



School of Law

GLOBALIZATION AND THE PURSUIT OF DECENT WORK: CAN THE ILO DELIVER?

**Harry G. Hutchison,
George Mason University School of Law**

**George Mason University Law and
Economics Research Paper Series**

14-51

This paper is available on the Social Science Research Network
at <http://ssrn.com/abstract=2510955>

GLOBALIZATION AND THE PURSUIT OF DECENT WORK:

CAN THE ILO DELIVER?

Harry G. Hutchison*

I. INTRODUCTION

Evidence has emerged signifying that globalization is a relatively new phenomenon, arguably one that has had a devastating effect both on developing countries and particularly the poor within such countries.¹ Whether globalization is a relatively recent development or not, it appears that as nations and nongovernmental organizations focus on international competitiveness and the correlative commitment to liberalization and privatization, and the acceptance of interdependencies and integrations among the world's major economies,² these moves have consequences. Taken together with (1) the pursuit of trade liberalization by the West (the quest for open markets for Western products and capital markets), (2) increased international inequalities with respect to capital stock and flows favoring the richest countries,³ (3) the simultaneous rise in trade protection that reduces or constrains access by developing countries to Western markets,⁴ and (4) the incipient and growing emphasis on technology and innovation by many countries and firms including the emergence of information and communication technologies (ICT) including the world wide web and the internet,⁵ the prospect of inequality in relationships and income advances.⁶ Further propelling these developments, it is argued that major international institutions such as the World Bank and the IMF have, unsurprisingly,⁷ advanced the agenda of the West at the expense of certain workers and consumers.⁸ These various moves, so the story goes, have the capacity to redistribute income toward individuals who possess scarce skills and away from individuals without such skills despite the fact that the emphasis given to trade and international competitiveness as causal factors for some or all of these developments, may be misplaced since trade only involves between 10 and 20 percent of GDP.⁹ Although the extent of the internationalization of business activity is often exaggerated¹⁰ it seems clear that it is difficult for some nation-states to manage the trade-offs between domestic economic liberalization and international integration.¹¹ Lurking in the background, the evidence

*Visiting Fellow, Harris Manchester College, University of Oxford, Professor of Law, George Mason University School of Law. This paper was submitted as part of the completion of Postgraduate studies at the University of Oxford's History, Politics and Society Programme on Globalization.

¹ See e.g., JOSEPH STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS*, ix (2003)

² PAUL HIRST, GRAHAME THOMPSON AND SIMON BROMLEY, *GLOBALIZATION IN QUESTION* 102-103 (2009, 3rd ed.)

³ *Id.* at 108.

⁴ See generally Stiglitz at ix-xvi & 22.

⁵ HIRST, THOMPSON AND BROMLEY, *supra* note ___ at 11 (2009, 3rd ed.)

⁶ *Id.* at 110-113.

⁷ See Stiglitz, at 7 (stating that "even when not guilty of hypocrisy, the West has driven the globalization agenda, ensuring that it garners a disproportionate share of the benefits at the expense of the developing world.")

⁸ Stiglitz at 6. See also *id.* at 85 (asserting that IMF policy has too often underestimated the benefits of the market and the costs of its programs, which include rising unemployment arguably tied to information asymmetries as opposed to the presence of unions and or government minimum wages).

⁹ HIRST, THOMPSON AND BROMLEY, *supra* note ___ at 125.

¹⁰ *Id.* at 99

¹¹ *Id.* at 137.

shows that worldwide inequality has increased rather substantially between the early nineteenth and late twentieth centuries¹²

On the other hand, globalization has been accompanied by the instantiation of new institutions coupled with renewed attention being given to existing intergovernmental institutions such as the International Labor Organization that are designed to deal with problems that are either initiated or exacerbated by globalization.¹³ The ILO program is advanced around the world through its promotion of “decent work,”¹⁴ an apparently ambiguous slogan calculated to level income inequalities within and between nations. It is the objective of this paper to briefly explore the promise, possibilities and failures of the ILO in an era that apparently features an increasing acceptance by elite opinion formers, banks and financial institutions, and Western world leaders of the presumed value and presumed legitimacy of increased trade integration.

