Reimagining Workers’ Human Rights: 
Transformative Organizing for a Socially Aware Global Economy1

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Abstract

Globalized neoliberalism is neither inevitable nor irreversible. By strategically reimagining labor activism, globally conscious local organizers are expanding the range of answers to the question of what kind of globalization will eventually predominate. The first part of the article outlines the provisions of international human rights law, many ratified by the United States, which require states to provide means of subsistence and work with dignity to all their people. International governance and finance institutions charged with protecting these “economic human rights” have instead, acting in the perceived interests of economic and political elites in developed nations (particularly the United States), enabled the actualization of neoliberal policies which have raised significant obstacles to realizing these rights.

The paper notes several cases in which the implementation of radical “free” market policies has resulted in a human rights catastrophe for workers in both developed and developing regions of the Americas. While economic human rights are not likely to be litigated, legislated or negotiated into existence under current global political and economic policy structures, international legal protections can and in some cases are providing a normative basis to support transformative social movement organizing for a “Socially Aware Global Economy.”

The second part of the article outlines a framework to foster egalitarian, popular democratic, systemic economic and political transformation, which the author dubs “SAGE” organizing. The foundation of this approach is linking local workplace and community organizing for the rights and agency of marginalized people to transnational change networks. The paper explores the efficacy of three divergent but complementary strategic manifestations of this framework. These approaches include 1) resuscitating economic human rights law enforcement through strategic application wedded to social movement organizing, 2) reinvigorating the labor movement through concrete struggles to build genuine transnational solidarity, and 3) applying lessons learned from the struggles and successes of the first two elements of the triad to articulate alternative policies and institutions.

The paper concludes with four active unifying principles for diverse movements to reframe economic human rights discourse and build effective transnational mass movements for egalitarian change. These include celebrating difference, practicing prefigurative politics, creating “fusion” and having the courage to struggle for our deepest convictions.

Introduction

1 © 2007 by Dean Hubbard. All rights reserved. This article has been developed from two shorter papers. The first was published in the Summer 2005 issue of Social Policy under the title What’s Law Got to do with it? Organizing for a Socially Aware Global Economy: The Case of Colombia, 35 Social Policy 4, 41-47 (Summer 2005). The second was published in the September 2006 issue of WorkingUSA under the title What Kind of Globalization? Organizing for Workers’ Human Rights, 9 WorkingUSA: The Journal of Labor and Society 3, 315-335 (2006).
On May Day 2006, Evo Morales, an indigenous union leader turned President, nationalized the Bolivian energy industry, a day after executing the Bolivarian Alternative for the Peoples of Our America with Venezuela’s Hugo Chavez and Cuba’s Fidel Castro.

Instead of retaliating, the political leaders of Bolivia’s principal natural gas clients, DaSilva of Brazil and Kirchner of Argentina, expressed solidarity with Bolivia and pledged transnational cooperation.

Left-leaning leaders were elected in Uruguay in October 2004, Chile in December 2005 and Ecuador in October 2006.

In the summer and fall of 2006, the progressive candidate for Mexico’s Presidency, Manuel Lopez Obrador, led the largest sustained protests in the recent history of that country, demanding a recount in Mexico’s closest-ever election, which was marred by alleged fraud reminiscent of the 2000 election in the U.S.

These political gains have been made possible in part by the growing strength of grass roots mobilizations throughout the hemisphere, including the massive immigration protests in the U.S. on May 1, 2006 and 2007.

These developments remind us that the global political economy is the product of conscious policy choices. They suggest that the “Washington Consensus,” the brand of globalization that op-ed pundit Thomas Friedman and others have described as inevitable as the sunrise, is in fact vulnerable to the earth’s political revolutions.

The United States, perceived by many as the world’s leading proponent of human rights, is arguably one of the leading (though certainly not the only) violators of economic human rights law, both abroad and at home, as a matter of government policy and through legal, political and military support of human rights violations by U.S.-based transnational corporations. These abuses are committed in pursuit of profit with the complicity of international financial institutions, rationalized by the ideology of neoliberalism. This ideology is commonly referred

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4 Neoliberalism is a philosophy premised on a nearly Messianic belief in the “invisible hand” of the “free” market as a panacea for all economic ills; it is a resurrection of the laissez faire policies of the Industrial Revolution which were widely discredited and rejected during and after the Great Depression. See, e.g., Joseph E. Stiglitz, Globalization and its Discontents 74 (W.W. Norton 2002). Initially championed by economist Milton Friedman and his University of Chicago acolytes, and widely implemented beginning in the Reagan-Thatcher era, neoliberal ideology is characterized by a set of policies which disfavor state regulation of corporate interests, but paradoxically often favor strong state intervention to protect those interests. Neoliberal policy isn’t the only force weakening workers’ rights globally. However, the prevalence of neoliberalism has exacerbated the impact of and sometimes
to as the “Washington Consensus,” at least with respect to its execution in the Americas.5

As the policies implemented by proponents of this ideology are products of conscious choices, it follows that alternatives to the existing global order are possible, notwithstanding what the apologists of global corporate power would have us believe. In fact, viable communities of resistance not only in Latin America but in the U.S. and around the world are actively struggling for global justice, organizing every day to incorporate the concept of economic human rights into alternative models of human development. As these local activists begin to build transnational networks, they complicate and broaden the narrow frame of globalization discourse, undermining the foundations of the corporate status quo. I refer to this work as building a “Socially Aware Global Economy” (SAGE).

Grass roots workplace and community organizing, linked to transnational social movement networks, provides the brightest strategic hope for building a more Socially Aware Global Economy. While the structures of the neoliberal political economy often pose significant barriers to the egalitarian goals of economic human rights law, those legal promises can provide an important normative and ideological foundation for SAGE organizing, a compelling frame for movement actors to transform the dominant discourse through collective action.

A core premise of this paper is that the goals of economic human rights law will not be attained without egalitarian, democratic economic and political transformation. It therefore focuses on three components of a strategy for workers’ rights advocates to help build the transnational movements necessary to achieve this metamorphosis, rather than on the specific institutions and policies which could be achieved as a result of such change.6 Nevertheless, activists must share at least a broad vision of global justice, especially if their organizing seeks in any way to prefigure that vision.

Articulating such a vision requires thinking beyond the labor movement as we now conceive it, and beyond the focus of this article on the impacts of and alternatives to global

worked in tandem with other factors, such as technological advances and changes in the structure of work and employment relationships.

5 Teddy Chestnut and Anita Joseph argue that the Washington Consensus has effectively gotten a bad rap; that the recipe of its principal intellectual architect, John Williamson, was more nuanced than the “neoliberal, imperialist, market-fundamentalist agenda” with which the phrase is now associated due to the “systematic[] and universal[] application of] the most conservative interpretation of the Consensus’ principles by the IMF.” Teddy Chestnut and Anita Joseph, The IMF and the Washington Consensus: A Misunderstood and Poorly Implemented Development Strategy, Council on Hemispheric Affairs (2005), http://www.coha.org/NEW_PRESS_RELEASES/New_Press_Releases_2005/COHA_Research_The_IMF_and_the_Washington_Consensus_A_Misunderstood_and_Poorly_Implemented_Development_Strategy.htm (last visited November 22, 2006). Nevertheless, Williamson’s prescription, which includes privatization, deregulation, secure property rights, and lower marginal tax rates (while preserving some public spending for public education and health care), is clearly within the tradition of neoliberalism. Id.

6 Sketching out an egalitarian global framework in any detail would contradict the author’s argument that a central purpose of SAGE organizing is for marginalized people to gain the agency to construct their own alternatives to the system of global exploitation.

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economic policies and institutions of relatively recent vintage. Persistent and deepening global inequality has deep roots, and cannot be attributed solely to post-World War II economic policies. Economic human rights are denied to people of all colors and genders, but throughout the world, women and darker-skinned people are disproportionately crushed at the bottom of the pyramid of wealth and power, while the inhabitants of the loftier bastions tend overwhelmingly to be lighter skinned and male. The complex structures of global oppression have been established over centuries of colonialism, racism and patriarchy carried out by powerful economic and political actors, while it is only over the last sixty years that the political and economic elites of the United States have dominated the neocolonial institutions of global power. Struggles to build a Socially Aware Global Economy must take into account the deep-rooted legacy of interrelated class, race and gender oppressions. The conclusion therefore proposes a set of broad norms and principles that are consistent with an egalitarian, broadly transformative re-framing of economic human rights discourse by activists engaged in a wide range of struggles. Ultimately, sagacious construction of viable alternatives to the neoliberal colossus will require reconceiving and rearticulating workers’ rights and human rights, and what it means to advocate and organize for them.

I. The Problem: Economic Human Rights Law Provides a Normative Foundation for SAGE Organizing, but the Institutions and Policies of Globalized Neoliberalism have Caused a Human Rights Catastrophe.

