in 2007' (*ibid.*).

However, statistics of the 2001 union survey belie the fact that CONTAG's São Paulo unions are negatively deviant. In fact, very few unions anywhere in the Brazilian countryside are inclined to strike action at all: Just 5 percent (a mere 184 of 3,911) of *all* STRs had seen any strike action in their remits during 2001. Furthermore, while unions in Pernambuco's sugar belt might be particularly inclined to militant mobilisation of farm workers (for reasons

such as workforce structure as mentioned above, and also historical reasons which I return to in the third part of this paper), unions across the northeast were actually involved in strike action to a *lesser* extent than their counterparts in the southeast (IBGE, 2002, p. 204). The same tendency is mirrored in regional variations as regards unions' inclination to engage in more strike-enabling, higher-scale bargaining strategies. According to the bargaining coverage estimation (*Appendix I*), southeast unions covered as many as 45 percent of formally employed farm workers by collective agreements at municipal scale or higher. The comparable rate in their northeast counterparts was just 23 percent.

Furthermore, case research confirms that some unions in Pernambuco opt for the same circumspect approach as their counterparts in São Paulo's Ourino municipality: The STR in the Pernambuco's São Francisco valley tends to mobilise workers and organise strikes only at larger export farms, and systematically 'avoids mobilizing workers at *colons*' [i.e., smallholders'] farms [as this would] create tensions and even splits within its own structure' (Selwyn, 2007, p. 547-548).

Undoubtedly, a range of factors might account for workers' lack of bargaining strength and disinclination to strike⁹. The above examples are nevertheless a strong indication that cohabitation with employer-smallholders stymies wage workers' organisation and pressing of collective claims: Many unions do not organise wage workers at all; few unions bargain on behalf of wage workers, and amongst those which *do*, many opt for bargaining strategies which make broad strike actions unfeasible. This surely sheds light on the observed inability – even of many formally employed and unionised farm workers – to claim a fair share: If workers are seen to be incapable of wielding the weapon of strike action, it is no wonder that employers concede little in collective bargaining and even disregard collective agreements.

⁹ Notably, prior to 2004, *dissídios* (arbitration awards) by labour courts – whose issuance render strike action 'abusive' (i.e., strikers may legally be fired) – could be solicited unilaterally by employers.

The relative dominance of petty employer interests in CONTAG is also reflected in its advocacy for national policies detrimental to the employment status of casual workers – and thus to wage workers’ organisational prowess. CONTAG co-drafted the infamous provisional presidential decree *410/2007* which permits the employment of farm workers without a formal contract:

Here, CONTAG openly prejudiced wage workers in the name of reduced costs for so-called smallholders. However, following our confrontation with CONTAG, CUT’s top brass intervened and we managed to at least negotiate a revision so that temporary employment without formal contract is to be an exception from rule rather than becoming the rule (Neves, *interview*).

Competition with ‘Family Farmers’

While some family farmers may themselves be petty employers, their interest in the labour market realm is certainly not significant. Indeed, the relationship seems to be one of incommensurate and *competing* interests – i.e. interests which belong in entirely different political realms but compete for the same, scarce trade union resources. According to Rosane Bertotti – who is CUT’s national communications secretary and leader in the break-away federation of family farmers’ union (FETRAF) – ‘the key issue for family farmers is agrarian reform and the place of family farming in public policies; for wage workers, the main issues are salaries and decent working conditions’ (Bertotti, *interview*).

In many countries in the global south, the roles and interests of smallholders and wage workers often overlap and converge in that a sizeable share of wage labour is often carried out by smallholders themselves. This phenomenon seems to be far less prevalent in Brazil: In its coastal plantation zone, labour was almost entirely proletarianised by the late 1970s; at that time, inland plantations would still draw on the seasonal labour of smallholders, but these

smallholders earned such a substantial part of their livelihoods from their own production (Heath, 1979) that their direct interests in the rights of wage labour must have been wholly subordinate to their interests in land and product markets, and in state producer support.¹⁰

Meanwhile, such independent smallholders had sizeable *indirect* interests in wage workers' rights: In plantation zones across the country, there was a 'connection between the proletarianisation of plantation labour and the expansion of *minifundio*-based trading enterprises' (*ibid.*, p. 279). In other words, the expansion of the rural proletariat and the improvement of its terms and conditions served to prop up the demand for smallholders' produce in local markets.

However, with the liberalisation and supermarketisation of recent decades, the integrated farming-processing-distribution model of *agronegocios* has effectively captured the domestic retail market and crowded smallholders out of local product markets. Nowadays, most smallholders may only access local markets – indeed, only earn cash and sustain a living – via so-called *integração* (contract farming) with agribusiness: In dairy, poultry, pork and vegetable farming, *agronegocios* rely extensively on this organisation of production. Smallholders deliver produce sourced at piece rates, in exchange for production inputs and access to supermarket shelves. However, by systematically dividing markets between themselves, *agronegocios* rig purchaser monopolies in their respective regions and force family farmers to produce output at piece rates which are often below the real cost of production (Oliveira, *interview*).

This surge of *agronegocios* at the expense of family farmers has had multiple adverse effects on the position of wage labour within unions: Not only have family farmers lost their

¹⁰ While the present research has not explored this question in any depth, it is safe to assume that marginal smallholders in many parts of Brazil continue to take casual wage work in order to make ends meet. However, smallholders which are on the verge of pauperization and dispossession typically associate themselves with either the radical family farming current of the union movement (e.g., Medeiros, 1997; Palmeira, 1995), or with the landless peoples' movement (e.g., Wittman, 2009) – instead of assuming a wage worker identity and participating in the struggle for wage workers' rights.

previous implicit, product-market-mediated interest in the plight of wage workers, but the exploitation associated with *integração* can only be overcome through collective mobilisation of and interventions in product markets (as opposed to labour markets). Furthermore, as I return to below, the quasi-proletarianisation associated with *integração* is used to buttress the pro-*cohabitation* claim that the fight to improve the position of family farmers in product markets is in keeping with unions' *trabalhismo* (workerist) mandate, not a departure from it.

The *competition* with family farmers for official rural unions' resources and attention – adding to the conflict with employer-smallholders – compromises wage workers' access to leadership positions. While representing some 28 percent of all agricultural livelihoods, and 13 percent of all actively affiliated members, only 10 percent of STR secretary generals are from wage worker ranks (DIEESE, 2008, p. 142). In some parts of the country, unions are so single-mindedly devoted to family farmers that wage workers are left largely unorganised:

CONTAG has managed to retain much of its legitimacy among smallholders. In the southernmost states, such as Paraná, you would see that 99 percent of union members are smallholders. At the same time you'll find slavery, and plenty of extremely precarious wage labour. Lots of salaried labour goes into grapes, agroforestry and logging in that region, but these workers are left outside of the union movement (Neves, *interview*).

CONTAG's allegiance to smallholders – whether of the family farmer or employer-smallholder kind – would not have been such a problem if it had been lenient towards the formation of wage-workers-only *oposições sindicais*. But, as the case of the break-away FERAESP in São Paulo illustrates, CONTAG has been anything but lenient: Ever since a group of militant union leaders resolved to form FERAESP as a *wage-workers-only* federation in 1989, CONTAG has incessantly challenged its legality. After a decade of

precarious and clandestine existence, FERAESP's legality was partially recognised in 2001. However, CONTAG continues to obstruct full recognition, and many years' worth of compulsory union tax revenue is withheld from FERAESP, which severely impedes its ability to service members to full effect (*ibid.*).

While Capital and Workers Migrate, Unions Cannot

That the extent of trade union rights realisation among agricultural wage workers varies across localities and regions is, of course, not particular to Brazil. What *is* particular is how the interplay between structural features of agriculture and the *cohabitation* model aggravates and locks in such unevenness. As I elaborate on in the third part of this paper, the militant wage worker unionism in Pernambuco and parts of São Paulo shows that whenever there was a very high concentration of agricultural wage labour during both periods of mass labour unrest – the pioneer period, during the late Second Republic, and the period of anti-dictatorship militancy from the late 1970s and into the 1980s – the *cohabitation* model did *not* prevent rural unions from assuming the role of organisational vehicles for the articulation and pursuit of farm workers' interests. However, in territorial remits where unions presided over more mixed constituencies, the *cohabitation* model prevented comparable radical contagion and wage worker mobilisation: In parts of the deep south and the northernmost parts of Brazil, for example, a radical contagion did occur, but manifested itself in the form of militant *family farmer unionism* (Medeiros, 1997; Houtzager, 2001).

In most of the centre and the northwest – where federal lands were brought under agriculture through the colonisation schemes engineered by the dictatorship to ease land conflicts and prevent radicalisation along the coast and in the fertile *cerrado* plains (Wittman, 2009) – the rural unions of *colons* (settlers) were neither radical nor committed to wage workers. The problem from the point of view of agricultural wage labour is that an increasing

share of labour-intensive agriculture – including much sugar cane production – migrates from the old union heartlands of the coastal and *cerrado* plains and into the territorial domains of these very unions:

In São Paulo, many workers have skills, decent working conditions and capable unions. But you must look beyond the individual region: As companies expand or relocate to the centre and northwards, the workers' conquests don't follow – along this route, the space for contestation becomes smaller the further you get (Neves, *interview*).

As thousands of workers are made redundant by mechanisation at employers' heartland estates, they must follow as employers expand: In fact, 'they often continue to work for the same company but the battles they fought and won with their former union is now to little avail' (*ibid.*). CONTAG's national secretary for wage workers attributes the deteriorating plight of migrating labour to 'the physical characteristics of agribusiness which lends itself to impunity with ever more abuse of workers' rights committed in places beyond the reach of the authorities'. That remoteness involves a measure of impunity is beyond doubt, but that is only part of the story: 'The point is that employers' space for manoeuvre is much larger also *on account of weak unions*' (Neves, *interview*).

From the workers' point of view, it would have made sense if their erstwhile union – say, a FERAESP or FETAPE union with decades' worth of experience in mobilisation, collective bargaining and strike organisation – followed capital and labour to new locations, much as would have happened in a pluralist labour regime. But this is exactly what *cohabitation* prevents: In the frontier municipality, the problem is *not* the absence of any rural unions but that there typically *is* an official union already, with monopoly rights to represent workers – albeit one with traditions and allegiances which may make it disinclined to organise

and press claims of wage workers. Thus, ‘the migration of agricultural production presents us with challenges which the CONTAG model simply was not built to deal with’ (*ibid.*). This challenge is reminiscent of a ‘race-to-the-bottom’, seen to undercut labour at the global scale.

Of course, official unions whose erstwhile allegiances were with employer-smallholders or family farmers need not remain beholden to the same constituencies forever. The STR in Pernambuco’s Sao Fransisco valley is a case in point: After two decades of devotion to *colons*, several large deciduous fruit plantations were established in the municipality and it shifted its attention towards wage workers. This shift, however, happened on the back of one circumstance particular to the region – namely, the historical commitment to wage workers of the state federation (FETAPE) which brought its ‘already successful strategy from the coastal sugar zone to the valley’(Selwyn, 2007, p. 547). Moreover, as we have seen, the union pursues a very circumspect bargaining strategy of focusing on mobilising workers and bargaining for collective agreement only at the plantations, leaving workers at *colon* farms unorganised.

Unlike in Pernambuco, rural union federations in typical frontier states are not as committed to wage workers, nor do they have FETAPE’s capacities as regards workers’ mobilisation, collective bargaining and strike organisation. Instead, it is in their remits that the most grotesque violations of labour rights occur most frequently, and where it is left to the local preachers of the *Comissão Pastoral da Terra* (CPT) to map and denounce cases of slavery. As one of CPT’s field workers says: ‘If you’re not a smallholder, in one way or another, you tend to fall outside of the unions’ priorities. Unions have a difficulty when it comes to rural wage workers, let’s put it that way’ (Britto, *interview*).

3. THE MAKING AND PERPETUATION OF *COHABITATION*

The above discussion leaves little doubt as to the adverse affects of *cohabitation* on the organisation and collective bargaining of agricultural wage workers. By inversion, it is also true that *cohabitation* serves employer interests well – whether they are large-scale commercial farmers or employer-smallholders. However, it would be misguided to attribute the making and sustenance of *cohabitation* to the predetermined strategy of any one actor (or alliance of actors) keen to curb wage workers’ associational power. In the following section, I draw on the rich body of research on the emergence and trajectory of the rural union movement from the late 1950s until the transition to democracy in the mid-1980s, along with interviewees’ perspectives, to offer a reinterpretation of why *cohabitation* has proven itself so resilient.

The Making of and Varied Experiences with Cohabitation

The ambiguity of the term *worker* is reflected in the earliest cases of organised contention in the countryside. In the 1950s, as huge sugar plantations expanded across the northeastern states of Pernambuco and Paraíba and wrought dispossession on the peasantry, the *Ligas Camponesas* (Peasant Leagues) emerged outside the formal union system to question the legitimacy of the *latifúndio* tenure system¹¹. Their *agrarismo* discourse – which invoked the ‘the fellowship of little people in the countryside who have to work the land themselves’ (Pereira, 1997, p. 104) – appealed to dispossessed peasants and the emerging class of plantation workers alike.

¹¹ *Latifúndio* denotes a tenure system with roots in the colonial *sesmarias*, characterised by very large landholdings commonly cultivated only in part and by means of obsolete production techniques and exploitative labour practices. Activists continue to use the term *latifúndio* to denote not only the continued skewed land distribution as such, but also the power exercised through it and social relations flowing from it in local and national politics; e.g. Vezzali, *Especial Latifúndio: Concentração de Terra na Mão de Poucos Custa Caro ao Brasil* (Reporter Brasil, São Paulo 2006).

During the early 1960s, the *agrarismo* discourse was partially overtaken by a distinct *trabalhismo* discourse, espoused by surging rural trade unions, which ‘accepted the existing distribution of land, and pressured the state to grant rural workers the benefits that had been gained by urban labour’ (*ibid.*, p. 98). In Pernambuco, such unions were soon to congregate in the form of the vital state federation, FETAPE.

In 1963, the left-leaning populist regime of President Goulart enacted the *Estatuto do Trabalhador Rural* (ETR) which removed constraints on rural union registration and supported the establishment of a national confederation of rural workers’ unions, CONTAG. Now, rural unions mushroomed all across Brazil. While the ETR extended the long-standing principle of *unicidade sindical* to agriculture – so that in any municipality, there could be no more than *one* recognised rural union – it was ambiguous about the possible differentiation of different legal categories of agricultural workers. By the eve of the *coup d’etat* in 1964, there were 1,200 rural unions organised into 40 federations. Notably, eleven of these federations of unions focused on organising wage workers only (Favareto, 2006).

The coup of 1964 was in part a direct reaction to the mass-based and assertive labour radicalism in the countryside: The collaboration of surging unions, communists and progressive *catolicos radicais* (forebears of liberation theology) was perceived as a very real threat to rural elites, and landowners contributed to financing and inciting the coup (e.g., Skidmore 2010; Welch, 1995). However, rather than opting for the possibly destabilising strategy of an outright union ban, the dictatorship sought to turn the union movement into a vehicle for popular control. Strikes were prohibited, collective bargaining was replaced by labour court decrees, and representatives of the *circulos operarios cristãos* – ultra-conservative church networks which had successfully embedded themselves in unions in the southeast – were inserted into the peak leadership of CONTAG (Thomaz Jr., 1997).

By way of a modification of the ETR in 1965, the dictatorship resolved that henceforth, there was to be only one occupational category in agriculture – namely that of *trabalhador rural* – and union organisations at all scales were to reflect this (Medeiros, 1997, p. 67; Houtzager, 2001, p. 17). Thus, while union plurality at the municipality level was already ruled out, this move prohibited plurality at the federation level too. This, then, amounted to the fully fledged institutionalisation of *cohabitation*.

The consequent all-encompassing pyramidal structure eased control and machinations by the dictatorship, and aimed to ‘correct’ the recognition status, election outcomes or tax receipts of any subversive unions. Such direct meddling subsided from 1970, when the dictatorship adopted a means of indirect control which simultaneously bolstered state-building and popular support for the regime: Unions were granted a monopoly role in terms of rendering dental and medical aid to millions of rural poor, in the massive PRORURAL scheme. Much as Goulart passed the ETR in the hope that rural unions would ‘register independent voters to help erode the influence of *coronelismo*’ (Welch, 1995, p. 179), so did the dictatorship use PRORURAL as an institutional linkage mechanism with which ‘to centralise power out of the hands of the regional oligarchies and local elites’ (Houtzager, 2001, p. 18), albeit for the sake of modernising the agrarian sector. PRORURAL was thus a gigantic state patronage scheme. Across all of Brazil, it gave rise to *pelegos* – co-opted union bosses who took on the leadership ‘in order to advance their political careers or increase their personal fortunes, while doing nothing for the workers’ (Lang & Gagnon, 2009, p. 252).

Nevertheless, these patronage-based political circumstances held certain advantages from the point of view of rural labour. While ‘it goes without saying that the movement which emerged was heavily regulated and enjoyed little autonomy’ [...] ‘rural unions were expected to organise the rural poor, help provide them a social wage, educate them about their rights [to certain conditions of employment rather than trade union rights, of course] and demand

enforcement in the labour courts' (Houtzager, 2001, p. 18). On the back of their privileged service delivery role, unions proliferated and attracted members *en masse*: By the end of the dictatorship, CONTAG had become the largest confederation in the Brazilian labour system with 2,747 unions and almost 10 million members on its books (Pereira, 1997). In the countryside unions served as conduits for citizenship.

Moreover, *pelego* unionism did not take hold everywhere. In the wake of the oil crisis of the early 1970s, the regime invested heavily in ethanol production, and sugar producers were thus linked directly to the dynamic automotive industries of the urban south – a captive, regulated domestic market undergoing rapid growth. This reversed the fortunes of the exhausted and decadent coastal sugar zones, and hundreds of thousands of workers were called on to cut cane in states such as Pernambuco and São Paulo. The new agro-industrial ethanol complex gave rise to an emerging class of mill and permanent field workers, with rights and benefits on a par with industrial workers. The majority of cane cutters, however, were less fortunate casuals. In São Paulo, they were nicknamed *boias-frias* (cold-lunches): 'In a country which valued a hot lunch as the main meal of the day, the fact that harvesters carried their lunch boxes to the fields, eating it hours after making it, meant that they were excluded from one of civilisation's benefits' (Welch, 2006, p. 40). In Pernambuco, they were called *clandestinos* owing to their lack of formal employment contracts.

The combination of empowered, assertive mill and field workers and exploited casual cane cutters 'paved the way for the emergence of a *militant but reformist* labour movement in Pernambuco's sugar fields' (Pereira, 1997, p. 101). Instead of yielding to a controlled and docile type of *pelego* unionism, unions used the patronage to build a movement with considerable disruptive ability. While providing dental and medical aid, union leaders ensured that constituents became aware of their trade union rights which had been suspended by the dictatorship.

This steadfast commitment to *trabalhismo* was confined to certain militant pockets in the plantation zones of Pernambuco and São Paulo. In general, wage workers ‘did not represent the political priorities of the organisations supposed to represent them [...] as was manifest in the increasing hegemony of *non*-salaried workers at the commanding heights of the rural union movement’ (dos Santos, 2007, p. 65).

Furthermore, rural unions did not visibly represent the interests of the millions of struggling smallholders, tenants and squatters: ‘CONTAG had become forgetful about the socialist aspirations central to its formation, including its erstwhile emphasis on agrarian reform [and] had been conspicuously silent and offered no help when family farmers paid dearly for the government’s ‘agrarian modernisation’ of the 1970s’ (*ibid.*) The modernisation scheme, with its green revolution technologies, price and credit incentives, and massive mechanisation schemes, forced no less than 30 million smallholders and workers to leave the countryside (Welch, 2006). The partial co-option and self-aggrandizement of its many *pelego* leaders notwithstanding, it seemed that CONTAG was pursuing the interests of an intermediate breed of smallholder who could cope well with agrarian modernisation. This perceived betrayal of the *smaller of the smallholders* is a key to later developments.

The Challenge of ‘Novo Sindicalismo’

During the late 1970s and early 1980s, Brazil saw waves of massive labour unrest provoked by the regime’s structural adjustment and austerity measures. The militancy of some CONTAG branches at this juncture – especially of the Pernambucan unions whose disruptive ability was revealed with the massive strikes of sugar workers during 1979, and a later wave of sugar and fruit workers’ strikes in São Paulo (Welch, 2006) – was crucial in building societal momentum against the dictatorship. But in the climate of surging social contempt for statism, CONTAG’s *sindicalismo oficial* was frowned upon and severely challenged by an

emerging *novo sindicalismo* associated with *Central Unica dos Trabalhadores* (CUT), a radical union established centrally in contravention of the formal labour relations system.

Cutistas abhorred corporatist labour relations systems, including cohabitation in agriculture: While they considered the plight of smallholders to be but ‘another manifestation of the several forms through which capitalism expropriates labour’ (Favareto, 2006, p. 36) – and therefore held wage workers and smallholders to be natural class allies in the pursuit of wide-ranging agrarian reform – they were of the opinion that *cohabitation* obfuscated the diverse and kaleidoscopic social terrain in the countryside and frustrated the mobilisation of diverse groups of the rural poor. CUT aimed for a total overhaul of labour legislation in keeping with the ILO Convention 87 on Freedom of Association. Pending such reform, it sought to foment organisational differentiation by offering affiliation to dissenting STRs and *oposições sindicais* (*ibid.*). Thus, even if certain CONTAG leaders had played a key role in CUT’s establishment (1983), an affiliation with CONTAG was ruled out (*ibid.*).

For a while the rift only deepened. CUT was, along with its close associates in Lula’s *Partido dos Trabalhadores* (PT), a vigorous proponent of radical land reform. Although CONTAG actively contributed to writing the agrarian chapter in the 1988 Constitution, this fell short of providing for anything like the far-reaching land reforms which so many had hoped for¹². According to one account, CONTAG’s cautious approach reflected that a sizeable share of its members, and most of its leaders, were themselves petty landowners who allegedly ‘identified more with landowners than with the landless’ (Pereira, 1997, p. 109). In the 1989 elections, the electoral districts with the highest concentration of CONTAG members voted almost consistently against Lula, fearful of his radical posturing on the land reform issue (*ibid.*).

¹² Land titles may be expropriated if they fail to serve a ‘social function’ (defined in terms of productive and lawful use). Otherwise, the status quo is upheld by the provision that land redistribution requires ‘due compensation’ (Welsh, 2006, p. 42).

As a consequence of CONTAG's alleged conservatism, CUT formed a quasi-confederation for agriculture in 1988, *Departamento Nacional dos Trabalhadores Rurais* (DNTR), which comprised several hundred unrecognised *oposições sindicais* and dissenting official unions. Most of the latter represented radical family farmers from the southernmost states and militant *colons* from the northern state of Pará – the very same segment of smallholders which CONTAG had failed to protect during the dictatorship's uprooting of the peasantry in the 1970s.

DNTR would also become the home of some vigorous *sindicatos dos empregados rurais* (SERs) – unions devoted solely to wage workers. Prominent among these was the aforementioned FERAESP, the São Paulo federation of *wage worker-only* unions. Overall, however, wage workers were hardly afforded more organisational power in DNTR than in CONTAG: Despite DNTR's stated commitment to organisational differentiation of the rural poor, 'almost all its secretariats were occupied by smallholders and it did not overcome the limits of the *unicidade sindical* based on the municipality, without roots in individual workplaces' (Favareto, 2007, p. 37-38).

While the new constitution had purged the labour relations system of its overt fascist traits, *unicidade sindical* and the compulsory union tax remained. Nevertheless a shake-up of the *cohabitation* model in agriculture, instituted to serve the dictatorship's machinations, seemed imminent. In the months preceding the 1989 CONTAG congress, *cutista* factions managed to rally a sizeable share of members behind the call for reform. But this provoked an ugly backlash:

CONTAG's leadership machinated a paralysis of the CONTAG Congress and its elections – a pretext for shifting power to the Executive Council. Subsequently, the Council constrained the mandates and elections of member unions, strangling

workers' participation. Ironically, CONTAG, which had played an important part in ousting the military dictatorship, slid towards a dictatorship within (*ibid.*).