Part II examines the arguments for increased dependence on the ILO for purposes of promulgating standards calculated to achieve “decent work” primarily within the context of Convention 131, which is aimed at fixing minimum wages. In addition, Part II looks at the ideology that appears to be inescapably attached to minimum wage advocacy. Part III reviews the economic evidence in order to assess the possibility that the ILO and its accompanying commitment to minimum wages can actually be a vehicle to achieve “decent work” in our globalized world.

II. THE ILO AND THE QUEST FOR “DECENT WORK”

Given the difficult economic currents percolating throughout the world, many analysts suggest that the “real question is how labor law can respond to the challenges presented by globalization. In order to promote an efficacious labor law . . . [it is argued that a] new global goal should be added to the labor law agenda – decent work with a living wage.”¹⁵ Emerging as a category of global standard setting, public organizations like the ILO have “arisen as the consequence of growing international regulation and governance of economic matters,”¹⁶ a development that reflects the intuition by some that “there are good economic and political grounds for arguing that the international economy is by no means ungovernable.”¹⁷ As thus understood, the ILO surfaces as a multilateral agency designed for a specific dimension of activity—the initiation and harmonization of labor standards.¹⁸ This designation as a vehicle for harmonization appears to operate in concert with the intuition that we, all of us, live in a complex and interconnected world,¹⁹ a viewpoint that implies that national boundaries cannot be seen as

¹² *Id.* at 149.

¹³ STIGLITZ *supra* note ___ at 9- 10.

¹⁴ *Id.* at 10-11.

¹⁵ Michael Zimmer, *Decent Work with a Living Wage*, in GLOBAL LABOR MARKET: FROM GLOBALIZATION TO FLEXICURITY, 61, 61 (2008, Roger Blanpain and Michele Tiraboschi). Available at SSRN: <http://ssrn.com/abstract=1072083>

¹⁶ HIRST, THOMPSON, AND BROMLEY, *supra* note ___ at 121.

¹⁷ *Id.* at 238

¹⁸ *Id.*

¹⁹ Martha C. Nussbaum, *Introduction: Cosmopolitan Emotions?*, in *For Love of Country?: in a New Democracy* Forum on the Limits of patriotism x, xviv (1996, 2002, ed., Joshua Cohen).

morally salient and one that suggests the primacy of world citizenship rather than national citizenship as the normative pivot point for analysis and the attainment of human progress.²⁰

This perspective appears to embrace global planning, global knowledge, and the recognition of a shared future²¹ and bristles against the notion that standards ought to be tied to the particularities of birth and limited to the geographic boundaries of the nation-state. Consistent with the virtually limitless capacity of humans to believe that human history is a kind of evolutionary process leading to progress,²² a perspective made untenable by the long-exploded errors of the 20th century tied to progressive myths,²³ it appears that believers in progress have asserted that the “1998 Declaration of the ILO setting forth fundamental labor principles should be expanded to include decent work with a living wage. The goal of decent work with a living wage, so it is argued, can maintain the viability of labor law because this objective can be an organizing principle for a broad array of unions and workers worldwide as well as other interested groups to push for its implementation as a matter of their own countries’ regional and national law.”²⁴

In recent years this push for decent work and living wages has been propelled in part as a consequence of the ongoing decline in unionism in Western Europe²⁵ and the United States.²⁶ Within Europe, “[t]he decline has not been uniform but has instead been concentrated in the larger countries, particularly Britain, Germany, and Italy.”²⁷ To the extent that this perspective prevails, it appears at the relevant parts of the ILO approach ought to be required to submit to skeptical analysis. The 1998 Declaration of the ILO, in pertinent part, asserts:

Whereas economic growth is essential but not sufficient to ensure equity, social progress and the eradication of poverty, confirming the need for the ILO to promote strong social policies, justice and democratic institutions; . . . Whereas, in seeking to maintain the link between social progress and economic growth, 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 shares of the wealth, which they have helped to generate, and to achieve fully their human potential; . . . Whereas it is urgent, in a situation of growing economic interdependence to reaffirm the immutable nature of the

²⁰ Martha C. Nussbaum, *Patriotism and Cosmopolitanism*, in FOR LOVE OF COUNTRY?: IN A NEW DEMOCRACY FORUM ON THE LIMITS OF PATRIOTISM 3, 11 (1996, 2002, ed., Joshua Cohen)[hereinafter, Nussbaum, Patriotism and Cosmopolitanism].