A. Everybody in the World has a Legal Right to Education, Food, Shelter and Work with Dignity.

As a matter of international law, human rights include not only political and civil rights but a broad category of legal entitlements known as economic, social and cultural rights (“economic human rights”). Under the U.N. Charter, the United States and the other member nations have clearly and unambiguously pledged themselves to action in support of full employment and higher standards of living. In addition, the International Covenant on Civil and Political Rights, *inter alia*, prohibits compulsory labor and guarantees the right to form and join trade unions. Both of these instruments have been duly ratified and are therefore, under

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our Constitution, treaty obligations which are binding law in the United States. 10 Moreover, the Universal Declaration of Human Rights establishes with astonishing specificity that the human rights recognized and protected by international law include the right to work under humane conditions and to the means of livelihood, including food, housing, clothing, medical care and social income protection. 11 Regionally, the American Declaration on the Rights and Duties of Man protects a remarkably similar set of rights. 12 Although the United States has refused to ratify the International Covenant on Economic, Social, and Cultural Rights, this important international agreement spells out in painstaking detail the direct duty of governments to protect economic human rights under Articles 55 and 56 of the Charter and Articles 22-29 of the

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10  U.S. Const. art. II, § 2, cl. 2; see also id.  Art. VI, § 2.

11  Universal Declaration of Human Rights, December 10 1948, adopted and proclaimed by General Assembly resolution 217 A (III).  http://www.un.org/Overview/rights.html. The United States, led by Eleanor Roosevelt, was central to establishing the UDHR, which is equivalent to a Bill of Rights for the entire world. It is the core of international human rights law. Article 22 of the UDHR establishes the right of each individual to social security and to realization of economic, social and cultural rights, meaning that society has the obligation to provide the basis for economic security for each individual. Articles 23-29 confirm this interpretation: Article 23 establishes the right to work, the right to just and favorable conditions of work, the right to protection against unemployment, the right to equal pay for equal work, the right to just and favorable remuneration, supplemented if necessary by society, that ensures each individual an existence worthy of human dignity, and the right to form and join trade unions. Article 24 establishes the right of each individual to rest and leisure, including reasonable limitation of working hours and paid holidays. Article 25 establishes that every human has the right to a standard of living adequate for his or her health and well-being, specifically including food, clothing, housing, medical care and the right to security in the event of unemployment, sickness, disability, old age or other lack of livelihood due to circumstances beyond their control. Article 28 establishes that each individual is entitled to a social and international order in which these rights can be fully realized. Finally, Article 29 confirms that it is in community alone that the full and free development of the human personality is possible, and established that everyone has duties to the community. For years, states have evaded their obligations under the UDHR by arguing that, as a Declaration, it is aspirational and does not have the force of a treaty. Recently however, international law scholars have articulated persuasive arguments that the provisions of the UDHR should considered norms of customary international law under the principles of jus cogens and opinio juris. See, e.g., Peter Barnacle, Promoting Labour Rights in International Financial Institutions and Trade Regimes, 67 Saskatchewan L. Rev. 2, 612 (2004).

Workers’ human rights are progeny of the grandmother of all the existing international institutions, the International Labor Organization (ILO). The ILO’s 1998 Declaration on Fundamental Principles and Rights at Work establishes four key principles as the cornerstones of workers’ human rights:

Freedom of association and effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor; and the elimination of discrimination in respect of employment and occupation.

These principles are codified in eight separate “core” conventions, “which have been identified by the ILO’s Governing Body as being fundamental to the rights of human beings at work, irrespective of levels of development of individual member States.”

13 International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976. http://www.unhcr.ch/html/menu3/b/a_cescr.htm. Art. 1(2) of the ICESCR provides that all peoples may, for their own ends, freely dispose of their natural wealth and resources. Art. 6 establishes the right to work, which includes the right of everyone to the opportunity to gain their living by work which they freely choose or accept, and obligates governments to take appropriate steps to safeguard this right. Article 11 provides the right of everyone to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The State Parties are supposed to take appropriate steps to ensure the realization of this right. Article 11 also establishes the fundamental right of everyone to be free from hunger. Again, the State Parties are supposed to take, individually and through international co-operation, the measures, including specific programs, which are needed to ensure an equitable distribution of world food supplies in relation to need. Art. 13 establishes the right of everyone to education. It states higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.


United States has ratified only two, the conventions on the abolition of forced labor (105) and the worst forms of child labor (182). 16

The fact that every individual in the world has a legal right, under international law, to food, shelter, education, and to work with dignity provides the foundation for a powerful organizing frame. But in all parts of the world, for most people, these legal rights have no substance. It is important to at least touch on some of the institutional obstacles which prevent economic human rights from being realized, before addressing some strategies for changing the balance of political and economic power so that the global majority speaks for itself; so that ordinary working people have the power to make these rights a reality.

B. The Institutions of Globalized Neoliberalism Are an Obstacle to Realizing Economic Human Rights.

The existence of legal rights without a remedy is itself contrary to principles of international law. 17 Nevertheless, profound barriers to the enforcement of economic human rights law are built into the structures of the U.N., both as a governance institution and its related international financial institutions.

In terms of governance, the U.N. Charter states that the organization is based on the sovereign equality of its members. 18 But, in fact, the five permanent members of the Security Council (the U.S. and four other economic and military powerhouses) 19 and its 10 rotating members make decisions for the whole world. As the affirmative votes of all permanent members are required for any action by the Security Council, 20 a single permanent member can block action on any issue. On issue after issue, the more democratic General Assembly has the authority only to make nonbinding recommendations to the Security Council. 21 And if the


17 “[I]t is a general conception of [international] law that every violation of an engagement involves an obligation to make reparation…” Case Concerning the Factory of Chorzów (1928), P.C.I.J. (Ser. A) No. 17 at 29, quoted in Barnacle, supra note 11, at 613. Nevertheless, as discussed infra, significant barriers to enforcement are built into the UN’s governance structure and the policies of its affiliated financial institutions.

18 U.N. Charter art. 2 § 1.

19 The permanent members of the Security Council are the U.S., France, the U.K., the People’s Republic of China and the Russian Federation.

20 U.N. Charter art. 27, § 3.

21 Id. arts. 11, 18. In the General Assembly, each member state has an equal vote, as all decisions are made by a majority or 2/3 vote of all members.
Security Council has decided to exercise jurisdiction over a matter, “the General Assembly shall not [even] make any recommendation with regard to that dispute or situation unless the Security Council so requests.”22

With respect to the enforcement of the economic human rights established by the Universal Declaration of Human Rights, states are supposed to make reports on their progress in implementing these rights to the Secretary General and to the Economic and Social Council.23 But the Economic and Social Council makes reports and recommendations to the General Assembly, which, as we’ve seen, makes only recommendations to the Security Council.24 In addition, placing the sole burden for implementation on states is a serious structural shortcoming given that, as discussed below, even developing states which want to protect their people’s economic human rights often face overwhelming pressure from international financial institutions and transnational corporations to implement policies which violate those rights. And this doesn’t address the issue of states which baldly represent only the interests of their elites.

Theoretically, the International Court of Justice (ICJ) could also serve as a forum to litigate violations of economic human rights, as all forms of applicable international law are available to the court in its decisions. However, it has the same problem as the Economic and Social Council and the General Assembly: Its judgments are enforceable only by the Security Council. Moreover, only states can be parties to ICJ proceedings, and states can only appear if both parties agree, or if they are party to a treaty that calls for resolution in the ICJ.25

Similarly, the ILO asks states that have not ratified the Core Conventions to submit reports on progress made towards implementing them, and has the power to investigate and issue findings regarding compliance with all ILO Conventions, but has no power to take action that would compel ratifying or non-ratifying states to comply.26 Moreover, the ILO’s tripartite structure requires consensus among representatives of governments, employers and workers before it can enact conventions or carry out activities. While this gives ILO Conventions the legitimacy of a genuine social accord among groups with competing interests, it makes achieving consensus on crises such as the murders of Colombian trade unionists almost impossibly

22 Id. art. 12. Emphasis supplied.
23 Id. art. 16.
24 Id. arts. 62, 63, 71.
25 Id. art. 94.
This governance structure reifies the power of the political and economic elites of the developed nations, transforming the UN’s promise of global egalitarianism into a sort of neocolonial universalism. These power relations are also reflected in the policies established and implemented by the financial institutions established under the auspices of the United Nations. Thus, in addition to obstacles posed by the UN’s governance structure, policies implemented by the so-called IFIs also bear significant responsibility for the fact that the promises of economic human rights law exist more in theory than practice.

The UN Monetary and Financial Conference held near the end of World War II at Bretton Woods, New Hampshire laid the foundation for the global economic institutions that shape and control the world’s economic activity today. The International Monetary Fund and the World Bank were founded at the Bretton Woods conference, and the framework for what later became the General Agreement on Tariffs and Trade (GATT) was designed there as well. As has been well-argued elsewhere, through what they used to call “structural adjustment programs” (SAPs), both the World Bank and the IMF, which are dominated by the U.S. and other developed countries, have pressured developing countries to open their borders and fundamentally change their economies in ways that adversely impact the economic human rights of their residents. The concentration of market power has moved beyond the reach of national governments, not only as a result of SAPs, but via the emergence of both trade agreements

27 See infra text accompanying notes 94-96.


29 The World Bank calls itself a development bank which provides loans, policy advice and technical assistance. The member countries are the bank’s shareholders. The number of shares a country has is based roughly on the size of its economy. The United States is the largest single shareholder, with 16.41 percent of votes, followed by Japan (7.87 percent), Germany (4.49 percent), the United Kingdom (4.31 percent), and France (4.31 percent). Traditionally, the president of the World Bank is from the U.S. The World Bank Group, About Us: Organization, http://web.worldbank.org/WBSITE/EXTERNAL/EXABOUTUS/0,,contentMDK:20040580~menuPK:1696997~pagePK:51123644~piPK:329829~theSitePK:29708,00.html (last visited August 8, 2006). The International Monetary Fund (“IMF”) is a specialized agency of the United Nations system set up by treaty in 1945. The IMF is the central institution of the international monetary system-the system of international payments and exchange rates among national currencies. It monitors member countries’ financial policies through a process it calls “surveillance,” and also provides loans to countries facing what it calls “balance of payments” problems. International Monetary Fund, About the IMF, http://www.imf.org/external/about.htm (last visited August 9, 2004).