CONTAG's Platonic Marriage with CUT

The first post-transition administrations of Collor and Franco (1990-1994) deepened the economic liberalisation drive begun during the dictatorship. In the words of Roberto Rodrigues, doyen of Brazilian agribusiness and later minister of agriculture under Lula, it was no less than 'a brutal agrarian re-settlement' programme, which squeezed not just smallholders but many *latifundistas* too (Welch, 2006, p. 43): The *latifundio* penchant for leaving land fallow became increasingly untenable, and much of the power exerted through the infamous *bancada ruralista* (rural bench) in Congress now shifted from the old-style landowners (represented by CNA) to the new dynamic agribusiness elites represented by Rodrigues' *Associação Brasileira de Agronegocios* (ABAG) (*ibid.*).

With its chequered history and recent clampdown on radical unions, CONTAG was increasingly vulnerable to being outflanked in yet another wave of brutal resettlement in the countryside. Along with 'the rural CUTs', non-union movements such the *Movimento dos Trabalhadores Rurais Sem Terra* (MST) and the *Comissão Pastoral da Terra* (CPT) now presented themselves as the true heirs of the proud *Peasant Leagues* legacy. The former were increasingly seen as the foremost vehicle for sustainable peasant agriculture; MST as the preeminent popular vehicle for land reform; and CPT as the obvious organisational reference point in the campaign against slavery and rural violence. As MST ranks swelled, CONTAG increasingly criticised it for being disrespectful of democracy, law and formal representation by unions. MST retorted that CONTAG had become a 'class enemy' in the struggle against the *latifundio* (Thomaz Jr., 1997, p. 76).

In this context, CONTAG was forced to credibly re-invoke the *agrарismo* identity to prevent new movements from bleeding it dry of popular legitimacy. The question of its

possible affiliation with CUT thus resurfaced; their separate lives looked more and more like a liability for CONTAG. From CUT's point of view, a 'platonic marriage' with CONTAG – still by far the biggest of all union confederations and occupying the space for formal articulation of rural workers' interests *vis-a-vis* an increasingly legitimate state – would bolster its power against competing union centrals. Moreover, CUT had long ago departed from its erstwhile strategy of building an entirely independent union movement outside the official system; it now pursued a strategy of reforming the system from within (Lang & Gagnon, 2009; Riethof, 2004), and an affiliation with CONTAG would open a new and momentous flank for such reformist conquests.

CONTAG affiliated with CUT in 1995. However, the changes resulting from this 'platonic marriage' were less far-reaching than one might have expected. CONTAG had to embrace *agricultura familiar* (family farming) as its foremost slogan and priority. The *cohabitation* model, however, remained intact (Favareto, 2007).

Further Rural Polarisation and Failed Labour Relations Reform

The championing of agribusiness continued unabated during the tenures of both Cardoso and Lula. Alongside commercial agriculture's insatiable hunger for land and other natural resources, contract farming arrangements of the aforementioned *agronegocios* with family farmers (*intergração*) have emerged as a major topic of contention. The discursive terrain in agrarian politics has become increasingly polarised as perceptions and positions on rural politics coalesce around either a *via agronegócio* (way-of-agribusiness) discourse, or a *via campesinato* (way-of-peasantry) perspective (Welch, 2006),

This polarisation has left the question of wage workers' organisational rights in an increasingly tenuous position, since it is moot (if not antithetical) to either of the dominant discourses. The vision of the *via agronegócio* discourse is an agricultural sector of dynamic

distribution systems and neat agro-processing factories, fed by hyper-mechanised estates or contract farming – a world without on-farm employment. That wage workers continue to be heavily involved at much less ‘modern’ *fazendas* than the *agronegocios* image suggests is perhaps not denied, but neither is it foregrounded. In the vision of the counter-hegemonic *via campesinato* discourse, the *rural worker* dominates the imaginary horizon, but this is a self-owning and self-sufficient family farmer, and absolutely *not* a wage worker. The wage worker enters the fray only as the archetypal *negation* of what the Brazilian countryside should look like. The question of trade union rights of agricultural wage workers is ‘matter out of place’ if the very existence of such workers is at odds with one’s vision.

In politics and in the media, [organisation of] rural wage workers has been nowhere to be seen for the last two decades – those you see and hear from every day are the likes of MST and CUT. This suggests a serious problem of representation (Campolino, *interview*).

No wage worker that I know of wants to be what he is: to be a farm worker is something to avoid, a transitory role. But the thing is, not everyone can and will become a smallholder; we cannot deny that there will always be millions of wage workers in Brazilian agriculture (Filho, *interview*).

Meanwhile, *integração* has deepened the ambiguity of the term *worker*– and this serves to justify the sustenance of *cohabitation*. Thus, even the national secretary for wage workers rejects that CONTAG’s emphasis on family farmers is a departure from its historical *trabalhismo* mandate: ‘You cannot draw a neat line between the wage worker and the family farmer – the family farmer *is* a worker. *Integração* creates as much dependence on the company as does wage work but without any of the rights and benefits’ (*ibid.*).

The fact that CONTAG is at such pains to stress that the plight of family farmers is indeed its business, reflects the imperative of responding to pressure from the family farmer ranks. In fact, while CONTAG's affiliation with CUT may have saved it from utter political bankruptcy, it has failed to settle scores with radical smallholders in the south: In 2001, many of 'the rural CUTs' of CUT-DNTR finally broke out of CONTAG to form a recognised federation of *family-farmers-only* unions, FETRAF. This now comprises 93 official STRs and scores of farmers' associations across the southernmost states (Bertotti, *interview*). Its ambition is, however, 'to challenge CONTAG across all of Brazil' (*ibid.*).

Consequently, CONTAG must jealously guard its family farmer flank to prevent a massive flight of STRs into FETRAF. Indeed, it has been noted how strikingly similar CONTAG and FETRAF have become – both devoting their organisational machineries to force the state to increase subsidies to family agriculture (Abramovay *et al.*, 2008). CONTAG is also challenged by wage-workers-only unions (SERs) in CUT, such as those organised in FERAESP, but this is less threatening: Its old strongholds in the coastal plantation zones notwithstanding, wage workers are nowhere near claiming 'majority control' over the same number of official unions as do family farmers; and, with FERAESP struggling to gain recognition even as a state-based federation, the creation of a national federation for wage workers only remains a very distant eventuality.

Meanwhile, through its affiliation with CONTAG, CUT – the erstwhile mouthpiece for organisational differentiation in the countryside – has integrated the contradictions and conflicts of the rural union movement into itself, leaving it increasingly hamstrung in the support for rural wage workers' organisational independence:

The situation in CUT is untenable – not only are we [FETAESP] and CONTAG supposed to be in there together but so is FETRAF, too. In my opinion, a working class union central cannot be the home of employers, no matter what size. The small-

scale employers, whether from CONTAG's or FETRAF's ranks, should withdraw from CUT so that the central may reclaim its *classista* role (Neves, *interview*).

The fact of the matter is that CUT, despite its formative pledges to this effect, never became the agent of general labour relations reform. Although Lula launched an ambitious reform process once in office, after two years of controversy, the tripartite *Forum Nacional de Trabalho* had arrived at no broad consensus. In 2005, the Ministry of Labour submitted a comprehensive *reforma sindical* proposal to Congress, which reflected 'a series of compromises between a minority of union leaders wishing to introduce *some* change to the system, and a large majority of actors who defended the status quo' (Lang & Gagnon, 2009, p. 264). Congress rejected the proposal and the Brazilian government notified ILO that it had been forced to abandon its ambition of bringing labour legislation in line with international standards, and could not ratify the ILO Convention 87. Instead the government had to present select elements of the reform package as separate, stand-alone bills to Congress.

CONTAG was as disinclined to reform as ever. While readily acknowledging problems associated with the *cohabitation* model, CONTAG's national wage worker secretary explain that 'a reform is not the way forward – it would unleash a factionalist splintering of the movement which, ultimately, would make matters worse for wage workers and smallholders alike' (Filho, *interview*). Allegedly, CONTAG colluded with the pro-*latifundio* CNA and others to ensure that the *bancada ruralista* in Congress would take a fiercely hostile position toward the reform project (Bertotti, *interview*). Employers were unanimously against the reform, as were all communist-leaning trade unions and all affiliates of the conservative central, *Forca Sindical*.

Significantly, CUT's own reform eagerness had waned, too. This was due primarily to CUT's *urban* unions whose membership base had been severely diminished by the onslaught

of liberalisation (Ramalho, 1998; Cardoso, 2002), and whose viability in the absence of spoils from the mandatory union tax system therefore seemed increasingly tenuous (Lang & Gagnon, 2009, p. 254). But it seems that the affiliation with CONTAG, too, may have tempered CUT's reform eagerness: It has been noted that, in the wake of the affiliation, CUT's programmes and slogans – which in the past strived to reflect the kaleidoscopic and differentiated social terrain of the rural poor – began to speak almost exclusively of the family farmer. Furthermore, CUT took a much less enthusiastic stance toward radical social movements and adopted traits it had historically rejected as *pelego* (Favareto, 2007).

CONCLUSION

This paper has explored the extent to which Brazilian farm workers' freedom of association and right to collective bargaining are realised, and the role of the formal labour relations system in this regard. There is no dearth of unions in the Brazilian countryside – in fact, union density of farm workers is quite high, and every second formally employed farm worker is covered by a collective agreement. However, such quantitative measures are deceptive: The characteristics of rural unions' organisation and bargaining, as well as very poor terms and conditions of agricultural wage work, suggest a distinctly shallow and uneven realisation of trade union rights.

Brazil's corporatist labour relations system – with its particular *cohabitation* model, according to which wage workers must share monopoly unions with smallholders, tenants and squatters – clearly plays a significant role. In exploring the ways in which cohabitation stymies the organisation and collective bargaining of wage workers, it emerged that the category of 'smallholders' actually comprises two qualitatively different cohabitants for wage labour and therefore two different relationships. The first relationship, with employer-

smallholders, is one of conflicting interests: Unions with a sizeable share of employer-smallholders in their remits are either inclined to mobilise and bargain in ways which undermine wage workers' bargaining power; or they abstain from organising and bargaining for wage workers altogether. The relationship with family farmers, meanwhile, is one of competing interests: Many rural unions and the national confederation (CONTAG) devote ever more resources to family farmers. While the issues and modes of action thus prioritised (inter alia, campaigning for enhanced producer support and product market reform) are not directly antithetical to the organisation and collective bargaining of wage workers, they certainly detract from such efforts.

However, the most severe problem with representational monopoly and cohabitation in the present is that it prevents capable unions committed to wage workers from migrating along with workers and capital. In a time when labour-intensive agriculture moves out of old union heartlands and toward the north-western agricultural frontier, this traps workers in a race to the bottom within Brazil.

Cohabitation's contribution to keeping wage labour unorganised bestow advantages on employers – whether they are large-scale commercial farmers or employer-smallholders. But it would be misguided to attribute the making and sustenance of cohabitation to the predetermined strategy of any one actor (or alliance of actors) keen to curb wage workers' organisational clout. The model was fully instituted by the dictatorship as one of several means by which to check rural radicalism. Its persistence, despite the transition to democracy, has to do partially with the sustenance of the larger corporatist arrangement (which, in turn, owes much to the financial spoils which such a system endows on official unions); partially with exigencies and debts created by CONTAG's chequered role and insertion in rural struggles; and partially with the trajectories and characteristics of these larger, enveloping struggles.

I have highlighted the fact that CONTAG, in the transition to democracy and afterwards, found itself in a politically compromised position and had to change its course to prevent new social movements and the proponents of *novo sindicalismo* from bleeding it dry of popular legitimacy. But the change of course did not imply that cohabitation was abolished, nor that there was any significant change of farm workers' organisational position within the union movement. By affiliating with its previous detractors in CUT, CONTAG was merely forced to assume a more progressive political stance, with family farmers as its main organisational priority. Meanwhile, the affiliation seemed to weaken CUT's erstwhile commitment to union pluralism and organisational differentiation in the countryside.

This coincided with an increasing polarisation in rural politics – between *via agronegocio* and *via campesinato* discourses, with the questions of land and product markets being the main axes of contention. Since the very existence of agricultural wage workers is at odds with the visions propagated by either discourse, the question of trade union rights of agricultural wage workers remains moot.

APPENDIX I:

ESTIMATED COVERAGE OF COLLECTIVE AGREEMENTS IN AGRICULTURE (2001, SELECT REGIONS)

	SOUTHEAST	NORTHEAST	NORTH
Number of farm workers	1,439,224	1,171,860	373,624
<i>Of which formally employed</i>	662,043	234,372	63,516
Average number of formally employed farm workers per rural municipality	675	261	282
Inter-municipal council agreements = <i>workers covered</i>	171 230,850	9 4,698	6 3,384
Municipal council agreements = <i>workers covered</i>	104 70,200	190 49,590	53 14,946
Workplace agreements = <i>workers covered</i>	475 47,500	647 64,700	175 17,500
Total workers covered	348,550	118,988	35,830
Coverage rate – formally employed	52.6%	50.8%	56.4%
Coverage rate – all farm workers	24.2%	10.2%	9.6%

Source: Calculated by the author using data from DIEESE (2008) and IBGE (2002). Negotiations settled by *dissidios* (labour court arbitrations) are omitted from the calculations.

Remarks on calculation method: The proliferation of agreements relative to bargaining unions – some 3000 collective agreements were reached, involving no more than 1000 STRs (23% of unions) and 1000 municipalities – suggests that, on average, every bargaining union negotiates one council agreement on the municipal level and another two workplace agreements, all within the same municipality. Given the dynamics of cohabitation (as discussed in part 3), it is reasonable to assume that actively bargaining unions opt for municipal collective conventions in branches characterised by large estates (e.g. sugar), supplementing this with specific workplace agreements in mixed estate branches (e.g. deciduous fruits).

When measuring coverage, I used the regional average number of farm workers per municipality as the factor of multiplication (twice multiplied in the case of inter-municipal council agreements, assuming each covers two municipalities). This is taken to approximate the number of workers *in the large estate branch only*. The number of workplace agreements – presumably covering workers in mixed estate branches – was multiplied by a factor of 100, which approximates the mean farm size in terms of number of workers employed (cf. DIEESE, 2008, p. 110).

REFERENCES

Interviewees cited

Bertotti, Rosane

Interviewed May 14th 2008 in São Paulo (SP)

Bertotti is in the leadership of *Federação Nacional dos Trabalhadores e Trabalhadoras na Agricultura Familiar* (FETRAF), the national federation of family-farmers-only unions. She also holds leadership positions in *Central Unica dos Trabalhadores* (CUT) and in *Partido dos Trabalhadores* (PT)

Brito, Leila

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Brito is a researcher with *Departemento Intersindical de Estatísticas e Estudos Socioeconomicos* (DIEESE) a union-owned research institute and think tank

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Britto is a fieldworker with *Comissão Pastoral da Terra* (CPT), a national church-based NGO that monitors rural conflicts related to labour, land and water

Campolina, Adriano

Interviewed April 28th 2008 in Rio de Janeiro (RJ)

Campolina is director at *Action Aid Brasil*

Filho, Antonio Lucas

Interviewed April 23rd 2008 in Brasilia (DF)

Filho is national secretary for wage workers in *Confederação Nacional dos Trabalhadores e Trabalhadoras na Agricultura* (CONTAG), the national confederation of [official] rural trade unions.

Neves, Elio

Interviewed May 7th 2008 in Araraquara (SP)

Neves is the secretary general of *Federação dos Empregados Rurais Assalariados do Estado de São Paulo* (FERAESP), the federation of waged worker-only unions in the state of São Paulo.

Oliveira, Marcos de

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Literature

Abramovay, R.; R. Magalhaes & M. Schröder (2008): 'Social Movements Beyond the Iron Cage: Weak Ties in Territorial Development', *World Development*, Vol. 36, No. 12, pp. 2906-2920.

Antunes, R. (2001): 'Global economic restructuring and the world of labour in Brazil: The challenges to trade unions and social movements', *Geoforum*, Vol. 32, pp. 449-458.

Biondi, A.; M. Monteiro & V. Glass (2009): *O Brasil dos Agrocombustíveis: Cana*. São Paulo: Reporter Brasil.

Cardoso, A. (2002): 'Neoliberalism, unions and socioeconomic security in Brazil', *Labour, Capital and Society*, Vol. 35, No. 2, pp. 282-316.

Chace, J. (1999): 'Trapped workers, urban freedoms and labour control in Brazilian agriculture: Evidence from southwest Goiás', *Journal of Rural Studies*, Vol. 15, No. 2; pp. 201-220.

Compa, L. (2003): *Assessing Assessments: A Survey of Efforts to Measure Countries' Compliance with Freedom of Association Standards*. Cornell.

CPT (2009): *Conflitos no Campo: 2008*. Goiania: Comissão Pastoral da Terra.

DIEESE (2008): *Estatísticas do Meio Rural*. 3rd Edition. São Paulo/Brasília: Departamento Intersindical de Estatísticas e Estudos Socioeconômicos/Núcleo de Estudos Agrários e Desenvolvimento Rural.

— (2007): *Anuário dos Trabalhadores*. 8th Edition. São Paulo: Departamento Intersindical de Estatísticas e Estudos Socioeconômicos

- Favareto, A. (2006): 'Agricultores, trabalhadores: os trinta anos do novo sindicalismo rural no Brasil', *Revista Brasileira de Ciências Sociais*, Vol.21, No.62, pp. 27-44.
- Heath, J. (1981): 'Peasants or proletarians – rural labour in a Brazilian plantation economy', *Journal of Development Studies*, Vol. 17, Issue 4, pp. 268-281.
- Houtzager, P. (2001): 'Collective action and political authority: Rural workers, church and state in Brazil', *Theory and Society*, Vol. 30, No. 1, pp. 1-45.
- IBGE (2002): *Sindicatos: Indicadores Sociais 2001*. Brasília: IBGE.
- ILO (2009): 'Brazil: Freedom of Association and the Right to Collective Bargaining', *Country Baseline under the 1998 ILO Declaration Annual Review (2000-2008): Brazil*. Geneva: ILO.
- (1998): *Declaration on Fundamental Principles and Rights at Work*. Geneva: ILO
- ITUC (2009): *Internationally Recognised Core Labour Standards in Brazil*. Report prepared for the WTO General Council Review of the Trade Policies of Brazil, Geneva 9-11 March 2009. Brussels: International Trade Union Confederation.
- Kelly, J. (1997): 'The future of trade unionism: injustice, identity and attribution', *Employee Relations*, Vol. 19, No. 5; pp. 400-414.
- (1998): *Rethinking Industrial Relations: Mobilization, Collectivism and Long Waves*. London/New York: Routledge.
- Lang, K. & M. Gagnon (2009): "Brazilian trade unions: In (in)voluntary confinement of the corporatist past", *Relations Industrielle-Industrial Relations*, Vol. 64, No. 2, pp. 250-269.
- Maybury-Lewis, B. (1994): *The Politics of the Possible: The Brazilian Rural Workers' Trade Union Movement, 1964-1985*. Philadelphia: Temple University Press.
- Medeiros, L. (1997): 'Trabalhadores rurais, agricultura familiar e organização sindical', *São Paulo em Perspectiva*, Vol. 11, No. 2, pp. 65-72.
- Motta, R. (2009): 'Atentado a Elio Neves repercute no exterior', *Journal O Imparcial*, August 28 2009
- Novaes, J. & F. Alves (eds.) (2007): *Migrantes: trabalho e trabalhadores no complexo agroindustrial canavieiro (os heróis do agronegócio brasileiro)*. São Carlos: EdUFSCAR.
- O'Connell, L. (1999): *Collective Bargaining Systems in 6 Latin American Countries*. Working paper no. 399/1999. Washington, DC: Inter-American Development Bank.
- Pahle, S. (2011): 'Stepchildren of Liberation: South African Farm Workers' Elusive Right to Organise and Bargain Collectively'. Part of PhD thesis, NORAGRIC, Norwegian University of Life Sciences, Ås, Norway.

- Pereira, A. (1997): 'The Crisis of Developmentalism and the Rural Labor Movement in North-East Brazil', in D. Chalmers; C. Villas; K. Hite; S. Martin; K. Piester & M. Segarra (eds): *The New Politics of Inequality in Latin America*. Oxford: Oxford University Press.
- Ramalho, J. (1998): 'The Restructuring of Labour and Trade Union Responses in Brazil', in Munck, R & P. Waterman (eds): *Labour Worldwide in the Era of Globalization*. London: Palgrave.
- Riethof, M. (2004): 'Changing strategies of the Brazilian labor movement – from opposition to participation', *Latin American Perspectives*, Vol. 31, Issue 6; pp. 31-47.
- Santos, D. dos (2007): 'Sindicalismo Rural: Luta Pela Posse da Terra e Contra a Exploracao do Trabalhador do Campo' in Inacio, J (ed): *Sindicalismo no Brasil: Os Primeiros 100 Anos?* Belo Horizonte: Crisalida.
- Selwyn, B. (2007): 'Labour Process and Workers 'Bargaining Power in Export Grape Production, North East Brazil', *Journal of Agrarian Change*, Vol. 7, No. 4; pp. 526-553.
- (2008): 'Bringing the social relations back in: (Re)conceptualizing the Bullwhip Effect in global commodity chains', *International Journal of Management Concepts and Philosophy*, Vol. 3, No. 2, pp. 156-175.
- Skidmore, T. (2010): *Brazil: Five Century of Change*. Second edition. Oxford: OUP.
- Thomaz Jr, A. (1997): 'O sindicalismo rural no Brasil – no rastro dos antecedentes', *Revista Paranaense de Geografia*, Vol. 2, No. 2, pp. 5-14.
- US-BDHRL (2009): '2008 Human Rights Report: Brazil', *2008 Country Reports on Human Rights Practices*. Washington, DC: Bureau of Democracy, Human Rights and Labour/US Department of State.
- Vezzali, F. (2006): *Especial Latifundio: Concentração de Terra na Mão de Poucos Custa Caro ao Brasil* . São Paulo: Reporter Brasil.
- Welch, C. (1995): 'Rivalry and unification: Mobilising rural workers in São Paulo on the eve of the Brazilian Golpe of 1964', *Journal of Latin American Studies*, Vol. 27, No. 1, pp. 161-187.
- (2006): 'Globalization and the Transformation of Work in Rural Brazil: Agribusiness, Rural Labour Unions and Peasant Mobilization', *International Labour and Working Class History*, Vol. 70, Issue 1, pp 35-60.
- (2009): 'Camponeses: Brazil's Peasant Movement's in Historical Perspectives (1946-2004)', *Latin American Perspectives*, Vol. 36, No. 4, pp. 126-155.
- Wittman, H. (2009): 'Reframing agrarian citizenship: Land, life and power in Brazil', *Journal of Rural Studies*, Vol. 25, pp. 120-130.
- Wright, E. (2000): 'Working-class power, capitalist-class interests and class compromise', *American Journal of Sociology*, Vol. 105, No. 4, pp. 957-1002.

STEPCHILDREN OF LIBERATION:

South African Farm Workers' Elusive Rights to Organise and Bargain Collectively

ABSTRACT

This paper explores the extent to which South African farm workers' *freedom of association* and *right to bargain collectively* are realised, and what accounts for the extent of realisation. The situation is found to be appalling: Despite South Africa's 'world class' labour legislation, the rights in question are poorly realised even by standards of developing countries. The paper draws on interviews with South African labour and human rights activists to explore why this is so. Notably, structural and cultural traits of rural labour relations collude with the inept approaches of trade unions to render the enforcement machinery severely deficient. The exploration points to a fundamental challenge in labour research and policy: That of making trade union rights of agricultural workers actionable.

KEY WORDS:

CORE LABOUR STANDARDS; AGRICULTURE; TRADE UNIONS; SOUTH AFRICA

INTRODUCTION

South Africa's partly union-driven transition to democracy and the ability of its dynamic agriculture sector to reap substantial gains from globalisation would seem to hold considerable hope for a significant improvement in the plight of farm workers. But such hopes have thus far been betrayed: The 2001 *Employment Conditions Commission*, for instance, found that the average farm worker wage was below subsistence costs; that only one in four children living on commercial farms had a secure source of food; and that farm workers constituted the group with the lowest literacy rate in the country (Naidoo *et al*, 2007).