²¹ Nussbaum, *Patriotism and Cosmopolitanism*, *supra* note ___ at 11-12.

²² JOHN GRAY, *SILENCE OF THE ANIMALS: ON PROGRESS AND OTHER MODERN MYTHS* 78 (2013)

²³ *Id.* at 79.

²⁴ Zimmer, *supra* note ___ at 61.

²⁵ John T. Addison, Alex Bryson, Paulino Teixeira, Andre Pahnke, *Slip Sliding Away: Further Union Decline in Germany and Britain*, IZA INSTITUTE FOR THE STUDY OF LABOR (Bonn, Germany) Discussion Paper No. 4760. Available at SSRN: <http://ssrn.com/abstract=1556548> 1, 2(February 2010).

²⁶ See e.g., Harry G. Hutchison, *What Workers Want or What Labor Experts Want Them to Want?*

26 *Quinnipiac Law Review* 799 (2008) (showing that American private sector density has fallen from around 35 percent in the early 1950s to about 7.4 percent in 2006.) [hereinafter, Hutchison, *What Workers Want*]

²⁷ Addison, Bryson, Teixeira, Pahnke, *supra* note ___ at 2.

fundamental principles of and rights embodied in the Constitution of the Organization and to promote their universal application;²⁸

Among the ILO's fundamental conventions, Convention 131 [Minimum Wage Fixing Convention, 1970 (No. 131)] states in relevant part of its preamble that "Noting the terms of the Minimum Wage-Fixing Machinery convention, 1928, and the Equal Remuneration Convention, 1951, which have been widely ratified, as well as the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951, and considering that these Convention (sic) have played a valuable part in protecting disadvantaged groups of wage earners, and considering that the time has come to adopt a further instrument complementing these Conventions and providing protection for wage earners against unduly low wages, which, while of general application, pays special regard to the needs of developing countries . . ." Article 1 of Convention 131 states that "Each member of the International Labor Organization which ratifies this Convention undertakes to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate." This standard setting approach appears to be consistent with contemporary efforts to raise the minimum wage or to introduce so-called living wages as part of an effort to achieve decent work. Capturing large swaths of the American public, it can be argued that "decent work with a living wage can become a rallying cry for pressure on employers who operate around the world. It will be the pressure of all those forces that might work to level the presently tilted playing field of the global economy."²⁹ With such claims in view, it appears that Convention 131 sets forth a hopeful hypothesis that through statutory enactment and bureaucratic intervention protection from unduly low wages and the furtherance of equality for members of all groups of wage earners, the national-state, in concert with others can reduce inequality and provide decent work. Before turning to the evidence a brief exposition of the ideology underlying minimum wage advocacy is in order.

The ideological underpinnings of minimum wage law and labor law reform have been widely exposed as originating with a wide ranging and disparate group of commentators and observers drawn from a number of western countries who can be called progressives. On one account, "the original progressives . . . were not a one-dimensional band of "heroic liberals snatching helpless social science from the clutches of vile Social Darwinists."³⁰ In reality, early "progressives were, in fact, simultaneously conservative and liberal. Moreover, many were enthusiastic biologizers, and most were elitist."³¹ On the one hand, "their liberal (progressive) instincts led them to call for social justice, to uplift the poor and disenfranchised."³² On the other, "their conservative instincts led them to call for social control, to impose order upon the causes of economic and social disorder. As elitists, the progressives believed that intellectuals should guide social and economic progress, a belief erected upon two subsidiary faiths: a faith in the disinterestedness and incorruptibility of the experts who would run the welfare state

²⁸ ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK AND ITS FOLLOW-UP, *available at* <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>.

²⁹ Zimmer, *supra* note ___ at 61.

³⁰ Donald C. Bellomy, "Social Darwinism" Revisited, 1 PERSP. AM. HIST. 1, 18 (1984).