30 Although no longer using the term “structural adjustment program,” both the IMF and the World Bank continue to use their economic leverage to impose neoliberal policies, using different nomenclature. Barnacle, supra note 11, at 624. Some of the common structural “reforms” still imposed by the IFIs include privatizing state enterprises; eliminating regulations that protect workers and the environment; reducing wages; removing restrictions on foreign investment; cutting restrictions on imports; devaluing local currency; and reorienting national economies towards exports and away from self-sufficiency. Bello, supra note 28, at 286.
negotiated under the GATT31 and institutions such as the World Trade Organization (WTO) as forums to protect the interests of transnational capital from state intervention on behalf of workers and the environment. In stark contrast to the ILO, the WTO has powerful enforcement mechanisms, including a binding dispute resolution process.32 In effect, governance decisions have been transferred to transnational corporations, which by definition serve only the interests of their dominant shareholders.33

As David Korten argues, the Bretton Woods institutions have clearly met their goals of fostering economic growth and international trade, but they have failed in their stated purpose of spreading prosperity. The world has more poor people today than ever. The gap between rich and poor is widening. Global violence is tearing nations, communities and families apart. The Bretton Woods institutions, steeped in neoliberal or so-called “free”34 market ideology, have empowered the super rich to lay claim to the world’s wealth at the expense of its working and poor people, not to mention the planet’s ecosystem.35

The U.N.’s espousal of the ideals of economic human rights generates an appearance of legitimacy, but when it comes down to the reality of power, the world’s economic powerhouses arguably use the U.N. and its agencies in a stark exercise of authority over the world’s developing nations.36 However, as Peter Barnacle notes, that this state of affairs is itself contrary to international law: The Bretton Woods institutions are specialized agencies of the U.N., and U.N. Charter obligations have legal supremacy over all other treaty obligations. Economic human rights law is therefore applicable to and binding on international financial

31 Including regional agreements such as the North American Free Trade agreement, the Central American Free Trade Agreement and the proposed Free Trade Area of the Americas.

32 Wallach and Woodall, supra note 28, at 239.

33 This is not to argue that powerful states do not represent the interests of capital. However, this power can be and is effectively challenged—the state, like the workplace, is a site of genuine contestation over power. One of the goals of SAGE organizing is the creation of participatory democracy at all levels of institutions which influence the lives of ordinary people, be they putatively state or private entities.


35 Korten, supra note 28, at 22.

36 One obvious solution would be democratizing the U.N. by giving more power to the General Assembly. But amendments to the U.N. Charter require a 2/3 vote of all members of General Assembly and the affirmative vote of all members of the Security Council. U.N. Charter art. 108.
institutions, “as they were never intended to be outside of the political and social context in which they were established.”37 Moreover, in terms of enforcement, in many states, including the U.S., duly ratified international law is enforceable under domestic law as a treaty obligation.38 As I discuss below, U.S. courts seem to be growing more open to arguments premised on international law, and there are several cases in which legal advocates of transnational workers’ rights, coordinating with social movement activists, have successfully used the U.S. courts to enforce internationally recognized human rights.39 In addition, regional organizations such as the European Union have had greater success than the U.N. agencies in enforcing economic human rights law transnationally.40 Moreover, workers’ rights advocates in the U.S. are increasingly turning to regional forums such as the Inter-American Commission on Human Rights (IACHR) and even instruments such as the North American Agreement on Labor Cooperation (NAALC) to publicize violations of workers’ economic human rights in support of organizing campaigns.41 Under certain circumstances, this type of legal strategy may be consistent with the SAGE organizing principle, detailed below, that economic human rights discourse should be reclaimed by workers and communities through grass roots struggles for agency and power. When applied in those contexts, economic human rights law may do more than simply legitimate class power and capitalist exploitation.42

37 Barnacle, supra note 11, at 625.


39 See infra note 90 and text accompanying notes 90-106. As I also argue below, using the U.S. courts as the final arbiter of economic human rights poses its own set of problems and is in no sense a panacea.

40 The Social Chapter in the Maastricht Treaty prescribes workers’ rights to be followed in all E.U. nations (except the U.K., which refused to adopt the Chapter). However, the E.U. is not immune to the ravages of neoliberalism. In an exhaustive report, “Five Years after Lisbon: Workers’ Rights Under European Pressure,” a Belgian lawyers collective documents in detail measures by the European Union which undermine workers’ rights, including measures which liberalize dismissals, impose additional hours of work, and limit workers’ income. Progress Lawyers Network and vzw DREFAC, 5 jaar na Lissabon: het arbeidsrecht Under Europese druk, XVI Congress of the International Association of Democratic Lawyers (2005) (on file with author).

41 See text accompanying notes 107-112 infra.

42 Law mirrors and helps reproduce the dominant political and economic systems, but is sometimes sufficiently autonomous to permit results inconsistent with the immediate interests of capitalists. See, e.g., Isaac Balbus, Commodity Form and Legal Form: An Essay on the ‘Relative Autonomy’ of the Law. 11 Law & Society Rev. 571 (1977). The author is sympathetic to the premises of critical legal theory, which amplify Thompson’s insight that the ideal of the rule of law is “something a great deal more than sham. …[T]here is a difference between arbitrary power and the rule of law.” E.P. Thompson, Whigs and Hunters: The Origin of the Black Act 260-266 (Pantheon Books 1975). The “crits,” building on the theories of Gramsci and Foucault, argue that legal processes are “meaning-creating practices” which partially constitute social reality. See, e.g., Karl Klare, Critical Theory and Labor Relations Law, in Kairys, supra note 34, at 548-549 [hereinafter Klare, Critical Theory]. Law is a “contingent product of human action” which is subject to human agency. Id. Legal work, especially labor law, should therefore be informed by a commitment to egalitarian redistribution and empowerment of subordinated groups. Karl Klare, Horizons of Transformative Labour Law, in Labour Law in an Era of Globalization—Transformative Practices and Possibilities 4 (Joanne Conaghan, Michael Fischl and Karl Klare eds., Oxford University Press 2002) [hereinafter Klare, Horizons]. See infra text accompanying notes 86-113.
Despite the fact that international financial institutions are bound by international law, they have very effectively insulated themselves from responsibility for economic human rights violations by manufacturing the legal fiction that international economic law is separate and distinct from human rights law.43 Furthermore, the dominant discourse in the U.S. continues to hold that the neoliberal model of economic globalization is the key to economic growth, which is in turn the answer to poverty and the reconstruction of the social fabric of nations and communities.44 Thus, U.S. political and economic decision-makers’ at once express hostility to the use of domestic or international legal mechanisms to remedy violations of workers’ human rights laws and advocate using international forums to restrict state action which protects workers.45 Their commitment to the neoliberal policy prescription remains unshaken,

43 Barnacle, supra note 11, at 610.


Marc Steinberg has argued that collective action discourse should be understood as a dialogue between power holders and challengers, and that movement actors can fashion new frames “by artfully transforming the meaning of discourses used to dominate them.”46 Thus, SAGE organizers should not rely solely on the institutions of the United Nations, regional human rights entities or other legal mechanisms to enforce economic human rights law, as the discourse, procedures and structures of those institutions too often legitimate existing power relations. Rather, they should consider the potential of grass roots organizing and action--connected to transnational networks--to transform economic human rights discourse so that it provides an ideological and normative frame for social movements to build the clout to make the political and economic changes necessary for those rights to have meaning in the lives of ordinary people.

C. Applied Neoliberalism: 
An Economic Human Rights Catastrophe in the U.S. and the World.

This section sketches three examples of the myriad ways in which the neoliberal system of global economic exploitation harms both the majority of the world’s population who live in the developing world, and the majority of working people in the United States. Countless researchers have traced the hemorrhage of well-paid unionized manufacturing jobs from the U.S. to the policies of the Washington Consensus.47 Moreover, in places like Colombia, the rhetoric of the war on terror has been used to justify grave violations of workers’ human rights to advance the interests of the beneficiaries of the neoliberal world order. And the functioning of global “free trade zones” (FTZs) illustrates how neoliberalism both depends upon and deepens the subordination of women.