There is, however, no dearth of legislation to enhance the wellbeing of South African farm workers. Post-*apartheid* governments have enacted a series of laws to safeguard outcome rights in the world of work, including the *Occupational Health and Safety Act*; the *Employment Equity Act* and the *Basic Conditions of Employment Act*. The latter prohibits the employment of children and forced labour; sets mandatory standards for working time, leave, particulars of employment and remuneration, termination of employment; and empowers the Minister of Labour to set, through *Sectoral Determinations*, a wage floor in sectors where employees are deemed to be particularly vulnerable to employers' discretion. Agriculture has been subject to such Sectoral Determinations since 2003. As of early 2010, the legal minimum wage for farm workers stands at 1,230 rand (approx. US\$ 170) per month (RSA, 2009). But even such recently targeted efforts at safeguarding outcome rights have not yielded as much change as one might have hoped: Farm workers are still 'amongst the most marginalised groupings in South African society' (SAHRC, 2008, p. 15); their *de facto*

working conditions are commonly appalling, and remuneration often falls short of legal standards¹.

This persistence of misery in the midst of an ambitious regulatory environment lends support to the view that

social protection mechanisms [...] will remain largely ineffective if the focus is on meeting practical needs [...] without at the same time creating the *necessary conditions for rural agencies* to build their collective strength and organisational capacities (Naidoo, 2009, p. 3, *emphasis added*).

The present paper pursues this concern for agency by focusing on farm workers' trade union rights – that is, their rights to *freedom of association* and *collective bargaining*. These jointly constitute the first of four universally acclaimed *fundamental principles and rights at work*² whose guarantee, in the words of the International Labour Organisation (ILO), 'enables the persons concerned, to claim freely and on the basis of equality of opportunity, their fair share of the wealth which they have helped to generate' (ILO, 1998, *preamble*).

These rights are, undoubtedly, of considerable importance to workers' *associational power*, and thus their ability to 'claim a fair share'. That said, it should be recalled that labour's overall power is a product not merely of *associational power* but also of *structural power*³, although the present paper does not attempt to gauge or explore the latter in any detail.

The present exploration is informed by and organised around the viewpoints of sixteen South African union and human rights activists working to improve the plight of farm

¹ In a study of Eastern Cape farms, Naidoo *et al.* (2007, p. 40) found that between 30 and 40 percent of workers still did not earn the minimum wage two years after the wage floor was introduced.

² The other core labour standards are: the elimination of all forms of forced and compulsory labour; the effective elimination of child labour; and the elimination of discrimination in respect of employment and occupation.

³ The distinction between associational and structural power is from Wright (2000).

workers, gathered through a series of qualitative, semi-structured interviews conducted across South Africa during 2009. Two methodological remarks are warranted: Firstly, the focus on activists' perspectives means that there is no pretence on my part to convey a picture free from perceptions, positions and agendas of politically motivated actors. Secondly, since interviewees were selected by means of convenience sampling⁴, I do not claim to convey a *broadly representative* picture of how union and human rights activists across South Africa perceive farm workers' organisational rights. Notably, most interviewees are based in the Western Cape. Such a regional over-representation is not wholly unreasonable, given the dominance of the Western Cape, both in terms of union and human rights activism and labour intensive agricultural activity. Nevertheless this selection lends itself to certain biases in terms of which substantive problems were highlighted⁵.

The first part of the paper offers an overview of the evolution of South Africa's rural labour relations. The second part attempts to assess *the extent to which* farm workers' freedom of association and right to bargain collectively are realised in the present.

In the third part of the paper, *conditions that account for* farm workers' actual ability (or otherwise) to organise themselves effectively are explored. Here, activist perspectives are subdivided into two parts: On the one hand, a stylised *union narrative* highlighting farmers' suppressive actions, faulty enforcement practices of the state, and structural disadvantages of the rural labour market; on the other, a *union-critical narrative* pointing to deficiencies in the approaches and priorities of unions themselves.

⁴ The first core sample was selected partly on the basis of literature reviews and web browsing, and partly by asking a South African representative of a Geneva-based transnational NGO to suggest domestic union and human rights activists likely to be interested in the question of labour rights in the context of globalisation (The research conducted for this paper was part of a larger research project conducted by the author which comprised a much larger number of interviewees).

⁵ The Western Cape is peculiar because of its predominance of *coloureds*, not least in agricultural employment. This has historical roots in the Cape colony's importation of slaves, and is associated with a shared language of, and relatively closer and more paternalist relationships between whites and coloureds (as compared to white-black relations).

In the fourth part of the paper, I highlight the inherent limits of conventional labour legislation and enforcement machinery in terms of making core process rights of historically oppressed workers actionable.

1. THE TRAJECTORY OF RURAL LABOUR RELATIONS

We have to understand how the rural proletariat was created – the way in which racist-capitalist farming developed. The Land Acts; the Pass Laws; the severe restrictions on the mobility of workers – it all turned out to be very debilitating and disempowering (Naidoo, *interview*).

The Apartheid Dispensation

Historically, labour relations in South Africa have been profoundly racist. Under the successive systemic periods of *colonialism, segregation and apartheid* (Terreblanche, 2002) literally every role, relationship and situation was organised according to racist schema. Laws of the early 20th century barred blacks from exercising any bargaining rights and made strike action a criminal offence. Furthermore, white labour representatives argued that ‘to give Africans industrial power was to put them in a position – as exploited workers earning much lower pay – to challenge white workers for their jobs’ (Davenport & Saunders, 2000, p. 634). Thus, for the better part of the 20th century, blacks were denied industrial work altogether. The *Colour Bar Act* of 1926 reserved jobs in ‘skilled trades’ for whites (and to a lesser extent, for coloureds).

In agriculture a semi-feudal order prevailed into the 20th century. The British had abolished serfdom and slavery in the first half of the 19th century but the emergence of a free black wage-earning class, and the sustenance of a sizeable indigenous peasantry, was

carefully prevented by depriving Africans of land and thus of independent livelihoods: By the time of the onset of apartheid, more than three-quarters of the country was reserved for white ownership. Half of the rural black population lived in white-owned areas, clamouring for precarious livelihoods – some 1.2 million as farm workers, domestic workers, labour tenants or sharecroppers on white farms (Seekings & Nattrass, 2005)⁶.

Wage workers, labour tenants and sharecroppers were suspended in a racist and authoritarian *paternalism* expressed in ‘close links between white identity, land ownership and a fierce insistence on farmers’ independence and final authority over all who lived and worked on the land’ (Ewert & du Toit, 2005, p. 318). Indeed, the law of the land extended only to the farm gate. Beyond it *die boer se wet* – the farmer’s law – prevailed (du Toit & Ally, 2003).

Nevertheless, labour tenancy and sharecropping offered many blacks a means for sustaining at least a part of their livelihoods with a modicum of independence. While white farmers had plenty of land – although not quite enough to go around for *all* whites wanting to be prosperous landowners⁷ – they were relatively short on the productive resources that black households had in relative abundance: labour and oxen. Thus, under favourable circumstances, such as in the Transvaal, blacks could make themselves a good living by ‘voting with their feet’ – i.e. pursuing successively better terms and soil by moving from one landowner to the next, each competing with the other to attract good labour and oxen⁸. During 1920-1950, one very industrious sharecropper, Kas Maine, moved no less than fifteen times to

⁶ By way of definition, a ‘labour tenant’ barter his/her labour (typically during harvest time) for permission to reside on and use some of the white farmer’s land; a ‘sharecropper’ barter the better part of his/her produce for the same permission.

⁷ Terreblanche (2002, p. 10) notes that, by the early 20th century, ‘a sizeable percentage of white landowners (mainly Afrikaners) were farming on agricultural units that were economically unviable. These small landowners went bankrupt in great numbers [...] This proletarianisation [led to] intense competition between the free white and non-free black proletariat for the same jobs’.

⁸ Labour tenancy persisted mainly in the northern provinces; in the wine and fruit farms of the Western Cape, capitalist relations of production, i.e. wage labour, became dominant soon after slavery was abolished (Ewert & Hamman 1996, p. 147).

improve his deal with patron farmers. After having paid the patron and his own ‘subcontracted’ workers their shares of the record 1948 harvest, Maine had a net surplus of sorghum, maize and seed, whose market value was equivalent to the salary of a white schoolteacher. Moreover, he had accumulated some 60 head of cattle, many horses and donkeys, and more than 200 sheep (Seekings & Nattrass, 2005, p. 60).

However, whatever was left of labour tenants’ and sharecroppers’ ability to ‘vote with their feet’, would soon be rooted out. Fed up with labour shortages and the *beswarming* farmlands, white farmers asserted themselves in national politics: ‘In the 1948 elections, the National Party campaigned with the slogan *die kaffer op sy plek en die koelie uit die land*’ [the *nigger* in his place and the *coolie* out of the country] (*ibid.*, p. 57). In the course of a few years, the new regime stamped out sharecropping for good: An aggressive state machinery saw to it that Kes Maine and his like either sold their cattle and sought on-farm wage labour, or moved to the reserves. Indeed, Maine was eventually forced into an arid reserve with four head of cattle. In 1960, the *Nel Commission of Enquiry* recommended the complete abolition of labour tenancy, too: ‘Africans should have no alternative to paid work at whatever wages white farmers offered’ (*ibid.*, p. 94).

Meanwhile, the Pass Laws and the extensive machinery of influx control strangled rural-to-urban migration to further boost the numbers of exploitable black workers in the white-owned countryside. Alongside such political crafting of destitution – in fact, enabling it – came mechanisation which reduced farmers’ dependence on manual labour. Hence, ‘not long after complaining about labour shortages, many farmers declared African families to be surplus to their needs [and had them] removed to the reserves, by force when necessary’ (*ibid.*, p. 92).

Nevertheless, many former sharecroppers and labour tenants did stay on the white farms, either as underemployed farm dwellers or proletarianised wage workers. Yet, the

increasing reliance on wage work did not spell the end to *paternalism*; it persisted in informal, authoritarian and quasi-familial farm practices whereby the farmer would supplement modest cash wages with on-farm housing, food rations, wine (by way of the notorious *tot* system⁹), and occasionally modest grazing permissions, schooling and health provisioning. But now workers were utterly dependent and thus more subservient than ever: By conflating the sites of the *relations of production* and *social reproduction*¹⁰, paternalistic practices meant that the farmer could sanction a disobedient worker by withholding essential in-kind provisions, consequently harming him and his dependants in much more direct and immediate ways than by merely withholding a cash wage. Furthermore, the hybridisation of wage labour and paternalism meant that, unlike in plain cash wage labour, the duties and concessions of the employment relation were not formalised but meted out at the day-to-day discretion of the farmer.

South Africa's racially segmented labour regime was reaffirmed through the 1953 *Black Labour Relations Act* which made it illegal for African workers to join registered or officially recognised trade unions and engage in their activities (Adler & Webster, 1998). But during the 1960s and 1970s, the South African economy underwent major structural changes which nevertheless prepared the ground for the emergence of black trade unionism: Job creation in manufacturing industries, public works and transport eliminated the critical issue of white unemployment, and the ensuing *unofficial* erosion of race-based job protection meant that millions of blacks could get jobs in manufacturing and services. However, discriminatory practices continued unabated in these sectors (*ibid.*).

Black workers' militancy first surfaced in Durban in 1973, and spurred the formation of the non-racist union federation FOSATU in 1979. During the late 1970s, hundreds of

⁹ On the wine farms of the Western Cape, workers received some of their remuneration in the form of second-rate wine. Besides inciting widespread alcoholism and a record high prevalence of foetal alcohol syndrome, the *tot* system is thought to have exacerbated the passivity and subservience of workers.

¹⁰ This conceptual description of paternalism is from Naidoo (2009).

strikes in the industries, mines and public sector – most of which protested that black labour rights remained unrecognised – threatened to bring the entire economy to a grinding halt. Growing labour militancy merged with township unrest, culminating in the 1976 Soweto Uprising, and the government was forced to grant African *industrial* workers statutory trade union rights in 1979. Thereafter, FOSATU's membership surged dramatically, and in 1985, it was instrumental in the establishment of a broader, non-racist union confederation, COSATU (*ibid.*).

The increasing demand for urban black labour from the late 1960s and onwards relaxed the massive structural oversupply of labour in agriculture. But agriculture remained entirely exempted from the increasingly inclusive labour legislation. Moreover, the surge of black unionism in cities and townships failed to spill into the countryside. However, as the apartheid regime encountered critical discreditation abroad, the government, farm owners and conservative overseas donors sought to ensure some 'upliftment' of farm labour, by setting up the *Rural Foundation* (RF) which was to do away with the detested *tot* system, establish liaison committees to formalise farm rules, improve amenities, and build chrèches for workers' children. However, at this time, the racist power relations were not open to debate. Consequently, the RF served to preserve-by-sanitizing rather than to shake up the neo-paternalistic order on farms (Ewert & du Toit, 2005).

Meanwhile, COSATU's role in the transition years would prove crucial: it led the struggle in the streets and at points of production, and sought to safeguard the future economic and labour rights of the disadvantaged black citizenry. The African National Congress (ANC) the South African Communist Party (SACP) were decriminalised in 1990 and their *Tripartite Alliance* with COSATU was formalised. Weathering imminent systemic change, employers opportunistically supported a progressive 1991 *Labour Relations Act* revision, considered to be the first piece of post-apartheid legislation (Adler & Webster,

1998). Then, in the historical 1994 elections, COSATU ‘devoted extensive federation resources to voter education and canvassing [...] crucial in ensuring the turnout for the ANC’ (*ibid.*, p. 148).

This all-out electoral support for the ANC was bartered against decisive inputs to the *Reconstruction and Development Programme* (RDP), which obliged the new government to grant trade unions, business associations and relevant civil society organisations a decisive role in the formulation of economic policy (through NEDLAC), and provided for a very progressive labour rights code. Thus, as of 1993, agriculture was finally to be subjected to a modern labour regime.

The Post-Apartheid Dispensation

Pursuant to the *Labour Relations Act (LRA)* it is illegal for an employer to *prejudice* (or advantage) a worker on the grounds of his/her exercise (or non-exercise) of the right to be a member of and participate in the activities of a trade union. Furthermore, the LRA grants extensive organisational and collective bargaining rights. Firstly, any trade union which is *sufficiently representative* of the employees in a workplace is granted some fundamental organisational rights – including the right to enter the premises of an employer, although “subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or to prevent the undue disruption of work” (LRA, *section 12.4* – RSA, 2002). Further organisational rights – *inter alia* to bargain for collective agreements at individual workplaces – are granted to unions which have the *majority* of employees in the workplace as members.

Secondly, all workers are granted access to mediation and conditional rights to protected strike action: In case of a dispute or stalled negotiation between the employer and employees, either party may call on the services of the *Commission for Conciliation,*

Mediation and Arbitration (CCMA). In the event that the CCMA has tried and failed to resolve the dispute, workers can go on a *protected* strike subject to a 48-hour advance notice to the Commission and the employer. It is illegal to dismiss a worker on the grounds of participating in such protected strike action, or to discontinue the provisioning of essential in-kind payments. The Commission is furthermore mandated to make binding arbitration awards at the request of either party.

As in other sectors, agricultural workers are granted the right to be party to *bargaining councils*, whether demarcated in terms of sector/sub-sector, or geographic area. The right to be party to a council, the collective agreements of which are legally binding on the participating parties, requires that the union represents at least 30 percent of the workers in the entire sector/area in question. All members of the union are then covered by the agreements, regardless of the extent to which the union party is representative at the individual member's workplace.

The main state apparatus for surveillance and enforcement is the Labour Inspectorate. In 2007, the South African Department of Labour reported that its ten provincial offices were supported by 129 regional offices which employed 1,046 inspectors vested with the authority to monitor, implement and enforce labour legislation. It has recently introduced 20 mobile labour centres to serve different farming areas (SAHRC, 2008). The means of enforcement are, in most cases, compliance orders issued by the inspectorate itself, or by the Labour Court (in the event that decriminalised proceedings and awards of the CCMA are not honoured by an employer, workers/unions may call on such court orders). Orders may eventually be executed by a local enforcement agency, typically a county sheriff, through the physical closure or confiscation of property.

The new labour regulation has presented farmers with hitherto unfamiliar constraints. At the same time, they have seen extensive *deregulation* and liberalisation of product

markets. In apartheid South Africa, the whole array of traditional interventionist policies in agriculture – producer subsidies, import restrictions, marketing boards and export monopolies – served as the means by which the landed elites entrenched their power and privilege. Consequently, the new dispensation has gleefully revoked such policies – indeed, South Africa’s post-apartheid liberalisation was largely voluntary, more pronounced than elsewhere, and much deeper than required by international commitments. The country now has one of the least protected agricultural sectors in the world¹¹.

The exposure of South Africa’s agricultural production to world markets has offered opportunities following growing demand in export markets, and incorporation into global agro-commodity chains of foreign agribusinesses and supermarkets. The upside for producers managing to break into these agro-commodity chains is considerable in terms of both demand volume and price premium. Such entry, however, requires substantial investments which few South African farmers can afford (Ewert & du Toit, 2005).

Consequently, the commercial fortunes of farmers vary considerably across both geography and subsector. Farmers of wine, deciduous fruits, table grapes and some vegetables are adapting well to the new circumstances; South Africa’s 3,000 fruit farms account for a disproportionate share of both employment and profits (Van den Burgh, 2009; Ewert & du Toit, 2005; du Toit & Ally, 2003). Meanwhile, in subsectors such as dairy, grain and livestock, many farmers are experiencing hard times. Mixed fortunes are reflected in geography, too: While farms in the Western Cape flourish, a mere 40 percent of all farms in the Free State are deemed financially sustainable (Atkinson *et al.*, 2005).

Overall income distribution between commercial farms is extremely skewed: 20 percent of commercial farming units account for more than 80 percent of the sector’s total

¹¹ While South Africa’s bound ceiling commitments under the WTO Agreement on Agriculture permits a tariff of 72% on wheat and 50% on maize, the applied tariffs in 2005 were 2% and 13% respectively. In terms of OECD’s Producer Support Estimate (PSE), the average aggregate value of interventions in support of farmers during 2000-2003 equalled 5% of gross farm receipts, compared to 31% in the EU (SAHRC 2008, p. 17; Theron & Bamu 2009, p. 11).

value of production; 5 percent of units have an annual income of more than 4 million rand while 51 percent of farms have an annual income of less than 300,000 rand. Only 3 percent of farms (some 1000 farms in absolute numbers) employ more than 50 workers (SAHRC, 2008). Massive ownership concentration has followed skewed income distribution: The number of commercial farms more than halved between 1971 and 2007 (see table 1 below) and the gross number of jobs has been in steady decline, too. However, against the backdrop of the steep drop in the number of farms, employment has remained relatively resilient¹².

TABLE 1: STRUCTURAL FEATURES OF COMMERCIAL FARMING, 1950-2007

	1950	1971	1985	1993	1995	2000	2002	2007
Commercial farming units		90 422	65 885	57 980	60 901		45 818	39 982
Farm workers	1 230 000	1 516 013	1 323 694	1 093 265	921 651		940 820	796 806
Casual workers, (percentage)	49		43 (1988)		33		49	
Average employees/farm		17	20	19			21	

Sources: Compiled and calculated by the author using data from Naidoo *et al.* (2007); Seekings & Nattrass (2005); Aliber *et al.* (2009); Du Toit (2004); Stats SA (2009); Agri Census (2007).

¹² This seems all the more true given reasonable doubts concerning the correctness of recent statistics: Farmers' increasing recourse to externalisation, through the use of labour brokers, led many farm jobs to be misleadingly registered as service sector jobs, or not at all (e.g. when the labour brokers themselves are not registered, which is very often the case in agriculture) (Theron & Bamu, 2009, p. 6).

2. THE EXTENT OF TRADE UNION RIGHTS REALISATION

The *realisation* of union rights is determined by a number of factors. First and foremost, the rights in question must be sufficiently *protected* – both in law and in practice – by the duty-bearing state. Furthermore, as I interpret realisation here, it requires that workers, as rights-holders, actively *exercise* their union rights¹³. Significantly, such exercise is not merely determined by state protection, but also by factors beyond the formal labour relations system itself – including workforce structures; non-justiciable yet compromising employer strategies; counter-productive union strategies; and subtle processes through which workers conceive of their interests and identities.

For the present purposes, I propose that the extent of trade union rights realisation be gauged through two quantitative measures, namely *union density* and the *extent to which workers are covered by collective agreements*. In pluralist labour relations systems, such as that in South Africa, workers are not coerced into joining unions, and the bargaining achievements of unions (below a certain threshold, anyway) are not inflated by wholly disproportionate extension rules. Union density and collective agreement coverage rates are therefore sensible reflections of the extent to which workers are *de facto* free to organise themselves in unions, and are in a position to bargain collectively with employers¹⁴.

As regards *union density* (unionisation rate) among South African farm workers, a 2003 survey estimated that ‘less than 6 percent of farm workers’ are organised (Theron &

¹³ The focus on rights realisation, and the way I interpret it, owes much to the analytical schemes associated with so-called human rights-based approaches (cf. Darrow & Thomas, 2005).

¹⁴ In statist-corporatist labour relations systems – such as in Brazil, which I have discussed elsewhere (Pahle, 2011) – the rates of *union density* and *collective agreement coverage* are poor proxies for trade union rights realisation. See Compa (2003) for a critical examination of the use of quantitative measures. Note in passing, that low union density and collective agreement coverage *need not* imply that trade union rights are insufficiently protected by the state: There can be situations where workers *do* consider themselves to be entirely free to form or join organisations, but nevertheless do *not* exercise their trade union rights because they possess such individual structural power (e.g. sought-after skills) that they deem union membership and activity to be unnecessary.

Bamu, 2009, p. 33). According to the 2003 Labour Market Review by the Department of Labour (RSA, 2004), some 69,000 workers in agriculture, hunting, forestry and fishing were members of a trade union, translating into a union density of 7.3 percent¹⁵.

However, the present union density is probably lower still: ‘You cannot rely on the government to provide adequate information about rural labour relations, and you certainly cannot rely on the unions to provide it either’ (Jacobs, *interview*). Gross membership in the larger farm worker unions has actually declined more markedly over the last decade than gross employment, and the Labour Market Review, which appears to recycle a very outdated figure¹⁶, has failed to pick this up: Presently, the contingent of agricultural workers in the COSATU-affiliated *Food and Allied Workers Union* (FAWU) stands at some 15,000 (Watkinson, *interview*) while its predecessor, SAAPAWU, had some 35,000 members at its height in the mid-1990s.

Membership in non-COSATU unions seems to be in comparable decline: The NACTU-affiliated¹⁷ NUFWBSAW cannot determine the number of farm workers it presently organises, but its predecessor, NUF, had some 5,500 members on its books in 2003 (Atkinson *et al.*, 2004, p. 22). Most of the small and independent farm worker unions which mushroomed during the early-to-mid 1990s have vanished (*ibid.*, p.26). However, *Sikhula Sonke*, a union focusing on organising women and casual workers in the fruits and wine farms of the Cape claims some 4,000 members, just three years into its existence (Pekeur, *interview*). Assuming, rather optimistically, that membership numbers of unions *other than* those already mentioned have remained stable at 13,500 since 1995¹⁸, the total tally of unionised farm workers comes to some 38,000. This translates into a union density of 4.77

¹⁵ Calculated using the 2002 agricultural census (948,820) as baseline.

¹⁶ The figure used by the Department of Labour seems to have been recycled from a 1996 article by Baskin (cited in Klerck & Naidoo, 2005, p. 160) who established that some 69,831 were organised.

¹⁷ NACTU is one of three major union confederations, alongside COSATU and FEDUSA.

¹⁸ Calculated on the basis of numbers presented in Atkinson *et al.* (2004).

percent. This is modest, to say the least, even by developing country standards: Ghana's national union of farm workers, for instance, claims to organise some 20 percent of farm workers (Karaweh, *interview*). In Brazil, 24.4 percent of agricultural wage workers are organised (DIEESE, 2008).

With regard to the realisation of the right to collective bargaining, I propose that *the percentage share of farm workers covered by collective agreements* is used as a makeshift measure. In the light of the fact that less than 5 percent of South African farm workers are organised, one would not expect the right to collective bargaining to be widely realised. Indeed, unions have not managed to organise upwards of 30 percent of workers in *any* sub-sector so there is not a single bargaining council anywhere in South Africa governing farm labour. The absence of councils certainly makes the task of unions more onerous: While councils emphatically do not relieve workers of having to organise themselves, they do relieve them of having to struggle for organisational rights and bargain for a collective agreement on *each and every* individual workplace, farm by farm. Moreover, as previously noted, the relative membership share required to gain bargaining rights is higher for individual workplaces than for sub-sectors/areas (councils).