³¹ David E. Bernstein & Thomas C. Leonard, *Excluding Unfit Workers: Social Control Versus Social Justice in the Age of Economic Reform*, 72 LAW AND CONTEMPORARY PROBLEMS, 177, 179 (2009).

³² *Id.* at 179.

they envisioned, and a faith that expertise could not only serve the social good, but also identify it.”³³ Much evidence shows that labor reformers viewed

the working poor and other economically marginal groups with great ambivalence. The reformers depicted the poor as victims in need of uplift but also as threats requiring social control. This fundamental tension was ultimately resolved by the appeal to hereditary fitness as a scientific basis for distinguishing workers worthy of uplift from workers who should be regarded as threats to the health and wellbeing of the economy and of society.³⁴

Although “progressives did, of course, advocate for labor, they also depicted many groups of poor workers as undeserving of uplift, indeed as the cause rather than the consequence of low wages.”³⁵ Similarly, progressives advocated women’s rights, while simultaneously promoting “a vision of economic and family life that would remove women from the labor force, the better to meet women’s obligations to be “mothers of the race” and to defer to the male breadwinner, a model also known as the “family wage.”³⁶ Taken as a whole, it seems clear that “Progressive economists and their reform allies offered uplift only to those groups they deemed deserving of work, arguing that in the name of social control the labor force should be rid of unfit workers: the immigrants, African Americans, women, and other “defectives.”³⁷ Arising out of this background and responding to “progressive currents percolating in New Zealand, Britain and the United States, minimum wage regulation became firmly established in the U.S. and other countries by the 1930s and featured legislative as well as judicial intervention in the setting of wages and hours” for first women and young adults and subsequently all workers.³⁸

Given this backdrop, the next section considers the ILO’s hypothesis that minimum wage regimes that mirror its standard-setting approach, leads inevitably to “decent work” in a globalized world. Part III considers the evidence associated with the enactment of minimum wage law on marginalized groups by considering evidence from the United States, the OECD, Pre-Mandela South Africa, and Russia.

III. MINIMUM WAGES IN THE MIRROR OF THE EVIDENCE

Space does not permit an examination of the entire body of evidence available on the capacity of minimum wage law to remedy low wages. It seem manifest that many countries have introduced minimum wages in harmony with the progressive notion that minimum wages diminish income inequality caused by a variety of forces while simultaneously ensuring a “living

³³ *Id.* at 179-180.

³⁴ *Id.* at 179.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Harry G. Hutchison, *Waging War on the “Unemployables”? The New Evidence* 29

HOFSTRA LABOR AND EMP. L. J. 25, 51 (2012). [hereinafter, Hutchison, *Waging War on the “Unemployables”*].

wage” for members of the workforce. Consistent with the possibilities associated with such notions a number of leading academics dispute the neoclassical consensus that minimum wages regimes harm their intended beneficiaries.³⁹ Before exploring the parameters of this dispute more carefully, it is helpful to consider both the neoclassical consensus regarding the harmful effects of minimum wage regimes as well as the recent evidence drawn from a number of countries.

Turning to South Africa first, the record shows that the South African government gave “legislative sanction to union demands for monopoly power [in] ... the Mines and Works Act of 1911--the first [national] color-bar law.”⁴⁰ Later in “February of 1917, the Mine Workers Union demanded that the Chamber of Mines exclude non-white workers from semi-skilled jobs.”⁴¹ In the 1920s, after the South African Supreme Court held unconstitutional the color bar provisions of the Mines and Works Act, white supremacists and the unions became enraged and rebelled.⁴² “The Labor party and the National Party, which targeted poor whites, joined to defeat the ruling” Smuts/Botha party.⁴³ With the Labor/National party overseeing what came to be called the “Pact” government, the mine workers and others demanded that the new government make lawful regulations that discriminated between white and non-white workers.”⁴⁴ More to the point, “the Mine Workers Union clamored for the establishment of a minimum wage law. Those in the ruling party who argued against statutory discrimination but [who] were also white supremacists saw [legal discrimination] as a flimsy protection for whites in the face of economic realities that would lead to its widespread contravention.”⁴⁵ The ruling political party felt that, after a while, the new Wage Act [the minimum wage] would make legalized racial discrimination unnecessary since it would mandate wages exceeding black productivity, and hence the incentive for hiring blacks in those jobs would be reduced. Since “white supremacist workers saw the payment of [even] low wages to blacks as exploitation of the whites,” the Wage Act of 1925 was perceived as one possible remedy. The South African government opted for a dual approach that included job reservations and a minimum wage. Also, “[u]nder the provisions of the 1925 Wage Act, in industries where whites were not unionized ... [minimum wages] could be instituted by determinations of the Wage Board.”⁴⁶ While the law ostensibly precluded outright racial discrimination, it was only enforced in areas where whites faced non-white competition,⁴⁷ a move that appears to be in concert with then prevailing white supremacist notion that saw the payment of even low wages to blacks as nothing more than the exploitation of whites.⁴⁸ As such, the Wage Act became “one of the most effective weapons in the hands of South Africa's racists” and is inescapably linked to other exclusionary vehicles sponsored by both the unions and the government even if South African unions have recently become more