1. Neoliberalism and the Decline of the U.S. Labor Movement

Pitting U.S. workers and communities against even poorer communities in the developing world is indeed a “race to the bottom” which nobody wins. In many sectors of the U.S. economy, the manufacturing base which supported a unionized working and middle class has been diminished to insignificance as production and jobs have moved to lower wage labor markets in the U.S. and abroad.48 At the same time, the enactment of neoliberal policy has


48 Id. Also see Immanuel Ness, Immigrants, Unions and the New U.S. Labor Market 13-57 (Temple University
resulted in devastating unemployment, poverty and wars in many developing countries, including American countries south of the U.S. border, leading to massive northward migration. In the U.S., jobs lost to global capital mobility have been replaced by lower paid, generally non-union work. The cheap labor these new jobs demand is often supplied by undocumented immigrants. Most undocumented workers find work in the informal economy, where employers often ignore minimum wage, health and safety and employee benefits laws. Formal enterprises as prominent as Wal-Mart, and countless others, benefit from this exploitation of undocumented workers but insulate themselves legally by entering into subcontracting relationships with informal enterprises.

When a transnational corporation, take Wal-Mart for example, squeezes a garment supplier so that it closes a unionized factory in the U.S. paying $10 dollars an hour, then buys from a maquila in Mexico paying $1.20 an hour, which goes out of business because Wal-Mart can buy for less from a supplier in China which pays 50 cents an hour, which closes when Wal-Mart moves its business to a Bangladesh supplier paying 15 cents an hour, the problem of unfettered capital mobility by unregulated corporate behemoths is obvious. The threat to democracy should be equally clear. Wal-Mart has 55 times the annual revenues of the entire country of Bangladesh. What hope does its government have of effectively regulating such a behemoth in the interests of its people? International organizations such as the World Trade Organization, which theoretically could function as a regulatory counterweight to the world’s


49 Ness, supra note 48 at 47, 181-184.


51 United States Department of Labor, Bureau of Labor Statistics, May 2005 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 315200 - Cut and Sew Apparel Manufacturing (2005), http://www.bls.gov/oes/current/naics4_315200.htm#b51-0000 (last visited November 22, 2006). This is not to ignore the problem of low wages in the garment and other manufacturing sectors in the United States, or to blame immigrant workers for that problem. On the contrary, as argued infra, the global race to the bottom will be reversed by visionary struggles to build transnational worker solidarity and power, not via a myopic “finger in the dike” approach that seeks only to protect established industries in developed countries by sharply limiting labor or capital mobility.


Wal Marts, are instead comprised of unelected representatives who operate in secret and, acting as agents of these powerful transnationals, abrogate unto themselves the power to negate national and local laws which in any way threaten corporate power.

While organized working people could compose a strong force opposing these policies, the ascendance of neoliberalism has profoundly impacted the organization of work and the density and power of unions in the U.S. and around the world. Capital and labor have both become so mobile that national borders seem as meaningful as the moat around a sand castle in the face of a rising tide. Traditional employment is increasingly replaced by “contingent” work or work in “informal” sectors of the economy.55 In the U.S., no less an authority than Human Rights Watch has concluded that “workers’ freedom of association is under sustained attack in the United States, and the government is often failing in its responsibility under international human rights standards to deter such attacks and protect workers’ rights.”56 The U.S. Supreme Court has specifically interpreted the National Labor Relations Act to prevent intervention by unions in decisions, such as whether to close a manufacturing plant and move it to a location with cheaper labor, which go to the “core of entrepreneurial control.”57 And this disability is imposed only where workers already have collective bargaining rights. As is well known, the percentage of workers who are unionized in the United States has declined from a high of 35% in the 1950s to less than 13% today. The figure is only 8% in the private sector.58 The situation is even worse for undocumented workers, who the Supreme Court has decided are not entitled to reinstatement or back pay if they are fired in retaliation for collective organizing.59 While many legal protections are available to all workers without regard to their immigration status, such as minimum wage, wage collection, and health and safety laws, many immigrant workers are unaware of these legal rights, underfunded government agencies often lack the power or the will to enforce them, and unscrupulous employers often take advantage of workers’ fear of deportation to evade them.60


60 J. Gordon, supra note 48, at 23-24.
2. Neoliberalism and U.S. Foreign Policy: The Case of Colombia

The criminalization of union activity to clear the way for the imposition of a privatized neoliberal economic model in Iraq following the U.S. invasion there is just the latest example of the use of military power to foster private corporate economic gain abroad. The textbook case is Chile, where in 1973 the U.S. government financed and directed a right wing military coup against the hemisphere’s first democratically elected socialist government. The resulting military dictatorship, besides engaging in well-documented and widespread murder and torture, followed up by imposing a radical regime of privatization and dismantling of the social safety net. Chile became a laboratory for free market economists from the University of Chicago. The result of this experiment was a severe economic recession.

U.S. foreign policy has long encouraged governments of developing countries to conflate popular movement opposition to the neoliberal model of development with terrorism. However, this tendency has proliferated wildly since the repeated statements by George W. Bush and members of his Administration after September 11, 2001 that the people of the world had better decide whether they are “with us or against us” in a permanent war on terror, with often fatal results for union and other social movement activists. In the last five years, in this hemisphere alone, the governments of Colombia, Peru, El Salvador, Nicaragua, Guatemala and the Dominican Republic have adopted this tactic in response to burgeoning popular movements, often led by radical unions, opposing the neoliberal agenda. As discussed at the outset, in many parts of the hemisphere these tactics are increasingly unsuccessful, and SAGE organizers are succeeding in shifting the balance of power in favor of working and poor people.

Nevertheless, to focus specifically on the case of Colombia, Peter Drury of Amnesty International recently confirmed that the murders of thousands of trade unionists in Colombia


over the last several years are not simply a matter of “government vs. guerrillas.” Rather, these killings are intrinsic to a strategy by transnational corporations, many of them based in the U.S.,64 and their allies among Colombia’s ruling elite to consolidate control over and profitably access economic resources, particularly natural resources. 65 As Mauricio Salgar, Director of Operations for Colombia’s state-owned oil firm, recently told the New York Times, "for the military, the priority is to protect and provide confidence for investors, in particular in the petroleum sector."66 For Colombian military, paramilitary and business leaders, the enemy from whom those investors must be protected is often union activists engaged in peaceful organizing to defend their members from the ravages of privatization and other symptoms of neoliberalism.67 In the words of paramilitary leader and businessman Rodrigo Tovar, unions have been “a disaster in Colombia for business,” and “we have always acted against the guerillas, armed or not armed.”68

Amnesty’s Drury confirmed that principal responsibility for the epidemic of killings of union activists in Colombia rests with the armed forces’ counterinsurgency strategy, which is largely carried out by their paramilitary allies in the form of killings, “disappearances,” internal displacement and other forms of state and quasi-state terror.69 Drury stated that “impunity,” or the ability to carry out atrocities without legal consequences, is intrinsic to the counterinsurgency strategy. With respect to the killings of trade unionists, there is virtually “100% impunity.” Of the nearly 4,000 unionists murdered since 1986, there has been no conviction of the killer in literally 99.9% of the cases.70 Drury argued that an important factor encouraging the climate of impunity is the fact that the victims of human rights violations are portrayed in Colombia’s corporate media as associated with “subversive” or “terrorist” organizations, which limits public support for investigating these cases. 71

One result of this political climate is that not only are trade unionists targets of heinous human rights violations such as extrajudicial killings, they are subject to arbitrary detention by

64  See infra text accompanying notes 86-111.


69  This is not to ignore the substantial role that left guerrilla groupings such as the FARC play in the violence in Colombia. Rather, the focus here is precisely the false equation of political opposition to neoliberalism with terrorism in order to rationalize the murder of non-combatant workers’ rights activists.


71  Hubbard, supra note 65, at 6 .
Government security forces, often without charges, always without convictions, and often for many months. A case in point is that of Hernando Hernandez, the President of Colombia’s oil workers' union. Mr. Hernandez was arrested on terrorism charges and detained in custody for 14 months before being released in April 2004 without further charges.72

But these are violations of political and civil rights. What is the connection to economic human rights? AFL-CIO President John Sweeney argues, “Colombian trade union leaders have been the leading advocates for peace, human rights and economic justice in a nation afflicted by internal violence and external economic pressure. And they have paid a heavy price for their advocacy.”73 On the other hand, César Carrillo, who was head of Colombia’s main oil industry union, the Unión Sindical Obrera, from 1988 to 1995, argues, “The most important rights for me are civil and political rights. Mine have been violated because I’m prevented from carrying out my trade union work. Having said that, economic rights are basic ones that enable people to lead a decent life.”74 In fact, the case of Colombia illustrates that economic human rights are inextricable from political and civil rights. When Colombian trade unionists struggle for the economic rights of Colombian workers, they exercise their political and civil rights. This struggle is next to impossible in a climate in which basic political and civil rights do not exist. And what meaning do political and civil rights have where people lack the basic means of human existence?75

3. Neoliberalism and the Subordination of Women: The Role of Free Trade Zones

In many ways, the globalization of the neoliberal economic model has exacerbated existing gender inequalities and deepened asymmetrical power relations between men and women. Women perform two-thirds of the worlds’ hours worked yet receive only a tenth of the


75 For more information on the links between trade union and human rights struggles in Colombia, see the AFL-CIO Solidarity Center’s report, Justice for All: the Struggle for Worker Rights in Colombia, American Center for International Labor Solidarity (2006), http://www.solidaritycenter.org/files/ColombiaFinal.pdf (last visited November 25, 2006).
“Free market” economic policies fail to take into account unequal access to resources as well as women’s unpaid household work, which the U.N. estimates is equal to $11 trillion dollars a year. International financial institutions depend on women’s unpaid work to cushion the impact of Structural Adjustment Programs. Cuts in social spending required by SAPs lead women to increase their workloads, by shifting responsibility for the development, provision and maintenance of human capacities, including the care of children, elders and the sick, to the private, ultimately the family, realm. Women disproportionately bear this burden, as the worldwide gender-based division between productive and reproductive work remains firmly entrenched.