Unfortunately and tellingly, no official records or sources exist which stipulate the extent to which farm workers are covered by individual workplace agreements; the assumption seems to be that since there are no established bargaining councils in agriculture, the utter non-realisation of collective bargaining is a *fait accompli*. However, this cannot be assumed. Wendy Pekeur of *Sikhula Sonke* claims that they have negotiated collective agreements on a number of farms they organise; and that in some cases 'workers are now paid twice and even triple the minimum wage' (Pekeur, *interview*). But a recent case study of the *Hex River Valley* in the Western Cape suggests that *Sikhula Sonke's* conquests are quite exceptional – 'there were *no* farms in the valley at which bargaining took place at all' (Theron

& Bamu, 2009, p. 21). This is telling since the valley is devoted exclusively to the labour-intensive production of sought-after table grapes; it is largely self-contained in terms of workers; and three of the major unions are present there. In general, there is nothing to suggest that the right to collective bargaining is realised for any more than a modest percentage of all *organised* workers in South Africa, and therefore only a negligible fraction of all farm workers.

3. OBSTACLES TO THE ORGANISATION OF FARM WORKERS

A Union Narrative

When asked about the reasons for the very modest extent to which organisation and bargaining rights are realised among farm workers, union interviewees expressed themselves in relatively consistent ways. In the following section, I have collated these responses into a stylised union narrative.

Denial of access to farms

Restricted access to farms is seen to be serious problem: It leaves farm workers isolated without proper information about their rights, and stifles the ability of unions to recruit workers. Unless the union already has more than majority membership on the farm, the farmer is assumed to enjoy full discretion in terms of granting access. Some ‘progressive’ farmers may allow unions to visit workers. But, more commonly, farmers deny such access. Then

there's nothing you can do, other than try to get in touch with workers outside hours when they're going to shop in the village; [or] you get a worker to invite you to come for a 'social visit' but once the farmer finds out, he can become very hostile and threatening (Cupido, *interview*).

Alternatively, the organisers have to 'use dirty tricks and sneak into the housing compound at night or on a Sunday, when they are not working' (Mdluli, *interview*). The latter strategy is hazardous, though. For, it seems that unionists cannot rely on any police protection even if they are seriously threatened or assaulted: 'The police have no idea about labour rights at all, and will work against you rather than for you' (Cupido, *interview*). 'I cannot think of any instance where the police cooperated with unions – at the end of the day it's really just you and your dirty tricks' (Mdluli, *interview*).

Most interviewees took it as a given that the right to access a farm is protected only if the union claims a majority membership there, and that otherwise the farmer 'has the legal right to deny you access' (*ibid.*). This leaves unions in a catch-22 situation:

How are you ever going to get past the *fifty-percent-plus-one* threshold when you don't have access to farms in the first place? [...] A farm's status as private property trumps its status as a workplace – the government has failed to properly regulate access rights so that unions can get into the farms to organise workers (Mashiele, *interview*).

The thorny issue of access is exacerbated by escalating rural violence. This compelled AgriSA (an association of farmers and agribusinesses) and the Department of Safety and Security to negotiate the *Agricultural Protocol* in 2000, which seeks to bolster farmers' security without compromising the movement rights of on-farm workers and dwellers. The protocol describes union organisers as private persons without statutory rights, and grants

them access to farms only under exceptional circumstances and subject to the permission and conditions of the farm owner (Atkinson *et al.*, 2004, p. 21).

Faulty enforcement practices on the part of the state

A major concern among unionists is the coverage of labour inspections, in terms of both quantity and quality. ‘By the time the Department of Labour reacts [to an allegation that workers’ rights have been violated] it’s too late – the workers have either left the farm, or been threatened to keep their mouths shut’ (Cupido, *interview*).

The Department of Labour (DoL) concedes that ‘the agricultural sector is one of the most critical sectors and most difficult sectors in which to implement and enforce legislation’ (cited in SAHRC, 2008, p. 66). Its own statistics indicate the limitation: It managed to inspect some 15,140 farms during 2003/2004; by 2006/2007 the number had fallen to around 12,000. Bearing in mind that a disproportionate share of inspections probably take place at the few farms with some union presence, these numbers suggest that most South African farms are inspected very infrequently, and many not at all.

However, what is worse than poor quantitative coverage is the dubious character and apparent shallowness of inspections. Inspection procedures require that both farm owner and representatives of workers are present and participate. But ‘given the lack of unionisation it is often difficult to find someone willing to be identified as workers’ representative [...] workers fear possible recrimination if inspections turn up problems’ (*ibid.*). Consequently, inspections are either conducted without workers, or in the company of a worker chosen by the farmer. Thus, ‘quite often [the inspectors] issue wonderful reports about a farm, but when you get there and talk to the workers you see that the situation is not good’ (Khumalo, *interview*). A hurried inspection with no genuine worker participation is plainly incapable of identifying

non-compliance in the relational realm – for instance, an employer’s victimisation of a worker who seeks to exercise her right to organise.

Tellingly, the DoL’s submission to the Human Rights Commission says nothing at all about the extent to, and means with which the inspectorate seeks to map, uncover and prosecute the causes of workers’ fear of recrimination which so disables its own inspections. In fact, according to one activist, ‘the inspectorate is not mandated to deal with provisions of the *Labour Relations Act* at all; its provisions are supposed to be enforced by the parties themselves’ (Shirinda, *interview*). Given the absence of unions, many farmers take this to imply an extent of impunity: ‘*Rogue* farmers basically don’t care because they calculate that there won’t be any consequences’ (Cupido, *interview*).

Some unionists question the integrity of the inspectorate, too. It is not unusual that a labour inspector and a farmer know one another; and it happens that the former receives a gift – a bag of maize; a calf; a case of wine – for ‘a job well done’ (*ibid.*). One activist claimed that ‘inspectors are corrupt and receive payments to overlook certain issues on farms’ (Khumalo, *interview*). He also commented that Zimbabwean immigrants on Limpopo farms tend to get their one-year working permits revoked by the DoL, once they join a union: ‘We hear of farmers that immediately call the local DoL office and say: ‘I don’t want these persons on my farm’; after a while the police come and they’re deported as illegal immigrants’ (*ibid.*).

Persistence of neo-paternalism

Unionists consider neo-paternalistic farm relations to be a major obstacle: ‘Farm workers have internalised the oppression within themselves – they don’t think that anything can be done to change their lot. So it’s very difficult to get them to stand up for their rights’ (*ibid.*). The wide repertoire that the employer can draw on to prejudice and victimise a worker who seeks to exercise her organisation and bargaining rights, stifles recruitment work. Furthermore, since many of the burdens and benefits of employment are not formally expressed but meted out at the discretion of the farmer, it is very difficult to document this kind of prejudicing:

The paternalist provisioning of in-kind payments to workers persists – a basket of fruit or a piece of meat every week. The minute the worker joins a union, he can expect to have that taken away [...] Such practices are too subtle to be documented – the farmer will argue it was a gift in the first place and he has the right to withdraw a gift; he’ll come up with a million of reasons why he cannot afford it anymore (Cupido, *interview*).

Workers’ dispersal and low subscription-paying ability

Recruitment work amongst farm workers is strenuous and costly. One organiser claims to cover an area spanning some 300 km across: ‘And when you finally get to the farm, you find that there are no more than ten workers there’ (*ibid.*). If a worker eventually signs up to join a union, she authorises the employer to deduct 1.4 percent of her salary, within an interval ranging from a minimum of 15 rand/month to a maximum of 90 rand/month. Farm workers contribute the minimum amount. While they feel that 15 rand is a lot to pay, it is a very modest contribution in the eyes of the union (Mdluli, *interview*). Consequently, the recruitment of farm workers is a financially unattractive activity: the farm worker is far

costlier to recruit – in terms of getting *to* the workplace, getting *into* it, and convincing the worker that it's worthwhile to join – than counterparts in an urban context. Yet, the financial contribution flowing from that disproportionate effort is much, much smaller than in other sectors.

Increasing casualisation and externalisation of farm employment

The *casualisation* of labour greatly compounds the problem. Widespread casual work – i.e. non-permanent employment associated with seasonal peaks – has always been a key trait in agriculture. The organisation of casual farm workers is not impossible; many (but far from all) casual workers live off farms and they are therefore not suspended in the relational webs of neo-paternalism. Casuals may unionise wherever a fairly stable group of workers returns to the same area, year after year, for a relatively long season. However, even then, the character of their employment compounds the general problem of farm workers' dispersal and low subscription-paying capacity. A FAWU organiser recalled how, in the years of the now-disbanded SAAPAWU, a disproportionate share of the union's income in KwaZulu Natal's sugarcane areas came from such casuals. During the eight-month season, organisers would collect plenty of subscriptions, and union finances would be in fair health. But during the off-season, income would dry up and the union would often discontinue salary payments to its organisers. Moreover, as seasonal workers had to sign new work contracts each year, they had to be signed up to the union every year, too. In effect, organisers had to recruit the same stock of workers, often the very same individuals, again and again (*ibid.*).

A worse problem is increasing *externalisation*, in which casual workers are employed indirectly at farms, via labour brokers. Such externalisation obscures who is the employer and, indeed, who is the employee. For all practical intents and purposes, the farmer remains the employer, but he circumvents employer liability which now falls on the broker. Brokers

assume such liability virtually by default: They rarely know or understand the full implications of employer liability and are often themselves exploited (Van den Burgh, 2008). This leaves workers and unions seeking to exercise rights to organisation and bargaining in a very difficult situation: Externalised workers often do not reside on, nor are they formally employed at, the physical place where they work. If a worker is victimised for union activity, there is often no one to hold to account.

A Union-Critical Narrative

The way I assembled the concerns and emphasis of unionists above made for a stylised union narrative. The following critique is also stylised: So, while it is true that union interviewees emphasise farmers' intransigence and faulty state enforcement, some of the most poignant critiques here are voiced by people who are themselves unionists.

The organisational dislocation of farm workers

In 1991, COSATU established a farm-workers-only affiliate, SAAPAWU. However, by 2005, SAAPAWU had been disbanded and its members and organisers incorporated into COSATU's food processing workers affiliate, FAWU. In this process, the total stock of farm workers organised under the COSATU umbrella fell from 35,000 in the mid-1990s, to some 15,000 at present.

From the very outset, SAAPAWU had financial problems: As was the case in the sugar sector in KwaZulu Natal, its core membership of permanent workers was too small, and the union remained too dependent on the shifting and feeble subscription payments of seasonal workers. Soon COSATU reckoned 'it was a non-starter and that SAAPAWU members had to be reintegrated with FAWU' (Mdululi, *interview*). Such integration has its

merits, at least in principle: ‘It’s an empowerment policy aimed at covering the entire sector, not just one tier of it [...]. There’s vertical integration, in some instances from the fruit farms all the way to retailing’ (Watkinson, *interview*). True, by organising workers along the entire commodity chain, FAWU is better placed to compel the relatively stronger workers in downstream agro-processing to take industrial action in solidarity with upstream farm workers. There is no evidence, however, that any such solidarity actions within FAWU have ever taken place.

Instead, the decisive rationale seems to have been less altruistic and sophisticated: ‘Between 1995 and 2005, COSATU was providing funding but because of financial problems it was decided that SAAPAWU be merged with FAWU since we have robust subscription income from our processing industry members’ (*ibid.*) – in other words: COSATU would not continue to cover the financial shortfalls from its central coffers but would rather have farm workers cross-subsidised by agro-processing workers. The consequence has been a further organisational dislocation of farm workers:

In SAAPAWU, we had a union whose staff was dedicated to farm workers and nothing else. That’s gone now [...] I’m still crying for a stand-alone union for farm workers – now they are lost, like stepchildren (Mdluli, *interview*).

COSATU’s provincial secretary concedes that ‘FAWU has not done the job [...] It has no great compulsion to work in that sector. It’s just not committed to servicing that category of workers’ (Ehrenreich, *interview*). But, notwithstanding its financial problems, SAAPAWU was no patent success story either. All the members and organisers it had at its peak had been transferred to it from other agro-processing unions in the aftermath of its establishment by the COSATU Congress in 1991 (Klerck & Naidoo, 2003). And despite being exclusively devoted to farm workers, SAAPAWU did not even manage to retain its erstwhile stock of members.

The modest spate of rural unionisation in the early 1990s might, in fact, have owed more to farm workers' desire to commit themselves to the mobilisation against *apartheid*, rather than to any collective resolve to change the circumstances of their work. At any rate, SAAPAWU neither emerged as, nor was managed to become a genuine embodiment of farm workers' collective agency: It was an organisational shell, ready-made through a political engineering feat of COSATU bosses who did not want to bear the cost of waiting to see if that shell could be properly inhabited and become a home for the farm workers themselves.

The organisational marginality of farm workers reflects broader strategic choices made by COSATU – not just a specific instance of terminating financial support to a weak constituency:

Over 60 percent of COSATU's members used to be *blue-collar* workers. Today that's completely inverted. Now, more than 60 percent are *white-collar* workers: civil servants; teachers; nurses – that's COSATU's social base [...] The 1998 *September Commission* presented the confederation with a choice: Should it aim downwards, to the casual and vulnerable workers, or upwards for the white collar workers? COSATU chose the latter (Schroeder, *interview*).

Even if one accepts the premise – itself a dubious one (cf. Lehulere, 2003) – that the erosion of COSATU's *blue-collar* base was driven by circumstances beyond its control, COSATU balked at taking on the momentous task of mobilising and empowering the masses of *no-collar* workers. Instead, the no-collars were to be placed under the shaky purview of a paternalistic state:

COSATU isn't organising workers, really: The majority of workers in this country – farm workers; domestic workers; security guards and all the casual and externalised workers – fall outside of [its affiliated] unions. In fact, more workers in this country are

covered by *sectoral determinations* than by collective bargaining agreements (Naidoo, *interview*).

Another strategic mechanism of COSATU which may detract from the organisation of farm workers is its ‘one industry-one union’ affiliation principle. The implication is that, as long as FAWU remains affiliated to COSATU, and claims to represent farm workers, other emerging unions may *not* become COSATU affiliates, no matter how good they are at organising farm workers. Such exclusion could imply an effective disenfranchisement of farm workers in South Africa’s peak corporatist structures¹⁹, as illustrated by the 2008 *Employment Conditions Commission* review process: Here, FAWU held the sole civil society seat and used it to insert the issue of farm shop wage deductions as the key issue on the agenda of the more inclusive provincial hearings. This annoyed most independent unions and NGOs, as farm shop deductions is a marginal concern for all but a few permanently employed workers (Marco-Thyse, *interview*).

The potential lopsidedness that may result from the ‘one industry-one union’ principle is not lost on the COSATU leadership. Speaking at a recent *Sikhula Sonke* congress, its provincial secretary said ‘he would have liked us [*Sikhula Sonke*] to join COSATU because we have achieved things that FAWU never could’ (Pekeur, *interview*). *Sikhula Sonke* concluded that they would rather remain independent. At any rate, a bid to join COSATU would have met with resistance. FAWU has not ‘heard anything about such a proposition, and it would really be a bit of an oddity if there were to be more than one farm workers’ union in COSATU” (Watkinson, *interview*).

¹⁹ Non-affiliated unions have no say in NEDLAC, much less in the governing *tripartite alliance* which includes COSATU.

Complacency toward restrictions on access to farms

Most activists agree that restricted access to farms is a serious problem. However, unions' willingness to deal with the situation is doubted by many. One unionist is particularly critical of his own colleagues and organisation:

The very low and falling rate of unionisation has a lot to do with the culture of FAWU itself. Union officials are not passionate about the farm workers – they won't go out there and take the risk. [...] All around I see all this exaggeration, people wanting the situation to look ugly, ugly, ugly [...] We have the best labour legislation in the world, but unions are not exploiting this to the full effect (Mdluli, *interview*).

It also appears that unions have too readily accepted farmers' claims that they can deny organisers access to farms where the union has less than majority membership – instead of challenging the legality of such an understanding; indeed failing to update themselves on emerging jurisprudence. Interestingly, *Sikhula Sonke* referred some access denials to the CCMA, and commissioners resolved that a union, even if only sufficiently representative, ought to be granted some organisational rights, such as access to farms (Pekeur, *interview*).

Relative disregard for casuals

Some activists consider the union approach to be defeatist and unimaginative with regard to the organisation of casual workers: 'The real problem is that no union, apart from *Sikhula Sonke*, even *tries* to organise casual workers' (Marco-Thyse, *interview*). Unions' poor efforts owe a lot to the perceived difficulty and cost of raising subscriptions from casuals. But, as one activist notes:

That cannot be the starting point. The starting point must be that, if it is politically necessary to organise casual workers, we will find a way to collect subscriptions. In

fact, the union movement became a massive political force in this country on the basis of *hand-collection* of subscriptions (Schroeder, *interview*).

And it clearly *is* necessary: ‘The trend is a shift from permanent to temporary jobs, so casual workers will *have* to be the base of unions’ (Pekeur, *interview*). This seems to be particularly important in the context of the Western Cape. Here, on-farm division of labour is rigidly gendered and racialised: Permanent jobs associated with higher skill, core tasks and access to in-kind provisions are held almost exclusively by *men* and to a very large extent by *coloured* men. In 2003, 68 percent of all permanent jobs in deciduous fruit, table grape and wine farms were held by coloured men; the accumulate share for coloureds of both sexes being 89 percent. Black women held less than 3 percent of permanent jobs (du Toit & Ally, 2003). A failure to straddle the divide between permanent and casual workers may therefore perpetuate racialised labour relations, which is likely impede the forging of a determined collective agency of farm workers.

The vitality of *Sikhula Sonke* attests to the possibility and advantages of organising *both* permanent and casual workers. *Sikhula Sonke* was born out of a team in the NGO *Women on Farms*, tasked to work specifically with labour relations on wine and fruit farms in the Western Cape. Many of the team members were recruited from the ranks of female casual workers, and its formative idea was that a systematic effort to change labour relations to the benefit of vulnerable workers and *women*, in particular, would have to emphasise casual workers:

When we begin recruiting on a farm we make it clear: We’re not a union for workers’ issues only, not a union only for blacks or coloureds; not a union for only permanent or only casual workers. We say: The most powerful weapon in the hands of the capitalist class is when working people are divided against themselves (Pekeur, *interview*).

When bargaining with farmers, *Sikhula Sonke* seeks to further the interests of permanent and casual workers jointly: off-farm casuals ought to be entitled to the same farm-specific benefits as on-farm permanent workers. Thus, a provident fund must benefit all who come to work on the farm; when a farmer makes in-kind payments – say, paint or materials to improve workers’ on-farm houses – the same must be provided to improve the shacks of off-farm casuals (*ibid.*).

Faulty approach to paternalism and rural social relations

Many interviewees believe that the unions’ approach fails to fully recognise the way in which neo-paternalistic relations are nested within the traditions and broader structures of the agrarian political economy, and the complex constraints this places on the organisation of farm workers. Part of the problem is epitomised by the union organiser stating, when asked why it is so hard to organise farm workers, that ‘these are illiterate people; they will believe anything the farmer tells them’ (cited in Atkinson *et al.*, 2004, p.27). But the deference of farm workers is only part of the paternalistic story:

The farm worker may seem docile and subservient because he keeps a tight lid on his anger in order not to upset the farmer and risk losing his job and benefits. However, once the farmer makes a move which nevertheless threatens the worker’s position, the latent anger typically erupts (Shirinda, *interview*).

The workers are walking a tightrope which spans an unspoken, imaginary compromise. Instead of attuning their interventions to this balancing act, unions seem to be stuck in the conventional methods of factory unionism: ‘We’ve asked COSATU and FAWU to come to the table and engage in some thinking out of the box [...] But while we ask what should the

work look like, they just come up with the same old shopping list: more cars, more staff, more cell phones' (Marco-Thyse, *interview*).

Post-apartheid attempts to shake up the paternalistic order have compartmentalised questions of tenure and labour rights – as if these were neatly separable compartments in life. For a farm worker, they are not. While labour legislation is blind to the problems of tied housing, tenure legislation is blind to its own adverse impacts on workers' rights. The rationale of the 1997 *Extension of Security of Tenure Act* (ESTA) was to stem the tide of evictions from white farms, but it has served to increase farmers' sense of urgency with regard to pre-empting future tenure claims on their property – indeed, providing a detailed blueprint for how to *legally* evict workers. Significantly, the ESTA ties tenure and employment rights in ways that create adverse ripple effects on labour relations: Since workers who have resided on a farm for more than 10 years, and reached the age of 60, earn permanent and legally protected titles to tenure, the effect is that farmers reduce their stock of permanent, on-farm workers, or limit the duration of their employment. Moreover, farmers' patent eagerness to get people off their properties increases the individual worker's insecurity and fear of victimisation.

Unions hardly address themselves to this adverse interplay of tenure and labour. While FAWU does offer some legal aid to evicted workers, it assumes that the countrywide network of NGOs which specialise in providing advice and legal aid to evictees 'makes it possible for farm workers to claim tenure rights if these are denied them as a consequence of joining a union, at least *ex post facto*' (Watkinson, *interview*). However, this tacit division of responsibilities merely perpetuates the undue compartmentalisation of tenure and labour rights. Just as the disregard of unions for casual workers leaves them with a shrinking base of permanent on-farm workers which prevents the collective resolve of the broader community

of farm workers, so does their relative disregard for tenure rights impede the galvanisation of a collective agency of the *farm community* as a whole (see table 2).

TABLE 2: UNIONS’ LIMITED OUTREACH IN THE EMPLOYMENT/RESIDENCE MATRIX

		EMPLOYMENT STATUS		
		Permanent	Temporary	None
RESIDENCE	On-farm	UNION FOCUS: Core wage labourers	Dwellers residing permanently or seasonally on-farm, engaged in casual work	Farm dwellers without farm work
	Off-farm		Externalised casual workers, from townships/settlements	

On any farm, ‘workers and dwellers know each other – their families have lived together on the farm for generations, so there’s plenty of loyalty [across the worker-dweller divide]’ (Pekeur, *interview*). Furthermore, the struggle for the tenure rights of non-workers might actually bear positively on workers’ own inclination to organise. *Sikhula Sonke* attains a certain amount of shielding against victimisation of its worker leaders by basing its work on *farm committees*, through which a range of potentially adversarial roles are dispersed on many individuals – one being trained in disciplinary inquiries; another in bargaining issues; a third in how to deal with evictions and tenure; a fourth in social security, etc. ECARP, an Eastern Cape NGO, bases its work on a similar model:

You need to build solidarity within the farm – ensure that workers are able to articulate what they want *as a collective*. What many farmers will do is to identify a

troublemaker, but that's prevented through the farm committee" (Manageng, *interview*).

Through farm committees, workers escape the role of passive recipients of a potentially recriminating factory unionism, although such committees are no panacea against victimisation. *Sikhula Sonke's* director estimates that 'about 20 of our worker leaders have been isolated and victimised during the last four years' (Pekeur, *interview*). The point here, however, is that the organisation of workers into multi-issue farm committees – which enhances a wider sense of being collective, and *reduces* the perceived vulnerability of union activists to paternalistic machinations – is ruled out by unions which insist on a conventional approach.

A funeral agency for a select few

In the light of the above discussion, it is not surprising that South African farm worker unions have been likened to a *funeral scheme*: 'You join us and we will take care of you after you die' [i.e.] represent you in the labour court after you have been dismissed' (worker cited in Klerck & Naidoo, 2003, p. 163). Indeed, since unions are incapable of mobilising the resources, resolve and approach to organise farm workers in significant numbers – and are therefore not in a position to bargain effectively on workers' behalf – the role left to them is that of serving as vehicles for access to justice in the *Commission for Conciliation, Mediation and Arbitration* (CCMA) and labour courts.

This is no unimportant role; it certainly makes a difference for the individual workers thus represented. If unions systematically prosecute violations of individual worker's rights in the court system, it deters employers from committing violations and therefore serves to protect the rights of many more workers than those actually defended in court.

But statistics suggest that unions are not guarding rights and prosecuting violations on behalf of any great number of workers, even if this is their foremost activity: Although more than 10 percent of all workers in South Africa are employed in agriculture, the sector accounts for less than 5 percent of referrals to the CCMA (Macun *et al.*, 2008). Meanwhile, unions have *exclusive* statutory rights to represent workers at the CCMA and labour courts. NGOs consider that this exclusivity compounds the asymmetries of labour relations. The concern is warranted: As public legal aid centres typically don't avail their services to victims of labour law violations, while unions have such low membership rates, only a fraction of South Africa's farm workers have meaningful access to justice.