³⁹ Simon Deakin & Frank Wilkinson, *Minimum Wage Legislation*, in *LABOR AND EMPLOYMENT LAW AND ECONOMICS* 150 (Kenneth G. Dau-Schmidt et al. eds., 2d ed. 2009).

⁴⁰ Harry Hutchison, *Toward a Critical Race Reformist Conception of Minimum Wage Regimes: Exploding the Power of Myth, Fantasy and Hierarchy*, Vol. 34 *HARV. J. ON LEGIS.* 93, 127 (1997) [hereinafter, Hutchison, *Toward a Critical Race Reformist Conception of Minimum Wage Regimes*].

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at 127-28.

⁴⁵ *Id.* at 128.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

racially inclusive.⁴⁹ Consistent with the exclusionary tenor of labor law and minimum wage advocacy in South Africa, leading British proponents of minimum wages and labor law reform put their proposal quite plainly:

‘With regard to certain sections of the population [the unemployable], this unemployment is not a mark of social disease, but actually of social health. “[O]f all ways of dealing with these unfortunate parasites . . . ‘the most ruinous to the community is to allow them unrestrainedly to compete as wage earners’⁵⁰

It is against this history in South Africa, a similar history in the United States as well as the history of progressivism in Great Britain that recent revisionist analysis favoring minimum wages must be examined. Recent revisionist analyses largely reject previously respected times-series studies based for example upon the U.S. Current Population Survey and instead favor a comparative approach that examines variations in minimum wages between states within the United States.⁵¹ Eagerly embracing the supposed demise of neoclassical theory . . . [this revisionist perspective] justifies minimum wage law as an attractive labor reform and income redistribution device.”⁵² Thus it has been asserted by critics of the neoclassical consensus that “repeated empirical studies . . . dating back to the first large- scale studies of low pay in Britain and the USA have shown that labor markets do not display the characteristics associated with standard neoclassical theory.”⁵³ Revisionists scholarships dismisses sound and defensible arguments that have been used to sustain the neoclassical consensus, including: (1) the contention that wage regulation itself may cause or expand inequality by preventing the market from clearing; (2) the notion that minimum wages are the predictable outcome of organized pressure—group activity wherein labor unions, operating as labor monopolists,—seek to cartelize the labor market and drive wages above the market rate by depressing demand for employment and diverting resources into wasteful rent seeking; and (3) the likelihood that minimum wages “have a disproportionately adverse impact on the young, who lack formal training or qualifications.”⁵⁴ If this dismissal of the neoclassical viewpoint can withstand scrutiny, it would leave neoclassical economists in high dudgeon and set the stage for a new assessment of minimum wage regimes.

On the other hand evidence from the early 1990s provides support for the consensus view showing that minimum wages reduce employment for teens and young adults.⁵⁵ Similarly estimates of the effect of minimum wage regulation in 16 OECD countries covering the period between 1970-2008, demonstrates strongly adverse effects on female employment in such

⁴⁹ *Id.* at 128-29.

⁵⁰ Bernstein & Leonard, *supra* note ___ at 186 (quoting leading members of the Fabian Society, Sidney and Beatrice Webb).