The transition to market economies has been accompanied by a simultaneous rise in occupational and sectoral sex segregation. So-called FTZs provide a case in point. Free trade zones, also known as “export processing zones,” “maquilas,” or “zonas francas,” are held up by apologists for the status quo as important contributors to national economies in the developing world. In fact, the FTZs are prime examples of the global exploitation of working people, especially women, in the relentless quest to increase profits by lowering labor costs. The workforce in most free trade zones is mainly female, with women accounting for as much as 90% of the workers in some enterprises. The reasons most FTZ workers are women are complex, but certainly a contributing factor is the mythology that women are more submissive workers, a belief which women FTZ workers are challenging. Nevertheless, FTZ employers often prefer their female workers to be young, single and childless. These workers are often subject to multiple forms of discrimination. The pregnancy tests required by some employers in the maquilas of Mexico and the Dominican Republic are a striking example of this discrimination. Pregnant workers are often forced to resign or illegally dismissed. Based on the findings of such discriminatory practices by Human Rights Watch in 2000, the International Confederation of Free Trade Unions (“ICFTU”) has condemned several U.S.-based transnational companies for their use of such practices in the maquilas. In the Dominican Republic, the ICFTU has documented numerous cases of sexual harassment and rape. Efforts by women workers in the FTZs to organize collectively for mutual self-protection are often ruthlessly suppressed.

In a recent case of note, when a group of Bangladeshi women sewing clothes for Disney for pennies a week organized to protest inhumane and subhuman working conditions, such as forced overtime of up to 20 hour work days, Disney responded by closing its factory and moving the work elsewhere.


77 Id.


79 International Confederation of Free Trade Unions, supra note 76, at 10-11.

80 The Hidden Face of Globalization (National Labor Committee video 2003).
Globalized neoliberal capitalism poses a diverse and extraordinarily difficult array of organizing obstacles not just for FTZ workers and Colombian and U.S. trade unionists, but for workers all over the world. However, workers are not simply victims. They can and do succeed in turning the tables on neoliberalism. When they do so, it is often through grass roots, transnational strategies which attempt to make economic human rights law a living reality.

II. The Solution: SAGE Organizing Strategies.

The remainder of this piece will briefly sketch the theoretical and strategic premises of SAGE organizing, comparing three related but distinct strategic approaches which seek to protect workers’ human rights, revitalize the U.S. labor movement, empower informal sector and FTZ workers, and transform the global political economy. I’ll conclude with four sets of principles which will help SAGE organizers engaged in diverse struggles to reframe economic human rights discourse to build effective mass movements for egalitarian change.

A. Grass Roots Organizing of Transnational Networks.

The crucial question is, how do SAGE organizers build interconnected global movements with the power to achieve the necessary changes? To reduce what follows to a bumper sticker formula, here’s a suggestion:

Think globally
act locally
for global change.

What does this mean in practice? Let us start with local action. One key to the organizing process is helping people to develop meaningful human agency. No democratic change is possible without the active leadership of workers at the grass roots level. A second critical ingredient is magnifying that agency through the power of coordinated, collective action. Experience has repeatedly proven that grass-roots, face-to-face community and workplace organizations that struggle to expand the participation and power of ordinary people are the most effective vehicles for systemic change. Grass roots organizing is a key ingredient for disenfranchised people to gain control over their political, economic and cultural lives.81

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Organizing in the local community; where people live and work, and organizing for people at the bottom to make demands, on themselves and on the system, rather than relying on someone else to speak for them, is central to this approach. Making demands is far more likely to build both agency and collective power where the demands are winnable and where the target, the institutional source of injustice, is confronted in direct action by the disenfranchised themselves in a campaign they have chosen and helped build.82

To establish a climate and culture in which this kind of organizing will thrive, grass roots organizers must develop networks; groups operating in workplaces, schools and communities, which are linked to other similar groups in different locations. Networks can grow out of and help sustain and build movements; they are a prerequisite to building organizations with the power to leverage institutional change.83 We have already seen that, in today’s integrated global political economy, the sources of oppression and therefore the organizing targets are often transnational. The paradoxical conclusion which follows is that building transnational action networks is an essential ingredient of a response premised on local, grass roots organizing.

Transnational advocacy networks (“TANs”) provide alternative channels for communication. They multiply and project voices that may be suppressed in their own communities or countries. By overcoming the suppression of information that sustains unjust power, transnational social change networks can reframe debates, become sources for new ideas and strengthen local networks. They can mobilize information strategically to gain leverage over much more powerful governments or transnational corporations. Transnational advocacy networks are committed to looking beyond mainstream conceptions of policy to broad institutional change. They help redefine collective expectations of proper institutional behavior by the powerful, and pressure those powers to implement new policies consistent with redefined norms. TANs are also political spaces in which activists from different cultural and political backgrounds negotiate the meaning of their collective enterprise.84

The number of TANs has grown exponentially in the last 20 years in response to global integration. Keck and Sikkink identify a “boomerang pattern,” which emerges when a domestic government (or, I argue, a corporation) blocks the demands of a local activist network, local activists seek out international allies to try to bring pressure to bear on states or corporations from other angles, international contacts amplify the demands of domestic groups, prying open new spaces for addressing the issues, and echo the demands back to the domestic arena.85

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83 Moses, supra note 81, 172-193.


85 Id. at 12-13. The tactics of TANS include:
   1) Information Politics: Generating politically usable information and moving it to where it will have most
Keck and Sikkink also distinguish between advocacy networks, in which large numbers of differently situated individuals become acquainted and develop similar views through advocacy around a range of issues, and action networks, which emerge when visionaries in an advocacy network propose a strategy for political action around seemingly insoluble problems. Examining the methods of different types of transnational networks may be helpful in identifying organizing climates in which transnational coordination can successfully mature from advocacy to effective action.

B. Three Approaches to Transnational Organizing for a Socially Aware Global Economy

In order to establish the viability of workers’ rights-oriented struggles to build a Socially Aware Global Economy, it is essential to identify groups which are materially engaged in that effort, and evaluate their strategies. This section briefly analyzes the effectiveness of several TANs which are using three very different strategies for organizing alternatives to neoliberalism. These approaches include 1) giving life to economic human rights law, 2) organizing concrete actions of transnational solidarity, and 3) building alternatives to the Bretton Woods institutions. The first can help shift the global discourse. The second can help shift power relations. The third not only helps reframe discourse, it prefigures what SAGE movements will build with their new power. One method does not necessarily precede the other. All three are complementary, interrelated and necessary. Nevertheless, given the premise that both local and transnational organizing are essential, it is particularly critical to focus on the promise of direct action, grown from local constituency-based organizing, across transnational networks, as a prerequisite to building institutional alternatives to globalized neoliberalism.

1. Administering CPR to International Human Rights

While grass roots organizing linked to transnational networks may provide the smartest impact.
2) Symbolic Politics: Calling upon symbols or stories to make sense of a faraway situation for a domestic audience.
3) Leverage Politics: The ability to influence powerful actors to affect a situation where weaker members of the network unlikely to be able to influence them.
4) Accountability Politics: The effort to hold powerful actors to their stated policies or principles.

TANs effect change on several levels:
1) Issue creation and agenda setting;
2) Influence on policy positions or change in states, international organizations or TNCs;
3) Influencing institutional procedures; and
4) Influencing state behavior.

Id. at 18-25. One might add more ambitiously that by influencing change on all these levels, TANs can also play a role in transforming institutions and power relationships.
avenue towards a Socially Aware Global Economy, economic human rights law can provide critical normative and functional support to such movements. Lawyers acting in coordination with those movements can help create a climate in which organizers seeking to resuscitate those rights can work in greater safety.86

As we have already seen, binding international law such as the UN Charter, the UDHR and the Covenant on Civil and Political Rights, all of which have been signed by the United States, specifically recognize and protects economic human rights.” In December 2003, a coalition of 50 key U.S. civil liberties and social justice groups launched a new “U.S. Human Rights Network” devoted to enforcing economic human rights in the United States courts.87 These groups, which range from the ACLU to Human Rights Watch, said they had agreed to join forces to address what they said was “the alarming rate of human rights violations in the U.S., particularly as it pursues its “war on terrorism”.”88 They called for U.S. citizens to speak out against these abuses, as well as to fight “U.S. exceptionalism”--the prevailing view that the United States should not be constrained by international law or human rights standards, especially relating to economic and social rights.