4. FURTHER CONSIDERATIONS

Less than two decades have passed since South Africa's agricultural sector came under the remit of modern labour legislation. Consequently, it is perhaps too soon to issue assertive conclusions as to whether farm workers may use the new dispensation to effectively claim a fair share of the wealth that they help to generate. The exploration in this paper broaches some qualitatively novel developments which may seem to hold some promise – notably, the innovative ways through which independent unions such as *Sikhula Sonke* organise farm workers. The findings also reveal the (otherwise regrettable) extent to which farmers evict workers and dwellers from their properties, thus severing the bonds of tied housing which was formerly a key factor in farmers' neo-paternalistic dominance over workers.

What we are seeing now is a complete inversion of the workers' historical relations to the land [...] Without wanting to belittle the huge problems of evictions, we have asked: Now that the farm worker isn't as dependent on the employer as before, this

must surely hold some possibilities in terms of building stronger organisations?

(Schroeder, *interview*).

However, the potentially advantageous labour relations effects of evictions may easily be overstated. Present evictions need not spell the end to tied housing: Farmers are primarily bent on removing those yesteryear tenants who have lived so long on the farm as to be on the brink of earning legal titles to their land. Once such claims are pre-empted, farmers may offer farm dwellings to new and temporarily employed workers. This seems to be the tendency in Limpopo where temporary Zimbabwean workers, while typically working on one month contracts, nevertheless reside year after year on the same farm as their contracts are continuously extended (Shirinda, *interview*).

Moreover, the destitution that follows in the wake of evictions is disempowering and enraging, and South Africa's civil society is profoundly confused as to whether evictions should be halted or permitted to run their course. 'If one actor achieves something with the government, there are others making opposite moves to shoot it down from the inside [...] In the end, no one gets anything really' (Watkinson, *interview*).

There are also clear limits to the transformative capacity of union innovations such as those of *Sikhula Sonke*. In principle, there may be little to prevent mainstream unions from emulating its strategies. In practice, however, such strategies do not change the underlying adverse conditions – and the implementation effort they require is immense. Moreover, some of the circumstances enveloping *Sikhula Sonke's* work are positively exceptional: The Stellenbosch area is not only remarkable for its tradition of human rights advocacy and the attendant interest and inflow of funds from international donors – it is the heartland of the country's wine and deciduous fruit industries, whose high density of workers and many commercially successful farms make it more favourable to union organisation and bargaining

than any other place in the country. Farms here are often subject to ‘ethical trade’ pressures which follow on the trail of its branded exports, reinforced by massive agro-tourism:

It's not like the wine [of Stellenbosch and surrounds] comes from some nameless place, with no face to it. For British consumers, for instance, it has a face. [The bottom rung of] the global value chain is not abstract – they know what it looks like (Shabodien, *interview*).

Indeed, *Sikhula Sonke* confirms that such external pressures greatly ease their efforts: ‘Many farmers here care about what they produce and *how*, and that’s the kind of farms where we are making the most progress’ (Pekeur, *interview*).

A more fundamental problem indicated by many interviewees is that the *Labour Relations Act* and the attendant enforcement machinery reflect a compromise between organised capital and organised *industrial* labour – it is too often and too easily assumed that measures known to safeguard industrial workers’ freedom of association and right to collective bargaining suffice in agriculture and will empower farm workers to organise and ‘claim their fair share’, too. However, ‘the fantasy of lawyers and policy makers about what law would do on the one side, and reality on the other, has turned out to be quite divergent’ (du Toit, *interview*).

In this *Fordist* fantasy, it is presumed that trade unions can and will perform two different but interdependent functions once legislation is sufficiently labour-friendly: Firstly, that unions can and will articulate and promote workers’ *collective* interests through collective bargaining; and, secondly, being vested with statutory and exclusive rights to serve as vehicles for access to justice, that unions can and will act as *custodians of individual workers’ freedom of association*. In fact, it only makes sense to absolve the state machinery from

having to police individual trade union rights – as the South African dispensation does – *only if* unions do serve as effective custodians of both collective and individual rights.

Meanwhile, in South Africa's agricultural sector, even a world class labour code is demonstrably *not* sufficient to cast unions in the role of such custodians. The assumption that legislation borne out of urban labour relations suffices for farm workers, fails to account for the very different structural features of rural labour relations: Production relations are less formalised and much more deeply intertwined with social reproduction; farm workers are therefore much more vulnerable to victimisation when exercising their freedom of association than their urban counterparts, and, correspondingly, less inclined to unionise. Furthermore, the often extreme spatial dispersal of farm workers around thousands of points of production complicates the reach of the unions, and prospective members can only afford to pay the most modest union duties; consequently, rural unions do not raise the revenue required to keep professional and committed staff capable of successfully prosecuting labour rights violations.

Where the structural circumstances enveloping urban unions lend themselves to a positive feedback loop – as successful protection of individual workers' rights compels new workers to organise, and unions' capacity and membership rates soar until successful collective bargaining may be realised – rural unions tend to be trapped in an inverse loop. Since the labour relations system, at the same time, presumes that unions look after individual workers' freedom of association, 'there is no one out there who really and truly looks out for the interest of farm workers. Farmers may govern at will and with impunity' (Jacobs, *interview*).

CONCLUSION

Despite South Africa's 'world class' labour relations system, farm workers' *freedom of association* is realised only to a very modest extent, and their *right to collective bargaining* to such a negligible extent, as to be but a right on paper.

Drawing on the perspectives and viewpoints of activists from union and non-union ranks, this paper has explored why the extent of realisation is so poor. While South Africa's labour legislation may be second to none in the developing world, its enforcement machinery is an altogether dubious story. Its poorly resourced labour inspectorate does little to prevent farmers from unduly isolating workers from unions, and its capacity, quality and integrity is questionable. Significantly, the inspectorate plays no meaningful role in terms of preventing farmers from violating workers' right to freedom of association. Such shortfalls compound the very adverse labour market and structural features in rural labour relations: Alongside increasing rates of casualisation and externalisation, a key trait stifling the organisation of farm workers is the persistence of neo-paternalistic relations.

Unfortunately, the approaches, priorities and cultures of unions also serve to stifle the realisation of farm workers' union rights. COSATU has permitted the utter organisational dislocation of farm workers, and its affiliate presently responsible for organising farm workers is considered to be inept, uncommitted and unimaginative in its efforts.

The more fundamental problem, however, is that South Africa's labour relations system is premised on the faulty assumption that labour legislation born out of urban labour relations will cast rural unions in the role as effective custodians of individual workers' freedom of association. But current structural features of the agricultural sector collude with union ineptness to prevent this from happening. The assumption of the labour relations regime

that individual workers' freedom of association is nevertheless the business of unions means that farm workers' organisational rights are not actionable.

REFERENCES

Interviews

Cupido, Llewellyn

Interviewed March 4th 2009, in Cape Town.

Cupido is an organiser with the COSATU-affiliated *Food and Allied Workers Union* (FAWU) in Western Cape

Du Toit, Andries

Interviewed May 7th 2009 in Cape Town.

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Ehrenreich, Tony

Interviewed February 27th 2009 in Cape Town.

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Jacobs, Cameron

Interviewed March 31st 2009 in Johannesburg.

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Khumalo, Thulani

Interviewed March 28th 2009 in Johannesburg.

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Manageng, Lebogeng

Interviewed April 21st 2009 in Grahamstown.

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Marco-Thyse, Sharron

Interviewed May 11th 2009 in Stellenbosch.

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Mashiele, Boas

Interviewed March 28th 2009 in Johannesburg.

Mashiele is the secretary general of the *National Union of Food, Beverage, Wine, Spirit and Allied Workers* (NUFWBSAW), an affiliate of the National Council of Trade Unions (NACTU)

Mdluli, Ali

Interviewed April 15th 2009 in Durban.

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Naidoo, Lalitha

Interviewed April 20th in Grahamstown.

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Pekeur, Wendy

Interviewed May 5th 2009 in Stellenbosch.

Pekeur is the secretary general of *Sikhula Sonke*, an independent Western Cape trade union.

Shabodien, Fatima

Interviewed May 5th 2009 in Stellenbosch.

Shabodien is director at the *Women on Farms Project*, an NGO working to empower women working and living on farms in Western Cape.

Shirinda, Shirami

Interviewed December 18th 2009 in Oslo.

Shirinda is a fieldworker and co-founder of *Nkuzi Development Association* (Limpopo chapter), an NGO working to empower farm dwellers and workers.

Schroeder, Ighsaan

Interviewed March 12th 2009 in Johannesburg.

Schroeder is director of *Khanya College*, an NGO working to empower grassroots-based organisations and movements of the rural and urban poor.

Van der Burg, Anthea

Interviewed March 6th 2009 in Cape Town.

Van der Burg heads the parliamentary liaison office of the *Confederation of South African Trade Unions* (COSATU). She was previously associated with the *Centre for Rural Legal Studies* in Stellenbosch.

Watkinson, Eric

Interviewed March 2nd 2009 in Cape Town.

Watkinson is national coordinator with the COSATU affiliate *Food and Allies Workers Union* (FAWU).

Literature

- Adler, G. & E. Webster (1998): 'The Labour Movement, Radical Reform and the Transition to Democracy in South Africa', in Munck, R. and P. Waterman (eds.): *Labour Worldwide in the Era of Globalization*. London: Palgrave.
- Aliber, M., M. Baiphethim & P. Jacobs (2009): 'Agricultural employment scenarios' in Hall, R. (ed.): *Another Countryside? Policy Options for Land and Agrarian Reform in South Africa*. Cape Town: PLAAS.
- Atkinson, D. (2007): *Going for broke: The fate of farm workers in arid South Africa*. Cape Town: HSRC Press.
- Atkinson, D., D. Pienaar & J. Zingel (2004): *From On Farm to Own Farm? The Role of Farm Worker Unions in Land Reform in South Africa*. Report on a study commissioned by FAO. Human Science Research Council.
- Compa, L. (2003): *Assessing the Assessments: A Survey of Efforts to Measure Countries' Compliance with Freedom of Association Standards*. Paper written for the Cornell University ILR School. Ithaca, NY: Cornell.
- Darrow, M. & A. Tomas (2005): 'Power, Capture and Conflict: A Call for Human Rights Accountability in Development Cooperation', *Human Rights Quarterly*, Vol. 27, No. 2, pp. 471-538.
- Davenport, T. & C. Saunders (2000): *South Africa. A Modern History*. 5th edition. London: Palgrave.
- DIEESE (2008): *Estatísticas do Meio Rural*. São Paulo: DIEESE.
- Du Toit, A. (2004): *Forgotten by the Highway: Globalisation, Adverse Incorporation and Chronic Poverty in a Commercial Farming District*. Chronic poverty and development policy no. 4. Cape Town: PLAAS.
- Du Toit, A. and F. Ally (2003): *The externalisation and casualisation of farm labour in Western Cape horticulture*. Research report no. 16. Cape Town: PLAAS.
- Ewert, J. & A. du Toit (2005): "A Deepening Divide in the Countryside: Restructuring and Rural Livelihoods in the South African Wine Industry", *Journal of Southern African Studies*, Vol. 31, no 2, pp. 315-332.
- Ewert, J. & J. Hamman (1999): 'Why Paternalism Survives: Globalisation, Democratisation and Labour on South African Wine Farms', *Sociologia Ruralis*, Vol. 39, No. 2; pp. 202-221.
- ILO (1996): *Wage workers in agriculture: Conditions of work and employment*. Geneva: ILO.
- ILO (1998): *Declaration on Fundamental Principles and Rights at Work*. Geneva: ILO.
- Klerck, G. & L. Naidoo (2003): 'In search of greener pastures: Trade unionism in the agricultural sector' in Bramble, T. and F. Barchiesi (Eds.): *Rethinking the Labour Movement in the New South Africa*. London: Ashgate.

- Lehulere, O. (2003): "The road to the right: COSATU economic policy in the post-apartheid period" in Bramble, T. and Barchiesi, F. (Eds.): *Rethinking the Labour Movement in the New South Africa*. London: Ashgate.
- Macun, I., D. Lopes and P. Benjamin (2008): *An analysis of Commission for Conciliation and Arbitration Awards*. DPRU working paper 08/134. Development Policy Research Unit.
- Naidoo, L., G. Klerck and M. Lebogeng (2007): "The bite of a minimum wage: enforcement of and compliance with the sectoral determination for farm workers", *South African Journal of Labour Relations*, Vol. 31, No. 1; pp. 25-46.
- Naidoo, L. (2009): *Farm workers and dwellers in post-apartheid South Africa*. Unpublished manuscript. Grahamstown: ECARP.
- Pahle, S. (2011): 'Out of mind – out of sight? The troubled trade union rights of Brazil's agricultural workers' In *Bringing the Workers' Rights Back In?* PhD thesis, NORAGRIC, Norwegian University of Life Sciences, Ås, Norway.
- RSA (Republic of South Africa) (2002): *Labour Relations Act No. 66 of 1995* (with amendments). Pretoria: Dept of Labour/RSA.
- RSA (2004): *Labour Market Review 2003*. Pretoria: Dept of Labour/RSA.
- RSA (2009): *Sectoral Determination 13*. Government Gazette Vol. 524, No. 31888. Pretoria. Dept of Labour/RSA.
- Seekings, J. and J. Nattrass (2005): *Class, Race and Inequality in South Africa*. New Haven and London: Yale University Press.
- SAHRC (South African Human Rights Commission) (2008): *Progress made in terms of Land Tenure, Security, Safety and Labour Relations in Farming Communities since 2003*. Johannesburg: SAHRC.
- Statistics South Africa (2009): *Labour Force Survey* (Historical revisions, September series 2000 to 2007). Pretoria: Stats SA.
- Terreblanche, S. (2002): *A History of Inequality in South Africa 1652-2002*. Pietermaritzburg: University of Natal Press.
- Theron, J. and P. Bamu (2009): *Sour Grapes*. Working Paper 11/2009. Cape Town: PLAAS.
- Van den Burgh, A (2009): *Going for Broke: A Case Study of Labour Brokerage on Fruit Farms in Grabouw*. Stellenbosch: Centre for Rural Legal Studies and Women on Farms
- Wright, E.O. (2000): 'Working-class power, capitalist-class interests and class compromise', *American Journal of Sociology*, Vol. 105, No. 4, pp. 957-1002.

BRINGING THE WORKERS' RIGHTS BACK IN?

The Complexities of Forging an 'Internationalist' Labour-Trade Linkage

ABSTRACT

Drawing on viewpoints of workers' rights activists in South Africa and Brazil, this paper presents four key propositions toward an internationalist labour-trade linkage, each pointing to a certain property that a linkage ought to possess, or a challenge it must tackle, if it is to make sense for workers' rights activists. The paper furthermore explores the extent to which these propositions may be accommodated by the ILO and WTO regimes. The less controversial of the two regimes, the ILO, lacks the kind of supervisory mechanisms that a linkage would require. In fact, an internationalist ILO-WTO alignment cannot be instituted through a single policy making feat compelled by a broad popular campaign. It can only come about through a series of discrete steps; it requires *not* a struggle for once-off adoption in the context of a WTO single undertaking, but rather gradual progress along several flanks.

KEY WORDS

Core labour standards; ILO; WTO; social clause; trade unions; Brazil; South Africa

Introduction

Reform is *radical* when it addresses and changes the basis arrangements of society: its formative structure of institutions and enacted beliefs.

It is *reform* because it deals with one discrete part of this structure at a time

(Roberto Unger on 'radical reformism', cited in Munck, 2002, p. 192).

The proposition to create a linkage between the International Labour Organisation (ILO) and the World Trade Organisation (WTO) according to which an exporting country's enjoyment of market access rights in overseas markets would be made somewhat conditional on its observance of core labour standards¹, has incited much heated debate and spawned a rich body of scholarly work (see French & Wintersteen (2009) and Pahle (2010) for recent overviews). The foremost mouthpiece for such a labour-trade linkage (also dubbed a *social clause*), the *International Federation of Free Trade Unions* (ICFTU), conceived of the idea as a means to create a global floor of inviolable workers rights.

The ICFTU proposal was based on the assumption that labour-capital relations, in the context of globalisation, are shaped by a *race to the bottom*. While today's circumstances purportedly confer commercial advantages on producers from countries where core labour standards are undercut², a labour-trade linkage would turn that same undercutting into a commercial liability and unleash a *race to the acceptable* (ICFTU, 1994; 1999a; 1999b). The then secretary of ICFTU expressed it thus: 'A social clause in international trade agreements [...] would certainly persuade reluctant governments to pay more attention to their [ILO]

¹ I very purposively write 'somewhat conditional': Proposals have been consistently indeterminate, and this has played a considerable role in the failure to secure support for such linkages; cf. Pahle (2010) and below.

² For a compelling case-based exploration of race-to-the-bottom and prisoners' dilemma-like dynamics, see Chan & Ross (2003). Whether larger patterns of interrelations between trade and labour standards conform to such dynamics is, however, disputed (e.g. OECD, 1996).

obligations and respect their workers' right to freedom of association' (cited in Cordella & Grilo, 2001, p. 646).

The ICFTU call received support from some key developed country governments. Throughout the 1990s, the US, in particular, tried to convince the WTO membership to accept a linkage as part of a new negotiations mandate. The great majority of developing country governments, however, were staunchly opposed to the notion, as epitomised by India's statement to the Doha Ministerial (Maran, 2001): 'We should firmly resist negotiations in this area; it is not desirable, now or later. We consider [core labour standards] *Trojan horses of protectionism*' (Maran, 2001, *emphasis added*). As the new negotiations mandate was sealed, WTO members pledged 'commitment to the observance of internationally recognised core labour standards', but stressed that the 'ILO is the competent body to set and deal with these standards' and rejected 'the use of labour standards for protectionist purposes' (WTO, 2001).

More significant for the present discussion, the linkage proposal was met by a lukewarm and, in many countries, outright negative reception amongst southern workers' rights activists. Many conceived of the linkage as a *terrorist* – 'a stick with which to beat the third world' (Kohr cited in Green Left Weekly, 2000) – rather than, as ICFTU held, a *freedom fighter* which would 'transfer the benefits of trade liberalisation to ordinary people in developing countries' (ICFTU, 1999b).

Recent years have seen valuable rethinking by linkage proponents. A particularly comprehensive and notable contribution is that of Barry and Reddy (2008) who systematically seek to rebut the predominantly neoclassical economic critiques which were so influential in the 1990s defeat of the linkage idea. Arguably, they do so to considerable effect, for ITUC considers their linkage campaign to be vindicated by the book (Howard, *interview*).

However, a striking characteristic of Barry and Reddy's contribution is that – even while it purportedly 'demonstrates how linkage can be made acceptable to all players' – it engages

the linkage idea almost entirely in the realm of the politics of principles (and particularly with principles related to the moral philosophy of international economic relations). Yet, if the quest for linkage is to make much headway, it must make its way into the realm of the politics of the possible: It is imperative that proponents explore *not* how to ‘make linkage acceptable to all players’ – which, if at all possible, would presumably empty the linkage of traction – but whether and how it may be made into a desirable device for Southern labour – the very people whose struggles the linkage rhetoric invokes. Unless linkage proponents manage to forge a credible *internationalist* vision³, the whole linkage idea can safely be discarded: A required (but clearly not sufficient condition) for the actual institutionalisation of a linkage is that organised labour in the global South vigorously compels developing country governments to embrace it⁴. As noted by a prominent South African unionist (now a cabinet minister) in the wake of the failed social clause campaign of the 1990s:

We haven’t succeeded in making the social clause a demand of the South. It is still a demand of the North supported by some unions in the South. We need to shift the epicenter to the South to the point that it is our campaign supported by the ICFTU and affiliates in the North (...) I believe the labour-link to be the right link [but] we must clean it up (Ebrahim Patel, cited in Anner, 2001, p. 18).

What it would mean to ‘clean it up’, has been the subject of remarkably little study, however, and that shortfall is the very subject of this paper. By drawing on viewpoints of workers’ rights activists in South Africa and Brazil, gathered through semi-structured interviews conducted during 2008 and 2009⁵, I present four key propositions toward an

³ The term ‘internationalist linkage’ was coined by Hensman (2001). I take ‘internationalist’ to mean the opposite of ‘nationalist’ – in other words: something that is not conceived of to promote nationally bounded interests.

⁴ Here it suffices to remark that international business associations (unsurprisingly) remain staunchly opposed to any kind of linkage (e.g. IOE, 2006). So too was the employer group in the ILO during the 1990s (Van Roozendaal, 2002).

⁵ Interviewees and their affiliations are listed under References.

internationalist linkage. Each of these points to a certain property that a linkage must possess, or a challenge it must confront appropriately, if a linkage is going to make much sense to workers' rights activists. I amalgamate the concerns of activists with insights from literature to interrogate the extent to which each of the propositions can be properly accommodated by the existing trade and labour regimes.

Such an approach invariably lends itself to a certain emphasis on specificities and technicalities – indeed to a certain disjointing of the linkage idea. But the fate of the linkage proposal during the 1990s demonstrates that such an emphasis is absolutely necessary. At the time, the international union movement rallied behind a somewhat open-ended proposal: Apart from proposing that ILO reviews of members' compliance with core labour standards be aligned with a reformed trade policy review mechanism (TPRM) at WTO, ICFTU reckoned that further questions of design could be dealt with once collaboration between WTO and ILO was established. However, as has been explored by Pahle (2010), this focus on open-endedness turned out to be a self-defeating, in that it left a lot to the imagination.

The problem for proponents was that many knew exactly *what to imagine* and the things they imagined did not look good to them. While the US government (at the behest of American unions) never proposed anything more specific than a WTO working group to investigate the question of linkage, most observers were of the opinion that this would soon translate into an inherently protectionist instrument along the lines of other US unilateral instruments: Here, violations of core labour standards justify punitive tariffs because they constitute *unfair competition* for American companies and their workers – not because rights violations are inadmissible as rights violations. Indeed, throughout the Uruguay Round and in the negotiations of the Doha mandate, US unions stressed that denial of workers' rights should be conceived of as an *exporter subsidy* in GATT/WTO and, by extension, subject to

anti-dumping and countervailing measures. Such instruments have, by their very nature, a protectionist bent (*ibid.*).

Consequently, a *North-vs-South* frame came to decisively shape the debate. ICFTU's attempted framing was obliterated – namely, that linkage would curb transnational capital's exploitation of North-South and South-South competition even in the most fundamental aspects, and provide a lever for unions to check their governments' use of the same competition as an excuse to undercut core labour standards.

The lesson is straightforward: Proponents of an internationalist inclination must, at the very least, impose their own specific vision of *exactly what the linkage is not* so as to leave much less to the all-too-obvious imagination. This recommendation is a matter of urgency – not because a linkage is likely to come about anytime soon, but because a number of actors, not exactly internationalist in spirit, are scrambling to reignite the debate. Notwithstanding the fact that some governments (whose motives are obscure and whose approaches might be profoundly confused) have taken to float the idea in international *fora* again, the moves with the most derailing potential are coming from within the international union family: In a petition lodged in March 2004, US trade unions alleged that 'China's brutal repression of internationally recognized workers' rights constitutes an unfair trade practice [which] burdens or restricts US commerce'. The cost advantage of such trade practices was translated into a loss of between 268,000 and 727,000 jobs in the US, and unions urged the president to 'enter into no new WTO-related trade agreements until the WTO requires each of its members to comply with the core labour rights of the ILO' (cited in Alston 2004, p. 474).

This, however, is exactly the kind of framing and pursuit of self-interest which, by inciting a rare but forceful discursive coalition between adherents of neo-liberal and counter-hegemonic thinking, wreaked such tremendous damage on the whole linkage idea in the

1990s (Pahle, 2010). Linkage proponents must set the terms of the debate in the right direction before it strays off along the all-too-familiar paths of the past.

Setting the terms of the debate decisively and on the right path is all the more important since Southern unions' stance on the linkage idea is as ambiguous as before. Tellingly, little has changed in the perceptions and positions of Brazilian and South African activists. The increasing unease about the perceived consequences of China's accession to the WTO (which, with its combination of utter disregard for fundamental rights at work *and* overwhelming dominance in global exports, is presumed to have sped up the race to the bottom) is nullified by the lack of any meaningful dialogue on the linkage issue within the international union movement since the early 2000s.