⁵¹ Hutchison, *Waging War on the “Unemployables,” supra* note ___ at 53.

⁵² *Id.* at 30.

⁵³ *Id.* at 53 (quoting Deakin and Wilkinson).

⁵⁴ *Id.* (quoting Deakin and Wilkinson).

⁵⁵ David Neumark & William Wascher, *Employment Effects of Minimum and Subminimum Wages: Reply to Card, Katz and Krueger*, (December 1993) NBER Working Paper No. W4570. Available at SSRN: <http://ssrn.com/abstract-226777>.

countries.⁵⁶ In addition, a study of employment effect tied to minimum wage increases in Russia also shows that minimum wage increases lead to higher unemployment in the general population.⁵⁷ Moreover, the legal and economics literature shows that *most* of the actual (as opposed to theoretical) beneficiaries of wage minimums in the United States do not live in low-income households, nor are they the primary breadwinners for their families. This fact indicates that minimum wage regimes, to the extent that they provide any benefits, at all, tend to benefit the middle and upper-middle class as opposed to the marginalized among us.⁵⁸ It follows that neoclassical economics is hostile to minimum wage legislation and to labor standards more generally including those coming from the ILO. Labor standards, however agreed upon fortified by their correlative wage regimes are seen as a source of “unwarranted interference with the operation of the market and a cause of unemployment and human misery.”⁵⁹ Consistently with this claim it is worth noting that “[n]eoclassical competitive models of firm behavior predict that wage increases reduce the quantity of labor demanded by firms and . . . that the least valued workers are the first fired or the last hired.”⁶⁰ Hence it strains credulity to believe that any impartial observer was surprised to learn, after the enactment of the Fair Labor Standards Act (FLSA) in the late 1930s in the United States, that between 30,000-50,000 African Americans (among the least valued workers) lost their jobs two weeks after the imposition of the law, a record that mirrors similar results in Pre-Mandela South Africa after the imposition of its minimum wage regime.⁶¹

Furthermore, after the United States government imposed the National Industrial Recovery Act in 1933 more than 500,000 blacks lost their jobs during the two year period following the imposition of minimum wage provisions tied to the NIRA.⁶² While such evidence does not necessarily mean that minimum wage regimes are necessarily racist in origin, it does show that their racist effects remain intact irrespective of the motivation of the proponents of such regimes. Consistent with this deduction, the record shows that artificial wage regimes existing in contemporary South Africa have caused South African employers to move production of steel to Poland a move of doubtful efficacy for marginalized and large black South African workers.⁶³

⁵⁶ John T. Addison and Orgul Ozturk, *Minimum Wages, Labor Market Institutions and Female Employment*, IZA Discussion Paper No. 5162. (Bonn, Germany) IZA Discussion Paper No. 5162. Available at SSRN: <http://ssrn.com/abstract=1672170>

⁵⁷ Alexander Muravyev & Aleksey Y. Oshchepkov, *Minimum Wages and Labor Market Outcomes: Evidence from the Emerging Economy of Russia*, Higher School of Economics Research Paper No. WP BRP 29/EC/2013, IZA Discussion Paper No. 7878. Available at SSRN: <http://ssrn.com/abstract=2377614>.

⁵⁸ Hutchison, *Waging War on “Unemployables,”* *supra* note ___ at 58.

⁵⁹ *Id.* at 57

⁶⁰ *Id.*

⁶¹ *Id.* at 50.

⁶² *Id.*

⁶³ See, e.g., THOMAS SOWELL BASIC ECONOMICS: A COMMON SENSE GUIDE TO THE ECONOMY 216-17 (3d ed. 2007) (describing the effects of artificially high wages on employment in both countries and indicating that at least some South African companies are expanding output by moving some of their production to Poland, which is unlikely to benefit black workers in South Africa).

IV. CONCLUSION

This paper answers the question whether international labor standards of the kind favored the International Labor Organization can deliver on its promise of “decent work” and living wages in today’s globalized world. The evidence so far adduced suggests an entirely negative answer particularly if society is interested in advancing the economic standing of the most marginalized members of society.