The network is guided by six “core principles,” including acceptance that all rights


88 Common Dreams News Center, supra at note 87.
enumerated in the U.N.’s Universal Declaration of Human Rights are interdependent, universal, and include economic human rights, not just the civil and political rights that have traditionally been recognized in the U.S. Most promising are the core principles that human rights are most effectively protected through building social movements whose leadership should be accountable to those who are most directly affected by their work.89 These principles challenge and, if applied, could transform the work of a number of major U.S.-based human rights groups, many of which have historically ignored economic human rights, in part because of their failure to accept the Universal Declaration and international human rights law as a sufficient juridical basis for their work. They have tended instead to rely on the rights provided under the U.S. Constitution. In recent years, however, U.S. courts -- even the Supreme Court -- have increasingly cited international human rights standards in their decisions regarding, for example, the death penalty for juveniles and the mentally retarded, women's rights, and the accountability of U.S. companies for wrongful conduct overseas.90

a. The Case of Colombia

The most universally accepted human rights are referred to in U.S. law as “the law of nations”91 and under international law as a principle known as “jus cogens.”92 These laws protect against human rights violations like torture, genocide and slavery. Sometimes, as in the case of the epidemic of murders of trade unionists in Colombia, economic human rights


90 See, e.g., Grutter v. Bollinger, 539 U.S. 306, 123 S.Ct. 2325, 156 L.Ed.2d 304 (2003)(In her concurring opinion upholding the University of Michigan’s affirmative action program, Justice Ginsburg cited both the Covenant on the Elimination of all Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination Against Women); Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005)(citing the United Nations Convention on the Rights of the Child in holding the death penalty unconstitutional for juveniles); Lawrence v. Texas, 539 U.S. 558, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003)(relying in part on rejection of sodomy laws by European Court of Human Rights); and Sosa v. Alvarez-Machain, 542 U.S. 692, 124 S. Ct. 2739, 159 L. Ed. 2d 718 (2004)(Alien Tort Claims Act claim based on the law of nations must rest on a specifically defined international norm accepted by the civilized world). Courts of other nations have long referred to workers' rights established by international instruments in interpreting domestic law. Barnacle, supra note 11, at 621. The ILO has a database of domestic court decisions based on international labor law. Id.


92 The principle of jus cogens holds that a treaty is void if it conflicts with a peremptory norm of general international law, such as prohibitions against the unlawful use of force, torture, genocide, slave trading and piracy. It is analogous to the notion of public policy under domestic law. Barnacle, supra note 11, at 613.
violations are so severe that they also violate the “law of nations.” One of the oldest laws in the United States is known as the Alien Tort Claims Act (“ATCA”). It gives foreign nationals a remedy in U.S. courts for violations of the law of nations committed by U.S. citizens and corporations. In the past ten years, workers’ human rights advocates have developed a transnational action network which has had some success suing U.S.-based transnationals under the ATCA in cases involving, for example, the killings of union activists employed by Drummond and Coca-Cola by paramilitaries in Colombia. The plaintiffs in the ATCA Coca-Cola litigation include the Colombian union SINALTRAINAL, and their co-counsel are the Assistant General Counsel for the United Steelworkers (Dan Kovalik) and the Executive Director of the International Labor Rights Fund (Terry Collingsworth).

The newly founded International Commission for Labor Rights (“ICLR”) provides another example of a transnational action network which has conceived an economic human rights defense strategy that combines legal and social movement elements. The ICLR is an international network of labor lawyers constituted jointly by the International Centre for Trade Union Rights (“ICTUR”) and the International Association of Democratic Lawyers (“IADL”, which has consultative status with Economic and Social Council of the United Nations). The ICLR recruits labor lawyers into panels of Commissioners to engage in a variety of actions intended to protect the human rights of workers in the face of increasing attacks worldwide stemming from the rise of globalized neoliberalism.

In 2003, employer and some government representatives to the ILO succeeded in blocking the demands of workers’ representatives that the ILO send a Commission of Inquiry to Colombia to investigate the epidemic of killings of trade unionists. In March 2004, the ICLR sent a Commission of three preeminent labor lawyers from the U.K., Guatemala and Argentina to Colombia to investigate the assassinations and disappearances of union activists there with near total impunity. The ICLR was hopeful that that the investigation and reports of its Commissioners would help in influencing the ILO to change its position at its 2005 Conference. The ICLR’s Colombia Commission was hosted by the Colectivo de Abogados Jose Alvear Restrepo, a lawyers’ collective involved in human rights, and met in Colombia with two of the three national union confederations. On June 12, 2004, the ICLR presented the findings of its Colombia investigative commission, together with a set of recommendations aimed at all relevant actors in the country, to a high profile meeting of trade unionists and labor lawyers in Geneva, concurrent with the ILO annual meeting. While the ILO did not appoint a Commission of Inquiry, the Chair of the Committee on Freedom of Association promised to “visit” Colombia “and meet with all interested parties.” Meanwhile, in the summer of 2005, the ICLR sent a second mission to Colombia, with the specific intention of focusing on gross violations of human rights in the extractive industries, such as the murders of union leaders by U.S.-trained soldiers

93 See note 86.

94 Cooper, supra note 72, at ¶ 3.

guarding the interests of U.S.-based transnationals such as Occidental Petroleum and Drummond. In June 2006, the ILO not only visited, it facilitated the signing of an agreement by the Colombian government, employers’ and workers representatives establishing a permanent ILO presence in the country. By November 2006, the ILO had further hardened its stance, referring in unusually strong language to “an extremely serious problem of violence in Colombia,” calling on the government “to put an end to the intolerable impunity and to take all possible steps to provide effective protection for all trade union members so that they could exercise their rights without fear,” and promising “careful follow up” of the findings of the Special Prosecutors assigned to investigate the murders.96

The effectiveness of both the ICLR Commission strategy and the groundbreaking Colombia ATCA litigation has hinged on coordination of the legal work with social movement activism. For example, both strategies have benefited from their organizational connections to the international labor movement and to networks of progressive lawyers such as the National Lawyers Guild and the IADL. In addition, the ICLR’s first Commission and the ATCA Coca-Cola litigation have been timed to coincide with a worldwide campaign led by labor activists to publicize the murders and to pressure transnationals to end their complicity. In the U.S., the most visible tactic in support of this movement has been a union/student boycott of Coca-Cola products led by corporate campaign veteran Roy Rogers. 97

i. Potential Pitfalls

Does this work actually protect anyone? Certainly, lawyers making aggressive inquiries of government agencies and transnational corporations, whether through fact-finding investigations or litigation, make it more difficult for those who would murder or unlawfully

96 “The case of Colombia was examined by the Committee for the nineteenth time since the complaint was first filed in 1995. In light of the new allegations relating to murders, disappearances, detentions and threats of trade union officials and members, the Committee said that there remained an extremely serious problem of violence in Colombia. The Committee called upon the Government to put an end to the intolerable impunity and to take all possible steps to provide effective protection for all trade union members so that they could exercise their rights without fear. In particular, the Committee requested information on the progress made in the investigations into "Operation Dragon", a plan allegedly aimed at eliminating trade unionists. The Committee expected that the tripartite agreement signed in June 2006 by government, employers' and workers' representatives, which included plans for permanent representation of the ILO in the country and careful follow-up of the findings of the Public Prosecutor's special investigation group to combat impunity, will yield tangible results in the near future.” International Labour Organization Department of Communication, ILO Governing Body concludes 297th Session, Considers labour situation in Myanmar, Belarus and other countries, International Labour Organization (2006), http://www.ilo.org/public/english/bureau/inf/pr/2006/53.htm (last visited April 3, 2007).

97 The website of the Campaign to Stop Killer Coke is found at http://killercoke.org. Interestingly, if one enters “stopkillercoke.org” on the Internet Explorer address line, one is redirected to a Coca-Cola website defending the company’s practices in Colombia: http://www.cokefacts.org (last visited February 17, 2007).
detain unionists and other social movement activists, by casting a light of public illegitimacy on practices which thrive on public ignorance and fear. This can be the case even where legal action tied to movement work doesn’t achieve its stated goals. Indeed, while the Colombian government and trade union organizations differ widely regarding the number of unionists murdered, they agree that the number declined by about half in 2003 and 2004,98 which coincides with the period of time in which the ATCA litigation, the ICLR Commission and the Coca-Cola boycott were most active and received their greatest publicity. Of course, it also coincides with a unilateral ceasefire announced by the largest paramilitary group in hopes of obtaining amnesty from Colombian President Uribe.99 These hopes were fulfilled in the summer of 2005 with the passage of what the New York Times editorialized should have been called the “Impunity for Mass Murderers, Terrorists and Major Cocaine Traffickers Law.”100

Political heat generated in part by the social movement orientation of this legal work may also explain a September 2004 decision by the Colombian Attorney General’s office, under belated pressure from the U.S. State Department, to issue arrest warrants in connection with the murders of three Colombian trade unionists by three soldiers who had been trained by U.S. Special Forces under a new Bush Administration initiative allegedly intended to protect U.S. multinational Occidental Petroleum pipelines and facilities from guerillas. Nevertheless, over two years after the warrants were issued, not one of the soldiers has been convicted.