Reminiscent of past scepticism, one of Brazil's foremost union leaders says he 'will be surprised if Northern and Southern labour manage to reach a workable compromise on linkage'. While he is not 'categorically against linkage in each and every thinkable form [...]', he is of the opinion that 'there must be a sea change in attitudes' (Felicio, *interview*). Opinions amongst South African unionists – the Southern beacon of hope for linkage proponents during the 1990s debacle – remain cautiously supportive. There are dissenting union voices, of course: 'Linkage makes no sense whatsoever, no matter how you twist and turn it [...] the international trade system has nothing to do with fairness, so if fairness is what we want, we have to change the system itself' (Rudin, *interview*). But most South African unionists take a distinctly pragmatic stance. Referring to domestic linkage opponents, a COSATU leader says:

I don't subscribe to *purist* views [...] categorical rejection is just a way to keep the debate out [...] It's nice to be ideologically *pure*, but if you're going to be *real* you will have to win victories that strengthen workers and their organisations while you agitate for your ultimate goal. The linkage proposal, with which certain compliance pressures could be

created, is not dead. We will continue, both as a labour movement [COSATU] and as a country [South Africa] to support it (Ehrenreich, *interview*).

Linkage support by Brazilian and South African activists is always severely qualified. The present exploration is organised around four of these very qualifications, namely: that an internationalist linkage should (i) be part of a wider compromise between Northern and Southern labour on the question of trade and labour rights; (ii) superimpose ILO on WTO (not the opposite); furthermore, (iii) be premised on targeted and positive trade measures; and (iv) give traction to the trade union rights of presently unprotected or unorganised workers.

I do not suggest that these four propositions present an exhaustive list of the concerns of the Brazilian and South African activists interviewed. A particularly important concern not among the above, is that a linkage should forestall protectionist abuse and *not* be premised on WTO's narrow *fair competition* logic. That this concern is not offered a subsection of its own is not meant to indicate that it is less important than before – to be sure, this concern is as prominent amongst South African and Brazilian activists as it was in the 1990s debate. Instead, it envelops and cuts across all the concerns discussed here.

This particular problematic has been quite comprehensively discussed elsewhere (e.g. Pahle 2010). It warrants some reiteration, though: If the implicit rationale of the linkage is to provide Northern labour an 'escape clause' with which to deny the produce of Southern labour an increasing share of international trade, then one cannot but expect considerable resistance from Southern labour, and one must also admit that any rhetoric portraying the linkage as a *freedom fighter* for oppressed workers rings hollow. It shall furthermore be recalled that opposition to a linkage grafted on *fair competition* logics was not just about protectionism. If one takes the rights of oppressed workers seriously, such logics are ill-devised, irrespective of whether they are invoked by importers (i.e. protectionists) or by worker rights-upholding exporters claiming that their market access rights are effectively

undercut by worker rights-violating export competitors: ‘Having to countenance labour rights abuses by way of proving the commercial costs that such abuses incur on someone’s business, in another part of the world, is taken to be a profound perversion [of the purported linkage rationale of helping to enforce the rights of oppressed workers]’ (Pahle, 2010, p. 401)⁶.

The crux of my argument is that linkage proponents can only build the needed strength-in-unity in labour ranks by paying sufficient attention to the above concerns. Such recognition implies that proponents should find ways of accommodating the concerns in question within the ILO and WTO regimes, a task to which this paper seeks to contribute.

First Proposition: Linkage should be Part of a Larger Internationalist Labour Compromise

For Southern unionists, the possible protectionist use of a linkage is a major concern. A key linkage problem is that it pits the *right to work* against *workers’ rights* (e.g. Kabeer 2004); and the more protectionist utility is vested in a linkage, the more acute and unacceptable this trade-off becomes for Southern labour. Their foremost concern for the right to work, however, relates not to the possible detrimental effects of the linkage as such, but to the way in which multilateral trade liberalisation *en toto* causes massive job losses in ailing manufacturing sectors – without producing formal and decent jobs elsewhere:

⁶ The only opening in existing WTO law for a linkage permitting negative trade measures, while not justifying it on fair competition grounds, is GATT Art XX (the General Exception Clause). This allows a WTO member country to suspend its market access commitments to another member in the event that this ‘is necessary in order to protect public moral, human or animal life or health’. To the extent that core labour standards constitute human rights – which they clearly do (e.g. Alston, 2004) – they are deemed to be covered by this article (UN-OHCHR, 2005). However, as I return to later, it is not necessarily desirable that a linkage permits negative trade measures.

[Brazilian unions] made it clear that we were in favour of a social clause *but* only as part of a genuine development round – one which offers sufficient policy space and generates jobs [...] However, ITUC and northern unionists have tended to emphasise everything we said before the 'but' and nothing about the rest (Barbosa, *interview*).

Again and again, Brazilian unionists have argued that you cannot deal with the challenges that confront labour in the face of trade liberalisation merely through a social clause. It may strengthen workers' rights to organise and bargain collectively but this means nothing for an unemployed or informally employed worker. Again and again we have said: we must look at the larger fairness of WTO agreements (Jacobsen, *interview*).

Amongst South African trade unionists, too, 'the real issue is to define and vigorously support strategies for equitable and employment creating growth in the South – otherwise labour standards will not make much difference' (Makgetla, *interview*). Or as one colleague stresses:

No amount of [sophistication in the linkage design] will provide for increasing wealth opportunities or shift economic scales in favour of developing countries [...] There must be a fundamental shift in the existing trade paradigm (Dicks, *interview*).

It may be argued that the merits of a linkage should not be judged on the extent to which it can solve all problems of Southern labour. However, to leave the argument at that would miss the point: Southern unionists feel that, by reducing the labour dimension of trade to the question of linkage, Northern unions deflect attention away from the issue that really matters the most to Southern labour, namely, employment. They don't see much point in committing to an international campaign for labour standards if it is not accompanied by a

commensurate commitment, on the part of their Northern comrades, to retain and create jobs in the global South.

The fact of the matter is that Southern unionists consider their Northern comrades to be outright adversaries in the context of the highly North-South-bifurcated WTO negotiations over manufacturing tariffs. Here, Southern unions are staunchly aligned with governments in a call for a modicum of industrial ‘policy space’, whilst Northern unions are equally supportive of their domestic governments’ (and employers’) demands for deep market access in developing countries⁷.

The tension is not lost on ITUC, even if it took the confederation a long time to act on it. A Brazilian activist believes that the circumspect position of Southern unions on linkage eventually forced the international union movement to shift its priorities, especially as regards the agenda and policies of the TILS⁸ (Barbosa; *interview*); ITUC also established a liaison office in Geneva dedicated to the task of forging union collaboration on the broader development dimension of WTO agreements (Busser, *interview*).

While, in the beginning, ICFTU’s position was just a reflection of the position of the American and European unions, a lot happened once COSATU became a member [...] By the late 1990s, ICFTU tried to elaborate the social clause idea more in tune with some of our concerns [...] and after the Doha Ministerial [2001] they finally began to discuss the broader implications of trade agreements on labour (Jacobsen, *interview*).

But Brazilian unionists are not convinced that the overall stance of Northern comrades has changed much:

⁷ For a general discussion on the WTO and ‘policy space’ for development, see Gallagher (2008). Busser (2007) has discussed the same issue from the point of view of organised labour.

⁸ ITUC’s task force on international trade and labour (TILS) was originally established for the purpose of coordinating international union efforts on the question of linkage (Busser, *interview*).

Once we managed – together with the South Africans and Koreans – to introduce a very strong position in the TILS on manufacturing tariffs [i.e., emphasising developing countries' right to retain industrial tariffs], the participation from developed country unions in TILS meetings waned markedly (Jacobsen, *interview*).

When we go to the international meetings we still experience that some of our Northern counterparts say: 'So we are going to liberalise our agriculture imports, but you won't give anything in industrial liberalisation?' Or: 'You will get your goods cheaper by liberalising – why are you against that?' They are reproducing the very same arguments that their governments put forward in international negotiations (Barbosa, *interview*).

The tension between Northern and Southern labour is far more pronounced in manufacturing than in agriculture, presumably because agricultural workers are few in the North and largely unorganised and voiceless in the South; by extension, offensive interests of developing countries are not reinforced by any significant demand by labour, and this leaves the job-generating aspects of agricultural export largely unarticulated in the international union movement.

However, the general concern of Southern unions – that of retaining and creating decent jobs – *does* apply in agriculture nonetheless. But it is framed in terms of the oft-forgotten *defensive* interests which many developing countries have in agriculture. Thus, the director of South Africa's foremost independent trade union in agriculture emphasises that import liberalisation's squeeze on small farmers has been transmitted to workers in the form of job losses and worsening terms and conditions of work.

[Linkage] might be a good thing – it may force farmers to respect trade union rights. But we also need to look at other things relating to the WTO. When signing on to the WTO, South Africa opened its markets to subsidised imports. Thousands of small dairy farms had to close down, with very adverse effects on farm workers (Pekeur, *interview*).

The centrality and severity of this concern is reflected in the following statement: ‘If it requires a new ambitious WTO single undertaking after the Doha Round to get [a linkage], it simply isn’t going to be worthwhile’ (Jacobsen, *interview*). The radical implication of this perspective must not be lost on linkage proponents: It suggests that one should address the question as to whether and how the required alignment of ILO and WTO can be achieved *independently* of any new single undertaking or agreement in WTO, a question to which the next proposition is pertinent.

Second Proposition: Linkage should Superimpose ILO Rule on WTO

(Not the Opposite)

A recurring theme in Southern unions’ critique of linkage is that it might expand WTO’s remit into matters in which a trade organisation has no legitimate role – and at the expense of ILO. Such concerns are particularly pronounced amongst Indian unionists:

By hijacking [ILO’s] functions, the imperialist countries in fact want to completely neutralize the might of workers and enable the transnationals to call the shots through WTO (CITU, in Van Roozendaal, 2002, p. 125).

We don’t see the WTO as an impartial body; it’s a highly political body and there is a definite agenda behind that. It represents the interests of big corporate capitalism. We don’t see anything to be gained by labour standards to be operated by a body that is essentially a tool of corporate capitalism (CITU, in Kolben, 2006, p. 250).

The hyperbole notwithstanding, such concerns are certainly not unfounded. There is almost universal agreement that the WTO suffers from an acute legitimacy deficit, owing to the still-unrecognised problems associated with its formative purpose, along with the more commonly criticised set-up and *modus operandi* of its legislative, judiciary and executive functions alike (e.g. Smythe 2007).

Furthermore, since legal regimes comprise multiple, overlapping layers of sovereignty and norm-creation with no clear norm-hierarchy (Klare, 2002), it is not surprising that the linkage idea invokes uncertainty and fear.

It is nevertheless true that the above union statements severely misconstrue ITUC's linkage proposal, which made it abundantly clear that ILO would indeed be superimposed on WTO. Furthermore, they exaggerate what a linkage might imply as regards the role of WTO. In fact, linkage proponents might argue that any 'operation' of labour standards by the WTO is neither an intended nor required implication of linkage.

WTO permissiveness

Despite huge legitimacy challenges, the WTO contract is an instrument intended for the harmonisation of members' trade regulation rather than outright deregulation. Furthermore, even the ambition of harmonisation is tempered by regulatory flexibilities: Members may take measures in apparent contravention of the non-discrimination principle, if this is necessary to attain a public interest objective.

Trade measures may well be considered 'necessary' in terms of upholding core labour standards. There is increasing recognition that WTO, instead of expanding its own remit, may facilitate coherent global governance by the exact opposite move – by permitting the suspension of trade law and its own standard operating procedures to avoid systemic tensions with other regimes.

This view is corroborated by a legal expert at the WTO secretariat who holds that, since states must be assumed to have negotiated their WTO obligations with a view to respecting their human rights obligations, and given ‘the inherent flexibilities of the WTO obligations’, considerable leeway can be presumed under WTO law and jurisprudence (Marceau, cited in Alston 2004, p. 472). Furthermore, UNHCHR has ‘underlined that what are referred to – in numerous WTO provisions – as the *right* to regulate may be *duties* to regulate under human rights law’ (Petersmann, 2004, p. 615).

Moreover, differential treatment on account of different production processes may be justified, even if the products are otherwise ‘like’, albeit on the strict condition that products made with recourse to the same processes would have to be subject to the same treatment (including offering comparable remedial opportunities)⁹. Hence, if comparable labour rights violations bear on the process of producing bioethanol in, say, Brazil and Mozambique, it would *not* be permissible to suspend market access commitments toward Brazilian ethanol only. Furthermore, it seems that if comparable labour rights violations bear on the production of Brazilian ethanol, coffee and orange juice, the suspension would have to apply to ethanol, coffee and orange juice alike.

By extension, if the European Union (EU) were to take recourse to Art XX and suspend its market access commitments on the grounds of labour standards violation in Brazil, the

⁹ A particularly pertinent case is that of *Shrimp-Turtle* (WTO, 1998). Here, the defendant (the US) took recourse to GATT Art XX and imposed an import ban on shrimps from some Asian countries, on the grounds that these were harvested in ways which contribute directly to the depletion of sea turtle stocks (i.e. not using ‘turtle excluder devices’). The claim was thus that trade measures in contravention of standard WTO market access commitments were necessary for the public policy objective of defending an endangered species. The complainants – Malaysia, India, Pakistan and Thailand – alleged unjustifiable nullification and impairment of benefits. Eventually, the Appellate Body ruled that ‘although the measure of the United States in dispute in this appeal serves an environmental *objective that is recognized as legitimate* [...] this measure has been applied by the United States in a manner which constitutes arbitrary and unjustifiable discrimination between Members of the WTO, contrary to the requirements of the chapeau of Article XX’ (*ibid.*, para. 186). The measures taken were deemed arbitrary and discriminatory since shrimp imports from the western hemisphere – the Caribbean countries, in particular – were *not* subject to any comparable ban; instead, the US had granted these countries a waiver period pending the implementation of capture with turtle-excluder devices, provided with financial assistance by the US itself (*ibid.*).

former would soon have to explain to a panel (and subsequently to the Appellate Body) by *what measure* it claimed to have established that Brazil violates core labour standards; and secondly, by what measure it claims Brazilian practices to be *distinctly different* from those of Mozambican or others. This is, of course, where ILO comes in: WTO's dispute settlement mechanism (DSM) is wholly unlikely to accept a claim established unilaterally by the EU – in particular, since the Singapore Declaration states that 'ILO is the appropriate instance for setting and dealing with core labour standards' (WTO, 1996).

Hence, the DSM would likely render the EU's measures as constituting 'arbitrary and unjustifiable discrimination' *unless* ILO had established unambiguously that Brazil in fact violates core labour standards *and* that its violating practices are distinctly different from those of other bioethanol traders, say, Mozambique. In this sense, the 'operation' of labour standards by the WTO is neither an intended nor required implication of linkage as proposed by ICFTU: the DSM would concern itself with the issues of 'necessity' and of possible discrimination between different producers – not at all with establishing labour rights violations *per se*.

The not-so-permissive nature of ILO

The core of international labour law is covered by specific provisions of ILO conventions. However it is also embodied in customary *case law* pertaining to the convention in question. Take the *right to strike*: While not granted explicitly in either C87 (Freedom of Association) or C98 (Right to Organise and Collective Bargaining), such a right is *implied by* these conventions. Thus, ILO's *Committee on the Application of Conventions and Recommendations* (CEACR)¹⁰ states that it has always recognised the right to strike by

¹⁰ The ILO's superior decision-making organ is the annual *International Labour Conference* (ILC) whose *tripartite* composition is unique as far as multilateral organisations are concerned: Each member country is represented by *two government delegates, one employer delegate, and one labour delegate*. The ILC adopts Conventions and Recommendations (and occasionally Declarations). It presides over the ILO's supervisory mechanisms – CEACR and the tripartite Committee

workers and their organisations as a legitimate means of defending their economic and social interests, and that ‘the legitimate exercise of the right to strike should not entail prejudicial penalties of any sort’ (Hilgert, 2009, p. 30).

International labour law is often ambiguous and flexible. Article 4 of C98 is an apt illustration: It states that a ratifying country *must* have some ‘machinery’ for voluntary collective bargaining; moreover *if* deemed ‘necessary’, ‘measures appropriate to national conditions’ should be taken to ‘fully develop and utilise’ such machinery. This, of course, allows extensive discretion by the member countries when implementing obligations.

Although case law certainly reduces some of this discretionary space, it still allows plenty of flexibility: Even if we take C98 to imply that strike action is indeed a necessary measure for the fullest possible realisation of the machinery of collective bargaining and that ‘the *legitimate exercise* of this right should not entail prejudicial penalties of any sort’, it remains open as to what is meant by the ‘legitimate exercise’ of the right to strike and how it is to be determined. It could, for instance, allow members to enact strict criteria for regulating ‘legitimate’ strike action so that workers would have to either abstain from striking or strike at the risk of being subject to prejudicial penalties.

Therefore, even a country which *does* ratify a convention – and thereby becomes bound to implement its practices in accordance with the provision of the convention and associated jurisprudence – cedes sovereignty to a far lesser extent than it does when agreeing to a *single undertaking* in the WTO; a WTO member must implement its treaty obligation by

on Freedom of Association (CFA) and determines the overall priorities and work programme of ILO’s secretariat, the *International Labour Office*. The office, headed by the Director-General, is tasked with the execution of capacity-building and promotional activities. The *Governing Body* (GB) is mandated to undertake a number of functions on behalf of the ILC, and consists of twenty-eight representatives of member governments (ten of which are permanent ‘states of chief industrial importance’ – Brazil, China, France, Germany, India, Italia, Japan, Russia, the UK and the US), fourteen employer representatives and fourteen worker representatives. In the ILC as well as in the GB, each delegate has the right to speak and vote independently of other delegates from the same member country. By extension, much of the delegates’ activity goes on in, and their voting decisions are often informed by, cross-national ‘social partner’ caucuses – e.g. the Workers’ Group and the Employers’ Group (Rodgers *et al.*, 2009; Wisskirchen, 2005; Van Roozendaal ,2002).

means of an individual *schedule of commitments* which (as far as tariffs under GATT is concerned) is expressed in quantifiable and unambiguous terms.

Moreover, ratifying members are obliged, in jargon typical of human rights law, to *respect, protect, promote and fulfil* the standards in question. Taken to its logical conclusion, the *respect-protect-fulfil* type of obligation means that there is no such thing as an unambiguous demarcation line between compliance and non-compliance in terms of a member's overall effort. Instead, there seems to be a sliding scale or a continuum ranging from utter *non-compliance* at one end, to utter – and only theoretically achievable – compliance ('fulfilment') at the other. Taken at face value, this means that a country is almost always somewhere in-between. As in human rights adjudication, a primary focus is on whether a member is moving in the right direction along the continuum, and ensuring that it does not take so-called 'retrogressive measures'.

Obviously, the character of a member's commitment under an international regime has a bearing on the extent and ways in which compliance may be established. The contingent, flexible and ambiguous character of ILO members' obligations (even under conventions which they have ratified), is reflected in the fact that ILO's 'adjudications' are *indeterminate* and based on procedures which give very *partial and arbitrary coverage*.

The backbone of ILO's supervisory system is that members are obliged to regularly submit reports on their implementation of conventions which they *have ratified*. On the basis of such reports – along with so-called *representations* from employers and workers which provide 'checks-and-balances' on the government's submission – CEACR assesses members' compliance in the form of 'individual observations' compiled in an annual report to the ILC. Associated and often more specific 'individual direct requests' may be addressed directly to the member government (Wisskirchen, 2005).

First, observations obviously speak to the question of compliance; CEACR has for instance repeatedly made clear that the current legislation in Brazil does not give effect to Art 1 of C98 or Art 3 of C141 (ILO-CEACR, 2010a, 2010b, 2008, 2007). However, such ‘adjudications’ are but threads pertaining to one or more provisions in conventions or jurisprudence, and are parts of a seemingly unending dialogue of question-response-question, pointing toward some distant state of ‘fulfilment’. Observations do *not* represent unambiguous adjudications about overall compliance; it is dubious whether one can infer from CEACR’s observations and direct requests, even if all of them are compiled in one document, whether a specific member – say, Brazil – is in decisive violation of its C98 obligations, let alone the extent to which it is *more or less so* than any other member.

Indeed, there is ‘no objective, widely recognised benchmark for determining the seriousness of breach’ (Wisskirchen, 2005, p. 282) and standards such as ‘freedom of association [...] are very hard to measure unambiguously’ (Rodgers *et al.*, 2009, p. 233). The above comments also raise questions about the extent to which and how ILO ‘adjudications’ gauge measures beyond legislation. For, while ‘the system of reporting and review deals with both legislative compliance and implementation [...] information on the latter is harder to obtain’ (Rodgers *et al.*, 2009, p. 21).

This indeterminacy must, however, be understood in its proper context: The legal standing of CEACR (and ILO) observations is disputed, and the organisation has few, if any, enforcement measures at its disposal. Consequently, unambiguous adjudications have never been in demand. While it is indeed common to consider CEACR observations (and direct requests) as binding interpretations of ILO ‘law’ they are not, in the strict legal sense. Pursuant to the *Treaty of Versailles*, the constitutional premise for CEACR’s establishment was that

the committee of experts would have no judicial capacity nor would be competent to give interpretations of the provisions of the Conventions nor decide in favour of one interpretation rather than another. [It would merely] advise the Conference and its committees as to the facts [leaving to the Conference] to decide upon its attitude and upon what appropriate action it might take or indicate (cited in Wisskirchen, 2005, p. 271-272).

In other words: CEACR's observations become binding ILO adjudications only if and once they are actively adopted by the ILC. This happens by way of the tripartite *Conference Committee*: From among the several hundred individual observations made annually by CEACR, the *Conference Committee* selects some *twenty-five* cases. In each case, the Conference Committee hears the viewpoints of concerned governments, employers and workers, whereafter it negotiates a conclusion comprising remarks on members' shortcomings, noticeable deteriorations or improvements, and calls to make necessary changes in law and practice. The *Conference Committee* report is adopted by the full ILC.

That the scope of ILO's binding adjudication process is *a mere twenty-five cases* per year is a major shortfall in its judiciary system. This impression is reinforced by the arbitrary case selection process in the Conference Committee: According to one account, the constituent national federations of ITUC simply 'negotiate which cases to consider' (Wisskirchen, 2005, p. 282). An experienced Brazilian unionist says case selection in fact 'depends on the deals struck between unions, employers and governments' (Jacobsen, *interview*).

Besides CEACR's adjudications (made binding by the Conference Committee), the ILO has two *special* supervisory procedures: According to the first, member states which themselves have ratified the convention in question or elected delegates to the ILC, or the Governing Body acting on its own motion, may file a *complaint* against a member regarding

faulty implementation. Such complaints are nominally forceful since they may lead to the establishment of a *Commission of Enquiry*. But a convoluted (if not obstructive) procedure guides the establishment of such a commission, which seems to temper the eagerness to file complaints. During ILO's ninety years of existence, a commission has been established, in average terms, only once per decade or so – a total of twenty-four complaints have led to the institution of eleven commissions. Notwithstanding that the defendant member obviously does its utmost to avoid the establishment of a commission, it seems that obstruction by other governments – which fear that more frequent commissions may create a precedent that will boomerang on them in another instance – is an important factor:

A couple of years back, there was this big struggle as to whether to establish a Commission expert to consider the situation in Colombia – unionists were killed every day, literally. It was not achieved because of pressure from the employers and other governments (Jacobsen, *interview*).

The second special supervisory procedure of the ILO is associated with the tripartite *Committee on Freedom of Association* (CFA). Since members' obligation to secure freedom of association is deemed to be a constitutional obligation on *all* members – irrespective of whether or not they have ratified C87 – member states which themselves have ratified C87 or elected delegates to the ILC, or the Governing Body acting on its own motion, may file a *complaint* against a member regarding freedom of association. The CFA engages in dialogue with the government concerned and issues a report through the Governing Body. The Governing Body may either refer the case in question to CEACR or establish a 'direct contacts' mission to the government to address problems directly, through tripartite dialogue. CFA is an important tool: It is much more in use than the former (with some 2300 cases

considered throughout ILO's history); and since it imposes pressures on non-ratifying members, it fills a void left by CEACR.

A further limitation on ILO's judicial functions is considerable uncertainty as to whether international treaty law actually invests ILO with the power to make binding interpretations about members' compliance. A former employer representative claims that 'it is virtually indisputable that only the *International Court of Justice* may give binding interpretations of [member states' compliance with] the ILO Constitution and its Conventions' (Wisskirchen, 2005, p. 273). Both legal experts and the ILO Workers' Group would take issue with such a claim; furthermore, ILO's recourse to implement sanctions against members, even if very limited, suggests that the ILO *can* indeed make binding interpretations and act as the ultimate interpreter of its own law in the international domain. But, as I argued above, since ILO has few if any enforcement measures at its disposal, there is no custom or method for making unambiguous adjudications. The same applies here: When ILO's power to make *binding* adjudications under international treaty law is contested it is no wonder that its supervisory apparatus is not geared towards *unambiguous* adjudications.

As is evident from the above discussion, the executive function of the ILO regime is limited primarily to promotion and *moral suasion* exercised by its supervisory mechanisms. ILO's authorised biographers claim that it cannot 'force countries to change until they are ready – the desire for 'teeth' for international organizations is a misleading distraction' (Rodgers *et al.*, 2009, p. 91). In much the same spirit, another ILO insider asserts that 'the real role of the ILO is to help member states see where their real self-interests lie' (Langille, cited in Alston, 2005, p. 473).

However, as Alston (2005) argues, such assertions are unconvincing: 'If the self-interests of governments truly matched the interests of workers around the world we would not need an international system to promote respect for standards' (*ibid.*). Furthermore, the

fact is that ILO both *can* and actually *has* appropriated and used rather sharp ‘teeth’ – hence, there *is* a case for saying ILO can indeed ‘force countries to change’ before they are ‘ready’. This can occur since ILO has recourse to a sanction mechanism through Art 33 of its Constitution which states that

in the event of any member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Enquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith

As previously noted, a *Commission of Enquiry* may only be established through an extremely convoluted process; and many members are reluctant to permit the establishment of commissions for fear that this will create precedent which might boomerang on them at a later stage. Furthermore, even if a commission *is* established, the member in question must have failed to carry out the recommendations made, before the ILC shall devise ‘wise and expedient action to secure compliance’. It is not surprising, then, that ILO has taken recourse to Art 33 just *once* in its history – namely in 2000, against Myanmar. The *Resolution* thus adopted instructed that all ILO support to the country should cease; and that every member state should ‘review’ its economic relations with Myanmar (i.e. consider wise and expedient means of sanction) (Wisskirchen, 2005, p. 269).

Third Proposition: Linkage should be premised on Targeted and Positive Trade Measures

ICFTU's proposals were never quite clear regarding what *kind* of trade measures might come about as a consequence of linkage. It also seems that it evaded open discussion on the matter:

While they never said it in so many words, the intention was always to get WTO's trade sanctions behind core labour standards [...] Whenever we asked whether this was in fact the motive and tried to get some discussion going, they just went silent or changed the subject (Jacobsen, *interview*).

The issue of sanctions is partly a question of whether a linkage would entail negative or positive trade measures, which I return to shortly. But it is also a question of targeting: whether and how to direct trade measures in terms of *depth and width*. Protagonists in the linkage debate seem to infer that, if trade measures were to come of use, these would *either* be applied to the subject country as a whole – and this is in fact the way trade measures are administered in unilateral social clause arrangements (e.g. Bartels, 2003) – *or* only to individual companies directly complicit in rights violations. The first alternative is less than desirable as a general rule: If trade measures are applied to an entire country, instead of being somehow targeted, it may not take account of pronounced segmentation of labour relations and the associated uneven realisation of fundamental rights at work across sectors.

The second alternative might be desirable, but is not feasible in the light of the character of the multilateral trade regime: Under international trade law, companies are not legal subjects, of course – only states are – and their rights and duties are those specified in terms of market access granted to categories of products, and codified in bound ceilings across tariff lines for these categories. While tariff lines are differentiated to a very high level

of product type specificity, this differentiation is only partially the kind called for in the context of linkage, since one cannot differentiate between different regional origins (within a country), much less between different companies in the same sector. Consequently, in the event of a linkage premised on negative trade measures, one would invariably penalise a great number of employers (and possibly their workers, too) for rights violations that they have absolutely no involvement with. Form the point of view of one Brazilian activist:

this is clearly a problem. You may end up sanctioning the whole production of orange juice because there is widespread child labour in, say, Sergipe – which is responsible for one percent of the Brazilian production. Meanwhile, you have virtually no child labour at all in São Paulo where most of the orange juice is made (Jacobsen, *interview*).

One activist engaged in the fair trade certification of wine makers in South Africa is particularly concerned: ‘That kind of scenario is unacceptable; here we push farmers to put in lots of investments and efforts in upholding rights, and then they may be sanctioned for the misdeeds of some rogue farmers’ (Goosens, *interview*). However, some unionists consider branch-wide measures to be ‘exactly what is needed to ensure that labour standards are met across the farming sector. It will send a signal to all farmers that violation of labour rights will not be tolerated’ (Dicks, *interview*). Or, as another activist puts it:

Investing in compliance with labour law is not an ‘extra’ or a nicety. Our objective is not compliance at certain individual estates but an industry transformation. Only good then if farmers are compelled to hold each other accountable and set up mechanisms to this effect (Shabodien, *interview*).

Linkage proponents have to reconcile themselves with the fact that, under multilateral trade law, one cannot devise trade measures any more specifically than to, say, ‘packaged

grapes’, ‘bottled wine’; ‘whole oranges’, ‘orange juice concentrate’, ‘bottled orange juice’ etc. From this point of view, a linkage will invariably treat producers within one category as equal – even if there might be pronounced differences amongst them in terms of the extent to which they uphold fundamental rights at work. The associated concern is appeased, however, if linkage is premised on positive trade measures. Then, fair trade winemakers are neither penalised for the rights violations of their rogue business colleagues nor are they rewarded for their own commendable efforts either – unless they can cajole their colleagues to respect and uphold rights, too.

Meanwhile, the degree of differentiation conceivable under international trade law – i.e. at the level of product categories – cannot be accommodated by the present ILO system: Its core labour standards pertain to the national scale, implying that a uniform set of implementation measures can be applied across sectors and branches with uniform effect; and the extent to which supervisory mechanisms differentiate between compliance levels across different sectors and branches is a matter of chance.

The above discussion underscores the importance of the question as to whether a linkage should be premised on negative or positive trade measures. While the former would entail that an exporting country *failing to comply* with its core labour standards obligations would temporarily lose its market access rights abroad (i.e. face higher-than-MFN tariffs), the latter would entail that the exporting country *actually complying* with the same obligations would be granted substantial tariff rebates (i.e. lower-than-MFN tariffs).

Activists in Brazil and South Africa are somewhat divided on the matter. On the one hand, some unionists are reluctant to embrace a linkage idea based solely on positive measures: While the worst labour rights offenders – whether individual states on the whole or problem sectors – would of course not qualify for any tariff rebates, they would be granted the same general market access (MFN) as before. Consequently, they could continue with their

exploitative business as usual and act as a drag on the positive efforts of others (e.g. Ehrenreich, *interview*). In other words: It would do little to offset race-to-the-bottom logic.

Furthermore, a South African farm worker activist thinks there is an undue patronising slant to a linkage invoking positive incentives: Its unspoken premise is that while governments and companies in the North *must* uphold fundamental rights at work without any question, their counterparts in the South are to be rewarded for doing so (Naidoo, *interview*). It is indeed true that a positive incentives approach configures the linkage question around the problematic North-South cleavage.

On the other hand, many activists think that this question is something of a litmus test as to whether the international union movement is genuinely concerned for Southern workers' rights: For, whereas negative measures would compile the burdens on developing countries and almost invariably have some protectionist utility, positive measures would shift the burden, in terms of trade commitments, onto rich countries. Positive measures also rule out the possibility that workers are forced to pay doubly for the violation of their rights.

However, the most compelling reasons for a linkage based on positive trade measures flow from the previously presented propositions and points. While, as argued above, a linkage based on negative trade measures can be conceived of within WTO without having to rely on its much disliked fair competition logics, nor assigning any big role to its dispute settlement system, this is even truer for a focus on positive trade measures. Furthermore, a positive approach would render another comprehensive single WTO undertaking unnecessary. Lastly, the question which is invariably raised by a positive linkage (i.e. *whether a country is in outright compliance* with core labour standards) is easier for ILO to tackle than the question raised by a 'negative' linkage (i.e. *whether a country is in outright non-compliance*).

Positive Trade Measures: Easing the ILO Task

It is not my intention to discuss the positions and calculations of governments here. Yet, one must not lose sight of the point that a linkage premised on negative trade measures would be a dramatic non-starter: According to Jagdish Bhagwati (a staunch critic of linkage), many countries have signed the conventions knowing that they are *de facto* non-enforceable; to introduce negative trade measures *ex post facto* would alter the very premises on which ratifications were made (cited in Van Roozendaal, 2002, p. 46), and provoke a backsliding, if not an abrogation of ratifications.

Since the focus of a negative incentives approach would be on determining non-compliance, attention would invariably drift towards countries which have *failed* to ratify ILO core conventions – and the entire effort would get bogged down in insoluble questions about non-ratifying countries' obligations. Here, it is necessary to remember that many ILO members are bound by core labour standards only by virtue of the 1998 Declaration on Fundamental Principles and Rights at Work which resolved that

[A]ll Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of [the eight core] Conventions (ILO, 1998, Art 2).

However, these obligations arising from membership are of a very different and effectively less stringent kind than those flowing from actual ratification. As a US employer representative at ILO said: 'One thing was unambiguously clear to every person who negotiated the Declaration [...]: Obligations [arising from membership] are not the legal requirements of the eight fundamental conventions' [and by extension not the associated ILO

case law] (cited in Alston, 2005, p. 494). Hence, Alston posits that ‘the principles [are] unhinged from the anchor of ILO’s painstakingly constructed jurisprudence [...] the discipline, or the *acquis*, of the conventions has been escaped’ (*ibid.*, p. 495). Given the aforementioned problem of determining compliance even for countries which actually *have* ratified the conventions in question one can only begin to imagine the difficulty of determining compliance with the ‘obligations arising from membership’.

Furthermore, even if it were possible to establish non-compliance in legal terms, it is worth recalling that the only gateway to a ‘negative’ linkage in the current ILO regime would be Art 33. One can imagine that ILO would take rather more regular recourse to this article, and that the resulting resolutions would be fed into a reformed WTO Trade Policy Review Mechanism (TPRM). Recall, however, that Art 33 may only be invoked where a Commission of Inquiry has been established and the defendant member has acted in a manner deemed to be *non-collaborative* – which has happened only once in history. It goes without saying that such utter non-collaboration accounts for only a miniscule number of global implementation failures.

Whereas a negative linkage would only come of use in the event that ILO adopted a resolution establishing *outright non-compliance*, a positive linkage would tend to call for the contrary: The applicant country would only qualify for tariff rebates if ILO had deemed it to be in *compliance*. In some sense, the ILO apparatus is no more inclined or equipped to make such ‘positive’ adjudications than negative ‘ones’: Recall that CEACR observations part of an unending dialogue of question-response-question pointing toward some distant state of ‘fulfilment’.

Consequently, a positive conditionality linkage would require institutional innovation at ILO. At the very least, ILO would have to be able to issue rulings on a country’s ‘provisional compliance’. What this could come to entail, and how it would be determined,

are not easily inferred from ILO's current mode of operation. But given the fickleness of obligations flowing from membership alone, it seems that only countries which actually *have* ratified all eight core conventions would come into consideration, since these can at least be held to account in terms of the 'detailed legal provisions' of conventions, and the associated 'painstakingly developed ILO jurisprudence'. A linkage premised on positive trade measures would invite ratification rather than abrogation.

Positive Trade Measures: Minimising the Active Role of WTO

As regards WTO's permissiveness toward a positive linkage, quite a lot can be deduced from Bartels' careful examination of the WTO-compatibility with the EU's existing *bilateral* positive linkage (Bartels, 2003).

The EU's positive linkage – the so-called *special incentives arrangement* – operates within the larger *general system of preference* (GSP)¹¹. Whereas the EU's 'normal' GSP (applicable to all developing countries without conditions) grants duty-free market access on all *non-sensitive* and a tariff rebate of 3.5 percentage points on all *sensitive* products, the special incentives arrangement grants duty-free market access to *all* products¹². However, developing countries only become eligible upon qualification: The individual country must itself submit an application where it convincingly *demonstrates* that it complies with its ILO core labour standards obligations (the eight core conventions); subsequently, it must undergo an examination arranged by the EU, and agree to a mechanism for monitoring continued

¹¹ The GSP is a WTO-endorsed scheme whereby developed countries may grant developing countries preferential market access through lower-than-MFN tariffs (without coming into conflict with non-discrimination principles).

¹² Sensitive products are essentially those in which the importing party has considerable defensive (i.e. protectionist) interests. While the concept is legally recognised under the WTO, current trade law does not set conditions for its application (even if this is under debate in the ongoing Doha negotiations) – the importing party itself determines what is or is not a sensitive product and applies the multilateral tariff reduction formula accordingly; that is spending much of its leeway on relatively high tariffs on sensitive products at the cost of taking deeper tariff cuts on non-sensitive ones.

compliance. Thus far, the special incentives arrangement has only been granted to one country: Moldova. The application of Sri Lanka is under examination (*ibid.*).

The 'gateway' for the GSP in WTO law is the so-called Enabling Clause¹³. The preferences granted pursuant to this clause are *voluntary*. A member country which is excluded from preferential treatment under the enabling clause may invoke GATT Art I and thus request WTO's dispute settlement mechanism to ascertain whether benefits accruing to it have been unlawfully nullified or impaired. Interestingly, a number of countries suspect that this is indeed the case with the EU's special incentives arrangement: India has filed a DSM case, and among countries which have reserved their rights as third parties are Guatemala, Honduras, El Salvador, Paraguay, Venezuela, Brazil, Cuba, Ecuador, Peru, Costa Rica and Columbia (*ibid.*, p. 509, note 8). In passing we may note that countries would not have taken such an interest in the legality of the EU's special incentive arrangement if it was not considered to bestow considerable preferences.

The bone of contention is that the enabling clause permits only preferences which are *generalised, non-discriminatory and non-reciprocal*. But the requirement of compliance with the eight ILO core conventions can hardly be deemed *de jure* discriminatory. As the EU has argued, the preferences provided 'are perfectly consistent with the enabling clause. No discrimination occurred, no reciprocity was required, but a positive incentive obtained, *available to all countries* under the GSP scheme' (cited in *ibid.*, p. 522, emphasis added).

However, India argues that *de facto* discrimination is involved, claiming that the arrangement is 'discriminatory with respect to countries *unable* to follow the standards and which are consequently unable to benefit' (cited in *ibid.*, p. 525). This, however, is a line of reasoning which Bartels rejects: The requirement is that the country complies with standards which all members have already recognised as binding under international customary law; in

¹³ The Enabling Clause permits derogations from GATT Art 1 (non-discriminatory treatment) when in favour of developing countries (thus permitting preferential market access) (GATT, 1979)

this regard, it would be difficult to sustain the argument that developing country members are not in an equal situation.

There is an element of *reciprocity* involved. However, enabling clause jurisprudence *does* permit a degree of reciprocity if this is consistent with the ‘individual development, financial and trade needs’ of the beneficiary country (*ibid.*, p. 529). And if a country has accepted the standards involved, ‘that country should be unable to argue that compliance with these conditions is inconsistent with its needs’ (*ibid.*). In support of Bartel’s point, it should be noted that all member countries have, in the context of ILO’s *Declaration on Social Justice for a Fair Globalisation*, conceded that ‘the violation of fundamental principles and rights at work cannot be invoked or otherwise used as legitimate comparative advantage’ (ILO, 2008, *Subsection I.A[iv]*).

The above argument suggests considerable permissiveness, on the part of WTO, towards a linkage based on positive conditionality – i.e. a ‘multilateralised’ *positive incentive arrangement*. A positive linkage thus conceived would *not* have to be justified as a public interest exemption (in contrast to a negative linkage by way of the General Exception Clause). Consequently, the whole issue of *necessity* would be irrelevant. However, since non-beneficiaries would be likely to claim undue discrimination, dispute settlement would have to concentrate on the issue of *likeness*. In this regard a positive linkage is not very different from a negative linkage: For example, if a developed country were to use the linkage so as to grant, say, Mozambique’s biofuel duty-free market access – while not granting the same to Brazilian biofuel – the DSM would question by *what measure* it can be established that Mozambique’s practices are *more compliant* with core labour standards than those of Brazil. Once again, it seems that the only legitimate source for establishing this is ILO adjudications. This, however, is where linkage would require something else than the mere replication of the EU’s GSP scheme by other developed countries. For, in the EU scheme, it is the *EU itself* which

ultimately determines whether an applicant country is ‘compliant’ or not (albeit on the basis of collating ILO adjudications, and conducting investigations of its own). From an internationalist point of view this is, of course, wholly unacceptable.

A multilateralised special incentive arrangement would have its problems and limitations, of course. Its ability to offset race-to-the-bottom dynamics may be limited: Countries are unlikely to put much additional effort into securing compliance with labour standard commitments unless the commercial gains associated with linkage are quite substantial. In this regard, two factors in a special incentive arrangement are of particular relevance: The *preference range* and the *preference margins*¹⁴. It is safe to say that, as far the GATT1994 tariff structures of developed countries are concerned, the product range (*all* tariff lines) and preference margins associated with an EU-like mechanism are quite considerable. This is especially so in agriculture: Here, a linkage would grant duty-free market access – as compared to an OECD *average* MFN tariff of 62 percent (and often considerably more) (UNDP, 2003, p.115) under the general GSP.

However, both the preference range and preference margins would invariably shrink as a consequence of a future *single undertaking* under the Doha Round mandate; this is particularly true for Least Developed Countries (LDCs) that stand to gain *unconditional* duty-free market access across 97 percent of tariff lines (WTO, 2005). Yet, even LDCs may retain considerable incentives under a linkage arrangement since developed countries are likely to apply the remaining 3 percent on their *most* sensitive products, which commonly are of considerable importance to LDC exports. But from the point of view of the argument pursued

¹⁴ The GATT1994 tariff reduction formula obliged members in terms of an *average* reduction; many developed countries ‘zeroed’ a number of non-sensitive tariff lines (e.g. certain unprocessed tropical fruits, coffee and other colonial products), so as to have ‘more to spend’ on sensitive product lines (UNDP, 2003). The extension of preference across tariff lines already zeroed has, of course, no effect whatsoever. The *preference product range*, therefore, comprises only tariff lines which have not been zeroed. The *preference margin* is the difference between the most-favoured-nation tariff rate and the preferential tariff rate.

here, that is an advantage: It makes it all the more meaningful to pursue a linkage independently of a new WTO *single undertaking*.

**Fourth Proposition: Linkage should give Traction to the Trade Union Rights of
Presently Unprotected and Unorganised Workers**

Problems related to fundamental rights are not the preserve of developing countries – shortfalls in the US have, for instance, attracted attention in the literature¹⁵. There is no denying, however, that problems are particularly widespread and pressing in the global South: Severe segmentation of labour markets and labour relations means that fundamental rights at work are very unevenly realised, even where core ILO conventions are ratified.

This very segmentation gives rise to a commonly raised concern in the linkage debate: Would it have much traction for the often huge *informal* sector and the growing army of workers engaged in *atypical* employment relations? Is it not the case that the very workers whose rights are in the most acute need of protection are effectively left outside the ambit of a labour-trade linkage? (e.g. Dessing 2001; Kabeer 2004).

These are questions to which linkage proponents have only halfway-house answers. A senior ITUC advisor argues that linkage might benefit marginal workers indirectly:

[Linkage] would strengthen domestic legislation and implementation. When some workers gain strength, others tend to follow – consider how [Northern] organised labour emerged as a force in the late 19th century. There is also a *tip-of-the-iceberg* effect with

¹⁵ Problems are particularly acute in US agriculture (cf. Compa, 2003). In an exploration of what changes ratification of C87 and C98 (and implementation in keeping with ILO ‘case law’) would force on the US labour relations system, Hilgert (2009) found that workers and unions would benefit from, *inter alia*, enhanced freedom from coercion; better access to employer premises; and much stronger protection against prejudice for striking workers.

regard to tackling problems [...] as each part of the problem is addressed, more emerges into the open and can be dealt with in its turn (Howard, *interview*).

While comparisons to 19th century Europe seem somewhat misplaced in the context of post-fordism and globalisation, one cannot rule out that linkage might have a sizeable contagion effect: The stronger formal sector unions are, the more likely it is that governments and capital will have a hard time institutionalising and expanding atypical employment relations and informality.

Meanwhile, it is notably *not* the case that workers in the global South are *either* formally employed and enjoy fundamental rights at work, *or* are informally employed without any rights at all. First, about half the world's working population (whether formally employed or not) is *not* covered by conventions No. 87 and No. 98, since giants such as Brazil, China, India, Mexico and the US have failed to ratify them (Alston, 2004, p. 514). Second, there are certain sections of vulnerable workers whose rights at work are far from sufficiently protected and promoted – even if they are formally employed. Notable amongst these are *agricultural workers*¹⁶. If there is any single discernable group which stands to gain from a labour-trade linkage, this is it. Viewpoints of South African and Brazilian workers rights activists in agriculture tend to confirm that agricultural workers stand to gain significantly from a linkage:

Our experience is that corporate South Africa doesn't listen to the government, trade unions or civil society. They *do* listen to what international markets are saying. But they only care as long as the heat is on them [...] [Linkage] is one of levers we should consider, given the very few alternatives we have, if this is really something that can force business to the table. But it's going to be a very long conversation, not any quick agreement (Marco-Thyse, *interview*).

¹⁶ ILO (1996) recognises that nowhere in the world are agricultural workers' fundamental rights at work realised to any notable degree.

CONTAG [the Brazilian confederation of rural unions] has been positive towards social clauses. It is going to be even more important with the expansion of biofuels exports [...] It is fundamental that we get social clauses into future trade agreements to ensure that ILO conventions are honoured [but] we have to look very carefully at the modalities of such proposals to see that they will really make the right difference (Facco, *interview*).

Rural activists seem to think of the linkage as a measure which, if carefully devised, may strengthen their bargaining hand in the domestic political economy. Experiences with unilateral social clauses show that linkage arrangements may indeed shift domestic bargaining strengths: As a consequence of the (otherwise dubious) unilateral linkage in the US-CBI trade agreement, ‘the potential loss through denial of duty-free privileges introduces an important new element in government and industry thinking’ (Fundt, cited in French & Wintersteen, 2009, p. 161).

In contrast, unionists oriented towards general labour challenges and the problems confronting manufacturing workers, see it differently: COSATU’s support for a multilateral linkage is premised on the assumption that ‘many countries sign ILO conventions knowing there is no enforcement mechanism and we believe these countries must bite the bullet’ (Ehrenreich, *interview*) – such a view is not about reconfiguring domestic power relations.

On the face of it, the prominence of developing countries in agricultural trade seems to make a strong case for linkage. However, some activists believe that a correlation between a sector’s prominent role in trade and widespread violations of workers’ rights actually assuages the case for linkage:

In Brazilian agriculture, bad working conditions are historically rooted and not really trade-related. When [Brazil’s minister of foreign affairs] Celso Amorim was asked by a foreign unionist, during a conference hosted by CUT, why the Lula government hadn’t changed the Brazilian position on the social clause, he replied: ‘Why are you going to

fight child labour in Brazil by the means of trade, when just 5 percent of all child labour is related to exports? Do you really think that's going to change the situation?' That is a good question (Barbosa, *interview*).

We fear it will only cover some sectors of very high visibility, and only parts of production processes. In fact, it is unclear whether the importers of Brazilian agribusiness products have any real concern for people at the grassroots [...] So we need to be careful with all social clauses (Facco, *interview*).

There are two interwoven claims involved here, both of which ought to be considered seriously by linkage proponents. The first is that trade measures will have no traction beyond export-oriented workplaces; the second is that violations of fundamental rights at work are not necessarily caused by trade.

To my mind, the first claim makes sense only if one presumes that linkage will be grafted on *fair competition* logics. This is, as I have previously made clear, a premise that linkage proponents ought to rule out. In fact, once it is established that fair competition logics have no role to play, the claim instantly makes no sense: Then the focus is on a state's obligations under ILO which, of course, make no distinction whatsoever between what goes on in export-oriented production and production for the domestic market.