Whatever their immediate impact, the results in the ATCA cases illustrate the potential strategic dangers of resting the fate of movements for change with the elite functionaries of an often conservative judiciary, especially when the litigation is not strategically and organizationally grounded in mass movements for social transformation. In 2002, the Bush Administration—specifically Colin Powell’s State Department—intervened with the courts to try to halt the use of ATCA to prevent human rights violations by U.S. transnationals, asking courts to dismiss these cases on the novel basis that seeking to hold U.S. corporations accountable for violations of the law of nations frustrates the government’s war on terror.101 In Sosa v. Alvarez-Machain, 102 the Bush Administration joined with transnational corporate interests103


99 US/LEAP, supra note 98.


101 Collingsworth, supra note 91, at 5-8. The District Court responded by dismissing the ATCA causes of action, but not the common law tort claims. Doe, et al. v. Exxon Mobil Corp. et al., 393 F. Supp. 2d 20 (D.D.C. 2005). Exxon Mobil appealed, arguing that the court should have dismissed the tort claims as a nonjusticiable political question. However, in February 2007, the DC Circuit Court of Appeals denied the appeal, arguing that it lacked jurisdiction under the narrow “collateral order” exception to the general rule against interlocutory appeals, and that Exxon had not established a “clear and indisputable” right to have the claims dismissed under the political question doctrine. Doe, et al. v. Exxon Mobil Corp. et al., 473 F.3d 345, 357 (D.C. Cir. 2007). Also see note 45, supra.

102 542 U.S. 692 (2004), reversing 331 F.3d 604 (9th Cir. 2003)(en banc).

103 Including the U.S. Chamber of Commerce, the U.S. Council for International Business, the Business
in an effort to persuade the Court that, after 215 years, suddenly the ATCA did not confer an ability to bring private lawsuits or to invoke modern notions of international law. The Supreme Court’s June 2004 decision rejected the application of ATCA to the facts of the case before it, which involved a claim by a Mexican doctor against another Mexican citizen for helping the U.S. Drug Enforcement Administration to kidnap him and bring him to the U.S. to stand trial.

However, the worst fears of human rights advocates were not realized. Justice Souter’s decision found that while ATCA did not apply to the brief detention of the plaintiff in this case, it could be interpreted to apply to international norms with "definite content and acceptance among civilized nations." Human rights lawyers argued that this means that the Court would apply ATCA to universally recognized violations like torture, genocide, slavery and prolonged arbitrary detention.

In another recent case, a federal district court dismissed an ATCA claim seeking to impose liability on Coca-Cola in connection with the murders of unionists at Coca-Cola bottling plants in Colombia, holding that Coke isn’t responsible for the action or inaction of its franchisees. Sinaltrainal v. Coca-Cola, 256 F.Supp.2d 235 (S.D. FLA 2003).

Both the inclusion of economic human rights in the broader human rights pantheon and the use of international human rights law by U.S. courts are anathema to the Bush administration and key policy-makers. This alone should encourage SAGE organizers. However, a potential problem with sole reliance on this particular litigation strategy is that the parties vest U.S. courts as the final arbiters of international human rights. Many human rights advocates consider this a precarious path, given the need to restore multilateralism and respect for international law in the wake of the Bush Administration’s “go it alone” approach to everything from global warming to the international criminal court to the invasion of Iraq.


104 Sosa v. Alvarez-Machain, supra, 542 U.S. at 731.


b. The Law and Economic Human Rights of Workers in the U.S.

A potentially more promising trend is the emerging use of international fora to publicize and organize against violations of the economic human rights of workers in the U.S. For example, in 2005, a public sector local of the progressive independent union UE107 collaborated with the International Commission for Labor Rights to investigate and publicize North Carolina’s denial of the right to organize to its largely African-American public sector workforce. In December of that year, the union filed a petition with the ILO Committee on Freedom of Association alleging that North Carolina General Statute §§ 95-98, which makes it illegal for the State and any of its political subdivisions to enter into contracts with any labor union, violates the workers’ fundamental rights to freedom of association and collective bargaining under ILO Conventions 87, 98 and 151.108 On April 3, 2007, the ILO ruled in favor of the UE, specifically calling on the U.S. government “to promote the establishment of a collective bargaining framework in North Carolina…and to take steps aimed at bringing the state legislation, in particular through the repeal of NCGS §§ 95-98, into conformity with the freedom of association principles…”109 An advocate thinking in conventional legal terms might dwell on the obvious federalism questions raised in calling upon the federal government to promote state collective bargaining legislation. A SAGE organizer would be much more attuned to the powerful organizing tool the ILO has handed to UE Local 150 in its ten year campaign for public sector collective bargaining rights in North Carolina.

SAGE advocates are increasingly finding legal legitimation for organizing strategies through regional bodies such as the Inter-American Court of Human Rights (IACHR). The recent roots of this tendency may be found in a 2003 advisory opinion of the IACHR, issued at the request of the Mexican government, on whether the decision of the U.S. Supreme Court in Hoffman Plastic Compounds v. NLRB110 violates international law. In its decision, the Inter-American Court advised that undocumented immigrant workers are entitled to the same legal protections, including back pay, as authorized workers.111 While this particular legal action

107 United Electrical, Radio and Machine Workers of America (UE) Local 150, which represents thousands of public employees who work for the state Department of Health and Human Services, the University of North Carolina system, the state Department of Administration and for municipal governments in Chapel Hill, Charlotte, Durham, Raleigh and Rocky Mount. North Carolina Rights Abuses Target of ILO Complaint, UE News (2005), http://www.ranknfile-ue.org/newsupdates/news.php?topicid=229&pageID=uenews&pagetype=article (last visited April 2, 2007).

108 Id., and interviews with Jeanne Mirer, co-founder of ICLR (November 2005), and Polly Halfkenny, General Counsel of UE (April 2006). In February 2006, Public Services International, the global public sector union, joined the UE in its complaint.


111 Advisory Opinion No. 18, Inter-American Court of Human Rights (2003).
does not appear to have been tied to a social movement campaign and therefore may not itself have met the criteria for SAGE organizing, it paved the way for cases which do, including the UE case discussed above and the following case, which was premised on the IACHR advisory opinion regarding Hoffman Plastics.

In April 2005, a coalition of Mexican unions and U.S. immigrant workers’ advocates filed a petition with the National Administrative Office of Mexico (established under the NAALC, the NAFTA labor side accords) regarding the failure of the United States to effectively enforce laws protecting the rights of immigrant workers by denying undocumented workers access to publicly-funded legal services which are available to authorized workers. The petition argues that this discrimination against undocumented immigrants is inconsistent with the principles announced in the IACHR’s opinion on Hoffman Plastic, which ruled in part that the denial of free public legal services to immigrants violates the right to judicial protection, one of the international human rights protected by legal principles of equality and non-discrimination established by, inter alia, the UDHR and the American Declaration on the Rights and Duties of Man. The petition argues that this discrimination also violates NAALC Articles 4 and 5 and Labor Principles 6 and 9-11. This petition was submitted by activist lawyers with the Northwest Workers’ Justice Project and the Brennan Center at NYU School of Law on behalf of constituency-based organizations engaged in strategic grass roots mobilization of transnational workers. It clearly meets the criteria for legal strategies in support of SAGE organizing.

In sum, there is a place for litigation and other legal components to a social movement strategy. As eminent British historian E.P. Thompson has argued,

The law when considered as institution … may very easily be assimilated to those of the ruling class. But all that is entailed in the law is not subsumed in these institutions. The law may also be seen as ideology… The rhetoric and rules of a society are something a great deal more than sham… They may disguise the true realities of power, but, at the same time, they may curb that power and check its intrusions. And it is often from within that very rhetoric that a radical critique of the practice of the society is developed. …[T]here is a difference between arbitrary power and the rule of law. …[T]he rule of law itself, the imposing of effective inhibitions upon power and the defense of the citizen from power’s all-intrusive claims, seems to me to be an unqualified human good.113


113 E.P. Thompson, supra note 42, at 260-266.
But the rule of law does not act as a check upon arbitrary power in defense of the rights of ordinary people automatically or in the abstract. Arguably, it can serve this function only when legal work arises from and complements, rather than attempting to substitute for, democratic organizing for broad-based social change. When legal advocates perform this function, they help create the conditions under which the rhetoric of economic human rights frames the transformative work which will bring about a Socially Aware Global Economy.

2. Transformative Organizing: U.S. Unions and Global Solidarity.114

The ascendance of a neoliberal global political economy, and its devastating impact on the U.S. labor movement, has forced U.S. unions to reconsider the importance of transnational solidarity. But U.S. unions need to be far more sensitive to creative opportunities to build transnational solidarity in their organizing both in the U.S. and abroad, some of which involve rethinking the definition of the very term “union”. The traditional workplace-based organizing model is, in many industries, simply no longer viable. In those sectors, workers’ advocates are increasingly turning to community-based models which take into account the needs and interests of the specific group of workers who are seeking to transform their working conditions.115 Within the U.S., the labor movement has made promising progress in this direction recently, most significantly in the form of the AFL-CIO’s decision to form a partnership with the National Day Labor Organizing Network, the largest of the networks of worker centers which have emerged as forums for day laborers to assert their collective power. The AFL-CIO Executive Council also voted to authorize worker centers around the country to affiliate with state and local labor movements.116 Worker centers are community-based coalitions that advocate for the rights of unrepresented and often undocumented immigrant workers. Historically, the labor movement had difficulties with these efforts, as they do not necessarily fit within the paradigm of workplace-based organizing for collective bargaining agreements. They also involve working in coalition and the inevitable need to share power with community-based organizations, some of which identify around issues of race, language and nationality to a greater extent than they do around class; and they involve accepting sometimes undocumented immigrants as fellow workers deserving of solidarity rather than potential threats to livelihood. The evolution in thinking at the top levels of the labor movement which this announcement appears to signify is welcome news.