With regard to the second claim, it might be true that rights violations are not *caused* by trade conditions – especially in agriculture, where workers have been at the proverbial 'bottom' all the while. But it is equally true that trade rarely does much to deter rights violations either¹⁷. And most importantly: If trade is not the main driver of rights violations, it does not mean that trade measures have no role to play in the struggle for better protection of workers' rights.

¹⁷ In the age of 'corporate social responsibility' hysteria, it certainly happens that trading contributes to the protection of labour rights. However, genuine CSR efforts are few and far between, and their ability to affect structurally significant change is dubious (cf. French & Wintersteen, 2009).

It remains the case, of course, that only *traded produce* may be subject to trade measures. However, linkage proponents may argue that this is both *warranted* – because of exporters’ increasing reliance on complex sourcing arrangement in the domestic sphere – and that it enhances the potential *effectiveness* of linkage (in terms of compelling governments to protect rights in both trade and non-trade-related production). However, it is quite the contrary: The common exigencies of having to sustain and expand exports make the incentives associated with linkage particularly powerful *because* its focus must be on traded produce.

A question that should really preoccupy linkage proponents is whether or not linkage will give traction to the trade union rights of marginal workers – a question which I address in the following discussion, focusing on Brazilian and South African agricultural workers’ associational powers (or as expressed in an aphorism of ILO on core labour standards: ‘their ability to claim a fair share’). As will become evident, the challenge has nothing to do with the linkage’s reliance on trade measures applicable only to traded produce, but to the very traction of core labour standards – once more, the ILO side of the story.

The case of South Africa: Model legislation, and so what?

After the transition from *apartheid*, South Africa put in place a pluralist yet very progressive labour relations system which, in many aspects, is second to none in the developing world. Yet, in terms of actual *realisation* of freedom of association and the right to bargain collectively, South African farm workers are no better off than peers in other developing countries: Less than 5 percent of farm workers are unionised and only a negligible fraction are covered by collective agreements (Pahle, 2011a)¹⁸.

A large part of the problem rests with South Africa's dubious enforcement machinery. The poorly resourced labour inspectorate does little to prevent farmers from isolating workers from unions, and its capacity, quality and integrity is questioned by activists. Significantly, the inspectorate plays no meaningful role in terms of preventing farmers from violating workers' freedom of association. Such shortfalls compound the very adverse labour market and structural features in rural labour relations: Alongside increasing rates of casualisation and externalisation, a key trait stifling the organisation of farm workers is the persistence of neo-paternalist relations. Unfortunately, the approaches, priorities and cultures of unions also serve to stifle the realisation of farm workers' union rights: COSATU has permitted an utter organisational dislocation of farm workers, and its affiliate presently responsible for organising farm workers is considered to be inept, uncommitted and unimaginative in its efforts.

The more fundamental problem, however, is that South Africa's labour relations system is premised on the faulty assumption that labour legislation borne out of urban labour relations will suffice to cast rural unions in the role of effective custodians of individual workers' freedom of association. But structural features of the agricultural sector collude with union ineptness to prevent this from happening. Even when the assumption of the labour

¹⁸ While one should not place too much emphasis on quantitative measures (e.g., Compa 2003), union density amongst agricultural workers in India is in the vicinity of 7 percent (Singh & Zammit, 2004); in Ghana around 20 percent (Pahle, 2011a) and in Brazil above 24 percent (Pahle, 2011b).

relations regime is that individual workers' freedom of association *is* the business of trade unions, farm workers' organisational rights are not actionable.

The above points give rise to the question: Do South Africa's measures of implementation represent 'compliance' with its core labour standards? If one were to follow the lead of one of COSATU's leaders, the answer would be affirmative:

In any global regulatory environment, you can only put in place those steps that you can measure. How do you measure the standard of organization – and who do you hold to account for the lack of organization? You *can* measure the laws themselves. Beyond that there's got to be a process of organising access to those rights (Ehrenreich, *interview*).

ILO case law, meanwhile, suggests that the country can, in principle, be deemed to be in non-compliance: Firstly, there is no doubt that 'implementation' of an obligation extends well beyond legislation (Rodgers *et al.*, 2009, p. 21). Secondly, ILO case law does not suggest that the presumption in the South African enforcement machinery which affects agricultural workers' so adversely – namely, that the policing of individual workers' freedom of association is the prerogative of trade unions (irrespective of the extent to which they fulfil this task), and not a matter for the labour inspectorate – is necessarily in keeping with international labour law. The Committee on Freedom of Association, for instance, has made it clear that

governments should take the necessary measures to enable labour inspectors to enter freely and without previous notice any workplace to carry out any examination [...] to satisfy themselves that the legal provisions – including those relating to anti-union discrimination – are being strictly observed (ILO, 2006, p. 167, para. 834).

However, the arbitrariness of ILO supervision is reflected in the fact that, since the transition to the democracy, CEACR has not issued a single negative ‘observation’ (or direct request) pertaining to the situation in South Africa’s agricultural sector. This fact reflects the crucial question about where ILO’s supervisory bodies, in their actual adjudication, draw the line between compliance and non-compliance – if they are indeed inclined or at freedom to draw any such line (which a linkage invariably requires).

As far as the trade union rights of South African agricultural workers are concerned, a linkage will certainly have no traction unless ILO’s supervisory system shifts from a near-blind staring at paper legislation towards more decisive attention on tacit enforcement practice¹⁹.

The case of Brazil: Laws contravening ILO Conventions

There is no dearth of unions in the Brazilian countryside – in fact, union density of farm workers is quite high, and every second formally employed farm worker is covered by a collective agreement. However, such quantitative measures mask more than they reveal about the extent of agricultural workers’ associational power: Substantive terms and conditions in agricultural employment – poor terms and employers’ disrespect for collective agreements; often inhumane working conditions; and a high prevalence of violence and slavery – illustrate that the realisation of wage workers’ union rights is shallow and markedly uneven (Pahle, 2011b).

This is, to a considerable extent, a reflection of Brazil’s distinctly corporatist labour relations system (which is incompatible with ILO Convention 87): By granting singular unions effective monopolies of representation in occupational-territorial remits determined by the state, it constrains workers’ freedom of association. The problems are particularly

¹⁹ Interestingly, however, CEACR has requested the South African government ‘to indicate in its next report more specific information on trade union membership density in the agricultural sector as well as the number of collective agreements concluded in that sector and their coverage’ (ILO-CEACR, 2009).

pronounced for agricultural wage workers, since the peculiar rural application of corporatist principles has forced them to share unions with employer-smallholders and family farmers, whose interests often conflicts or compete with those of farm workers (*ibid.*)

What difference would a linkage make in this context? Assuming that a linkage would indeed compel Brazil to ratify and implement the provisions of C87 (which may or may not be the case), the systemic impacts would certainly be far reaching (Jacobsen, *interview*). Agricultural workers would presumably be free to join and establish unions of their own choosing – and not be forced to continue their debilitating union cohabitation with ‘patron-smallholders’ and ‘family farmers’. Brazil’s current implementation is non-compliant with C98 (which it *has* ratified): In a system which generally invests its specialised labour courts with too much intervening power, both employers and unions may solicit binding arbitration *unilaterally*, which severely compromises workers’ right to strike. A linkage would presumably undo this, too.

On the face of it, such inferences illustrate how the linkage idea might have clear purpose and traction for workers whose fundamental rights at work are currently denied. But things are certainly not that straightforward. Notably, the fact of the matter is that a very sizeable share of the Brazilian union movement emphatically does *not* want domestic legislation to be brought into conformity with C87 and C98. A recent labour law reform proposal (devised by Lula’s administration), failed to make it to the voting stage. Even a considerable number of unions affiliated with CUT – for whom reform of the Brazilian labour relations system was a formative objective – have become less than enthusiastic about reform. In a situation of stagnating or falling membership, even radical unions have taken to favouring corporatist arrangements for the way in which they prop up the finances of recognised unions.

The official unions in agriculture have, unsurprisingly, opposed reform. CONTAG’s national secretary for wage workers maintains that ‘reform is not the way forward – it would

unleash a factionalist splintering of the movement which, ultimately, would make matters worse for wage workers and smallholders alike' (Filho, *interview*).

Here, one comes face to face with a delicate problem confronting internationalist linkage proponents: When unions themselves favour domestic legislation which contravenes core labour standards, a linkage invariably gives rise to insoluble conflicts between the principles of *universality* and *tripartism*. It has indeed been noted that, in ILO, 'the contradictions between the principles of universality and tripartism are likely to become acute' (Hepple, 2005, p.54). 'Universality' here refers to an approach whereby the answer to the question of compliance is *not* something to be negotiated between governments, employers and unions, but should be established by the adjudication of legal experts, the principal exponent of which is CEACR. A linkage crafted on the premises of *universality* would essentially overrule the preferences of Brazil's organised labour (which is well represented in ILO's upper echelons, of course).

Linkage proponents might argue, with some merit, that trade unions in Brazilian agriculture are not particularly representative of agricultural wage workers. Indeed, rural unions' disinclination to accept legal reform shows exactly how a linkage may strengthen the bargaining hand of those presently dispossessed; hence, catering for the principle of *tripartism* in these circumstances would amount to a surrender of the organisational rights of agricultural wage workers.

But this too is rendered tenuous by the complexity of Brazil's rural trade union politics. For there are strong oppositional, semi-legal unions (for *wage workers only*) in Brazil, and one of their foremost leaders, while being a militant advocate for legislative reform, promotes a kind of reform that is hardly in keeping with C87:

There is no dispute that we [the wage workers-only unions] are actually perfecting *unicidade* [the system of representational monopoly] [...] What's at stake is the way in

which the occupational categories are demarcated. We demand that agricultural wage workers are recognised as a category on its own [i.e. not just as 'agricultural workers' having to share unions with smallholders] (Neves, *interview*).

This situation points to a key substantive tension in the relationship between *universality* and *tripartism*. In certain circumstances, core labour standards – as conceived of in international labour law and interpreted by CEACR, in particular – can be seen to stand in the way of labour power:

ILO's understanding of freedom of association is distinctly liberal, which has important implications for the creation of *powerful* as opposed to *free* trade unions. In this liberal conceptualization, many labour regulations that limit union fragmentation and that increase union bargaining power are considered to be violations of freedom of association (Carraway, 2006, p. 211; *italics in original*).

Conclusion

Drawing on viewpoints voiced by workers' rights activists in South Africa and Brazil, this paper has presented four key propositions toward an internationalist labour-trade linkage, each pointing to a certain property that a linkage ought to possess, or a challenge it must tackle, if it is to make much sense for workers' rights activists. Furthermore, the extent to which these propositions may be accommodated by the ILO and WTO regimes was explored. The tasks confronting linkage proponents are truly daunting. The less controversial of the two regimes, ILO, lacks the kind of supervisory mechanisms that linkage would require.

It can be argued that while a linkage idea crafted around these propositions may forestall a return to the defeating discursive politics of the 1990s, it certainly makes for a

highly complex ‘package’ which will not lend itself to constituency mobilisation, let alone popular campaigning. But this points straight to the essence: An ILO-WTO alignment construed so as to meaningfully address the challenges which confront Southern labour, cannot be instituted through a single policy-making feat, compelled by a broad popular campaign. The particular regime alignment called for can only come about through a series of discrete steps, each of which requires *not* a struggle for once-off adoption in the context of a single undertaking, but gradualist progress along several flanks.

These struggles include a cumbersome recalibration of ILO’s supervisory functions, and a gradual ‘multilateralisation’ of the positive conditionality approach of which the EU’s GSP scheme represents an embryo. The great prize of pursuing such a strategy of several parallel and gradualist regime changes is that it would unhinge the linkage from becoming a bargaining chip in a possibly detrimental single undertaking at WTO.

The argument pursued here leads to an apparently paradoxical conclusion: An ILO-WTO alignment that meaningfully address the challenges which confront Southern labour can only be advanced by discarding the campaign for a social clause as a single policy feat to be enacted at WTO. Or, put differently: by *not* bringing the workers’ right back into multilateral negotiations. That is the only way to salvage the radical-reformist potential of linkage.

REFERENCES

Interviews

Busser, Esther

Interviewed April 19th 2007 in Geneva

Busser heads the Geneva liaison office of the *International Trade Union Confederation* (ITUC)

Howard, James

Interviewed April 25th 2007 in Brussels

Howard is director of economic and social policy at *International Trade Union Confederation* (ITUC)

Barbosa, Alexandre de Freitas

Interviewed May 12th 2008 in São Paulo

At the time, Barbosa served as chief researcher at *Instituto Observatorio Social*, a union-based think tank focusing on globalisation and labour rights.

Facco, Luiz Vicente

Interviewed March 11th 2008 in Brasilia

Facco is international relations secretary at *Confederação Nacional dos Trabalhadores e Trabalhadoras na Agricultura* (CONTAG), the national confederation of [official] rural trade unions.

Felicio, João Antonio

Interviewed May 13th 2008 in São Paulo, Brazil

Felicio is international relations secretary at *Central Unica dos Trabalhadores* (CUT), Brazil's biggest trade union central.

Jacobsen, Kjeld

Interviewed May 1st 2008 in São Paulo

Between 1994 and 1999, Jacobsen was international relations secretary at *Central Unica dos Trabalhadores* (CUT). He presently

works as independent consultant and is an associate of the union-based *Instituto Observatorio Social*.

Sakamoto, Leonardo

Interviewed May 9th 2008 in São Paulo

Sakamoto is director at *Reporter Brasil*, a research-based NGO monitoring practices and policies related to the use of forced labour in agriculture

Dicks, Rudi

Interviewed March 11th 2009 in Johannesburg

Dicks is director at the *National Labour and Economic Institute* (NALEDI), a COSATU-owned think tank

Ehrenreich, Tony

Interviewed February 27th 2009 in Cape Town

Ehrenreich is the Provincial Secretary at *Confederation of South African Trade Unions* (COSATU) in Western Cape

Goosens, Boudewijn

Interviewed March 3rd 2009 in Cape Town

Goosens is the director of *Fair Trade South Africa*

Makgetla, Neva Seidman

Interviewed March 19th 2009 in Johannesburg

Makgetla was formerly the head of policy at COSATU (2000-2006). She is currently sector strategies coordinator at the South African Presidency.

Marco-Thyse, Sharron

Interviewed May 11th 2009 in Stellenbosch.

Marco-Thyse is director at *Centre for Rural Legal Studies* (CRLS), a Western Cape NGO working to equip organisations of rural dwellers and workers with legal and political know-how.

Naidoo, Lalitha

Interviewed April 20th 2009 in Grahamstown.

Naidoo is director at *East Cape Agricultural Research Project* (ECARP), an NGO working to empower rural workers and dwellers in the Eastern Cape

Pekeur, Wendy

Interviewed May 5th 2009 in Stellenbosch.

Pekeur is the secretary general of *Sikhula Sonke*, an independent Western Cape trade union.

Rudin, Jeff

Interviewed March 6th 2009 in Cape Town

Rudin is national researcher at *South African Municipal Workers Union* (SAMWU)

Shabodien, Fatima

Interviewed May 5th 2009 in Stellenbosch.

Shabodien is director at the *Women on Farms Project*, an NGO working to empower women working and living on farms in Western Cape.

Literature

Alston, P (2004): 'Core labour standards and the transformation of the international labour rights regime' *The European Journal of International Law*, Vol. 15, No. 3, pp. 457-521.

— (2005): 'Facing Up to the Complexities of the ILO's Core Labour Standards Agenda' *The European Journal of International Law*, Vol. 16, No. 3, pp. 467-480.

Anner, M. (2001): *The Paradox of Labor Transnationalism: Northern and Southern Trade Unions and the Campaign for Labor Standards in the WTO*. Paper presented to the Annual Meeting of the American Political Science Association; San Francisco, 2001.

Barry, C. & S. Reddy (2008): *International Trade and Labour Standards: A Proposal for Linkage*. New York: Columbia University Press.

Bartels, L. (2003): 'The WTO enabling clause and positive conditionality in the European Community's GSP programme'. *Journal of International Economic Law*, Vol. 6, No. 2, pp. 507-532.

Busser, E. (2007): 'Why NAMA is a trade union issue: Negotiations, policy implications, and trade union responses'. *Labour, Capital and Society*, Vol. 40, No.1-2, pp. 159-189.

Carraway, T. (2006): 'Freedom of association: Battering ram or Trojan horse?' *Review of International Political Economy*, Vol. 13, No. 2, pp. 210-232.

Chan, A. & R. Ross (2003): 'Racing to the Bottom: International Trade without a Social Clause'. *Third World Quarterly*, Vol. 24, No. 6 (2003), pp. 1011-1028.

Chenoy, J. & A. Chenoy (Eds.) (1996): *Labour, Environment and Globalization*. CEC: Dehli.

Compa, L. (2003): 'Assessing Assessments: A survey of efforts to measure countries' compliance with Freedom of Association standards'. *Comparative Labor Law & Policy Journal*, Vol. 24, pp. 283-320.

Cordella, T. & I. Grilo (2001): 'Social dumping and relocation: Is there a case for imposing a social clause?' *Regional Science and Urban Economics*, Vol. 31, pp. 643-668.

Dessing, M. (2001): *The Social Clause and Sustainable Development*. ICTSD Resource Paper No. 1/2001. Geneva: ICTSD.

French, J. & K. Wintersteen (2009): 'Crafting an International Legal Regime for Worker Rights: Assessing the Literature since the 1999 Seattle Protests'. *International Labor and Working Class History*, No. 75, pp. 145-168.

Gallagher, K. (2008): 'Understanding developing country resistance to the Doha Round'. *International Review of International Political Economy*, Vol. 15, No. 1, pp. 62-85.

GATT (1979): *[The Enabling Clause] Differential and more favourable treatment: reciprocity and fuller participation of developing countries*. L/4903. Geneva: WTO

Green Left Weekly (2000): 'IMF/WB/WTO – Fix it or Nix it?' *Green Left Weekly*, No. 402, April 19 2000.

Hensman, R. (2008) 'Fine tuning the linkage proposal' postscript in Barry, C. & S. Reddy: *International Trade and Labour Standards: A Proposal for Linkage*. New York: Columbia University Press

— (2001) 'World Trade and Workers' Rights: In Search of an Internationalist Position'. *Antipode*, Vol. 3. No. 3, pp. 427-450.

Hepple, B. (2005): *Labour Laws and Global Trade*. Oxford & Portland: Hart.

Hilgert, J. (2009): 'Mapping the Boundaries of Human Rights at Work: Questioning how the ILO Defines Labor Rights and Social Justice' *Labor Studies Journal*, Vol. 34, No.1; pp. 21-38.

ICFTU (1999a): *Building Workers' Rights into the Global Trading System*. Brussels: ICFTU.

— (1999b): *Enough Exploitation is Enough: A Response to the Third World Intellectuals and NGOs Statement Against Linkage* (TWIN-SAL). Brussels: ICFTU.

— (1994): *International Workers' Rights and Trade: The Need for Dialogue*. Brussels: ICFTU.

IOE (2006): *The Evolving Debate on Trade and Labour Standards*. IOE Information Paper. Geneva: International Organization of Employers.

ILO-CEACR (2010a): *Individual Observation concerning Right to Organise and Collective Bargaining Convention 1948 (No. 98) Brazil*. ILOLEX document no. 062010BRA098. Geneva: ILO.

— (2010b): *Individual Direct Request concerning Right to Organise and Collective Bargaining Convention 1948 (No. 98) Brazil*. ILOLEX document no. 092010BRA098. Geneva: ILO.

— (2009): *Individual Direct Request concerning Right to Organise and Collective Bargaining Convention, 1949 (No. 98) South Africa*. Document No. (ilolex): 092009ZAF098.

— (2008): *Individual Observation concerning Right to Organise and Collective Bargaining Convention 1948 (No. 98) Brazil*. ILOLEX document no.062008BRA098. Geneva: ILO.

— (2007): *Individual Observation concerning Rural Workers' Organisation Convention, 1975 (No. 141) Brazil*. ILOLEX document no. 062007BRA141. Geneva: ILO.

ILO (1996): *Wage workers in agriculture: Conditions of employment and work*. Geneva: ILO.

— (1998): *Declaration on Fundamental Principles and Rights at Work*. Geneva: ILO.

— (2006): *Freedom of Association. Digest on the decisions and principles of the Committee on Freedom of Association and the Governing Body of the ILO*. Fifth revised edition. Geneva: ILO.

— (2008): *ILO Declaration on Social Justice for a Fair Globalization*. Geneva: ILO.

Kabeer, N. (2004): 'Globalization, labour standards and women's rights: Dilemmas of collective (in)action in an interdependent world'. *Feminist Economics*, Vol. 10, No. 1, pp. 3-35.

Klare, K. (2002) 'The horizons of transformative labour and employment law' in J. Conaghan; R. Fischl & K. Klare (eds.). *Labour law in an era of globalization*. Oxford, OUP; pp. 3-29.

Kolben, K. (2006): 'The New Politics of Linkage: India's Opposition to the Workers' Rights Clause'. *Indiana Journal of Global Legal Studies*, Vol. 13, No. 1, pp. 225-259.

- Lim, H. (2001): 'Trade and Human Rights: What is at Issue?' *Journal of World Trade*, Vol. 35, no 2, pp. 284-288.
- Maran, M. (2001): 'Statement by the Honourable Murasoli Maran, [India's] Minister of Commerce and Industry' Ministerial Conference, Doha, 9-13 November 2001. WT/MIN (01)/ST/10.
- Munck, R. (2002): *Globalisation and Labour: The New 'Great Transformation'*. London: Zed Books.
- OECD (1996): *Trade, Employment and Labour Standards: A Study of Core Workers' Rights and International Trade*. Paris: OECD.
- Pahle, S (2011a): 'Stepchildren of liberation: South African farm workers' elusive rights to organise and bargain collectively'. Manuscript/PhD thesis, NORAGRIC, Norwegian University of Life Sciences, Ås, Norway
- (2011b): 'Out of mind – out of sight? The troubled trade union rights of Brazil's agricultural workers' Manuscript/PhD thesis, NORAGRIC, Norwegian University of Life Sciences, Ås, Norway
- (2010): 'The rise and demise of the social clause proposal in the 1990s. Implications of a discourse theoretical reading'. *Labour History*, Vol. 51, No. 3, pp. 389-410.
- Petersmann, E. (2004): 'The human rights approach advocated by the UN High Commissioner for Human Rights and by the International Labour Organization: Is it relevant for WTO law and policy?' *Journal of International Economic Law*, Vol. 7, No. 3; pp. 605-627.
- Ramaiah, Dr B.B. (1996): *India's Statement to the [WTO] Ministerial Conference, Singapore 9-13 December 1996*. WT/MIN/(96)/ST/27.
- Rodgers, G; E. Lee; L. Swepston & J. van Daele (2009): *The International Labour Organization and the Quest for Social Justice, 1919-2009*. Geneva: International Labour Office.
- Singh, A. & A. Zammit (2004): 'Labour standards and the race to the bottom: Rethinking globalization and workers' rights from developmental and solidaristic perspectives'. *Oxford Review of Economic Policy*, Vol. 22, No. 1, pp. 85-104.
- Smythe, E. (2007): 'Democracy, development and WTO's legitimacy challenge' in Lee, D. & R. Wilkinson (Eds.): *The WTO after Hong Kong. Progress in and Prospects for the Doha Development Agenda*. London and New York: Routledge, pp. 205-225.
- UNDP (2003): *Making Global Trade Work for People*.
- UN-OHCHR: *Human Rights and World Trade Agreements. Using General Exception Clauses to Protect Human Rights*. Geneva: United Nations/Office of the High Commissioner for Human Rights.
- Van Roozendaal, G. (2002): *Trade Unions and Global Governance: The Debate on a Social Clause*. London: Continuum.

Wisskirchen, A. (2005): 'The standard setting and monitoring activity of the ILO: Legal questions and practical experience'. *International Labour Review*, Vol. 144, No. 3, pp. 253-289.

WTO (2005): Hong Kong Ministerial Declaration. Geneva: WTO.

— (2001): *Doha Ministerial Declaration*. Geneva: WTO

— (1998): *United States – Import Prohibition of Certain Shrimps and Shrimp Products*. WT/DS58/AB/R. Report of the Appellate Body. Geneva: WTO.

— (1996): *Singapore Ministerial Declaration*. Geneva: WTO