Other hopeful developments include the leading role played by organized labor on the organization of the Immigrant Workers Freedom Ride and the creation of a category of associate

114 The term "transformative organizing" was inspired by the title of Karl Klare's essay, Horizons of Transformative Labor Law. In Klare, Horizons, supra note 42, at 3.


membership in the AFL-CIO. 117 Some of the most intriguing of recent immigrant organizing efforts, which  

have been written about elsewhere, including the successful organizing of home care workers in L.A., of greengrocery, supermarket delivery and vehicle for hire workers in New York City. 118

Globalized neoliberal policies contributed mightily to the forces that ultimately rended the AFL-CIO, but strategic differences over the proper response seemed to play only a minor role in the debate which led to the split. 119 Many unionists in the U.S. are articulating a vision for the future that emphasizes coordinated transnational organizing, bargaining, strikes, and political action. However, the question of whether a verbal commitment to transnational organizing translates into viable strategies with sufficient resources to support them remains wide open. The trade unions from around the world which are part of the International Confederation of Free Trade Unions have divided themselves into ten global federations representing unions in various economic sectors. 120 Five of the ten global union federations have had some success in pressuring transnational corporations to enter into so-called “Framework Agreements” 121 In August 2005, UNI, the global service union, announced an


120 The major institutions of the international trade union movement have adopted the name “Global Unions.” http://www.global-unions.org/displaydocument.asp?Language=EN&Index=991209025 (last visited February 19, 2007).

121 Global Union Federation Framework Agreements with Multinational Enterprises, International Confederation of Free Trade Unions (2004), http://www.icftu.org/displaydocument.asp?Index=991216332&Language=EN (last visited February 19, 2007). These so-called IFAs, in which international sectoral unions generally negotiate commitments by transnational enterprises to honor core ILO Conventions, are a promising macro-level development. However, one is hard-pressed to discover examples of IFAs emerging from local organizing which builds workers’ agency. In the last few years, the Global Unions have become more oriented towards social movement activity, even playing important roles in the World Social Forum. Nevertheless, in some ways they still
international campaign to organize Wal-Mart workers. In the U.S., Wade Rathke of the SEIU/ACORN has advanced the intriguing notion of a multi-union Wal-Mart campaign premised not on collective bargaining and its attendant employer power, but upon building a powerful, open, community-allied workers’ organization which advocates for changes in policy as well as advancing workers’ grievances. Imagine this as a transnational strategy! In general, however, in the battle over what kind of globalization will predominate, transnational corporations have been strategically far ahead of the unions, at least in the United States.

SAGE trade union activists generally agree that cross border solidarity does not mean that U.S. unions should organize in other countries; rather, they argue, U.S. unions can help provide resources and create the conditions—through pressure on the U.S. government and U.S.-based transnationals—to enable workers to organize more effectively in their own countries, and union activists abroad can help U.S. workers in their struggles. As Bill Fletcher recently put it,

[Global unionism…should not be seen as resulting from the expansion of U.S.-based so-called “international unions,” but rather by creating a new international partnership of workers. …International working-class solidarity…must represent a voluntary coming together, rather than the imposition of unity on someone by someone else who thinks they know better—that is not solidarity, but rather imperial arrogance.]

Function in a “top-down” and bureaucratic manner, which can be inimical to grass roots social movement struggle intended to build workers’ power. Thus, this paper focuses on bottom-up organizing facilitated by TANs, which sometimes include the Global Unions.


125 Bill Fletcher, Jr., Globalization Labor and Justice, 8 WorkingUSA: The Journal of Labor and Society 3, 268 (2005). Global corporate behemoth Wal-Mart presents the fattest and perhaps most difficult potential target for a transnational organizing drive based on genuine solidarity. But no such drive could take place absent a climate of respectful communication and coordination. A small step in this direction occurred recently when the Union Network International (UNI), one of the so-called Global Unions, organized a historic meeting in China with the ACFTU, the Chinese workers’ central union. Meeting the Multinational Challenge in China, UNI News Flash (2005), [http://www.union-network.org/uniflashes.nsf/5861ecf5875ff90c12567bb005642f9/0f43655f99163c08c1256fe0003b1da0?OpenDocument]. One of the finest examples of a transnational action based on the kind of solidarity envisioned by Fletcher was the sympathy strike by dockworkers and their community supporters around the world against the Neptune Jade, whose owners had fired unionized workers in Liverpool. So effective was this transnational action that the
U.S. unionists encounter significant obstacles in their efforts to forge genuine solidarity with their counterparts in the developing world. Among them are differences in race, language and culture, limited resources, the historic relationship between the AFL-CIO and U.S. foreign policy objectives, identification of U.S. workers with the perceived interests of the nation state (as articulated by political rulers who are often hostile to workers’ needs) rather than common class interest with workers in other countries, and the resulting sense of rivalry between U.S. workers and their counterparts abroad. It is imperative, however, that unions move forward to establish strategic international alliances. Ultimate success, of course, will require political change. But change begins with what sometimes appear to be “impossibly small steps.”

Some of these steps are being taken by The World Organization for the Right of the People to Health Care (“WORPHC”), a grass roots, inter-American coalition of health care unions, community health advocacy organizations and students seeking to address the consequences of neoliberal economic integration, such as privatization, on health care access and delivery in the Americas. This all volunteer organization was started and is led by immigrants from the Dominican Republic, Chile, Guatemala and other countries who became active in their union, 1199 SEIU (New York’s health care workers’ union). In October of 2002, WORPHC held an historic conference in the Dominican Republic which, for the first time ever, brought together over 400 health care workers’ advocates from 19 countries to discuss the impact of neoliberal globalization and health care privatization on health care in North America, Latin America and the Caribbean. At the end of the conference, a 12-point unity resolution was drafted and agreed upon by the delegates. Since this resolution was passed, volunteers with the World Organization have been working to put the commitment to transnational solidarity expressed in

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Jade, after virtually circumnavigating the globe, was forced to return to Liverpool without unloading its cargo. James Atleson, Voyage of the Neptune Jade, in Labour Law in an Era of Globalization--Transformative Practices and Possibilities 379-399 (Joanne Conaghan, Michael Fischl and Karl Klare eds., 2002).


127 Nissen, supra note 47. Bacon, supra note 47.

128 Alexander and Gilmore, supra note 122.

129 The web site of the WORPHC is located at http://www.worphp.org.
the resolution into practice. For example, WORPHC-affiliated unions supported the successful 2003 anti-privatization strike by Salvadoran health care workers, and they have organized several forums on health care privatization and international organizing for rank and file union members in the U.S., Canada, the Dominican Republic, Argentina, Venezuela and Guatemala. WORPHC activists are now preparing for the second major inter-American meeting of health care workers and their organizations, which will take place in Guatemala in 2008.130

One of the most interesting developments arising from the WORPHC is their work with unions and community organizations in the Dominican Republic to develop democratic organizations capable of addressing prevalent public health concerns in neighborhoods adjacent to free trade zones. In 2002, under the leadership of 1199 organizer Luis Matos, WORPHC initiated a Community Public Health Project in Lebrón, a barrio outside Santo Domingo, where the unemployment rate is about 65%, with most of those who find work laboring in the informal sector or assembling garments in the nearby “zona franca” (free trade zone) for subcontractors of transnationals such as the GAP. The vast majority of the zona franca workers are women, as are the leaders and participants in the Lebrón Project. Residents working in concert through the neighborhood organization are pressuring the government and the transnational corporations in the free trade zone to provide the basic infrastructure necessary for health, including plumbing, sewage, waste disposal, potable water, and support for the permanent health clinic. WORPHC organizers saw the community health project as a prelude to organizing in the zona franca. They believed that residents who gain confidence and develop leadership skills through successful community organizing struggles are more likely to be successful in applying the same set of skills to collectively addressing their conditions of work in the zona franca. WORPHC now seeks to expand the project to other neighborhoods, and is finalizing an agreement with the University of Santo Domingo to provide residency credit for work on the project to Dominican medical students who have completed their training at Cuba’s free medical school of the Americas.

Although initial organizing efforts have shown promise,131 the long-term prospects for the project are hampered by a number of factors. These include (1) the difficulty of articulating the importance of this work to U.S. labor leaders (who are more attuned to traditional workplace-based organizing for collective bargaining agreements) and foundations (who are more attuned to traditional public health projects), (2) a corresponding lack of resources for the project, (3) internal disputes among neighborhood residents, and (4) the difficulty of travel by U.S.-based organizers to and from the Dominican Republic. The ultimate viability of this intriguing project, which exemplifies both the promise and the profound challenges of transnational organizing for workers’ rights on an economic human rights model, is therefore unclear. Nevertheless, this work addresses the suppression of organizing by and discrimination against women workers in FTZs, meets the SAGE criteria of local organizing of disempowered people to make demands on

130 *Id.*

131 Working with WORPHC organizers, the community organized itself into eight zones, and each zone designated four local activists as coordinators. These coordinators worked with community residents to create a small, temporary clinic space, provide basic first aid to residents within each zone, and arranged for home consultations by volunteer doctors who have seen over 500 patients. The project then expanded to the community of Nagua, where WORPHC worked with the radical priest Rojelio Cruz to develop a similar project.
power, and expresses a far-reaching vision of unions transcending physical and psychological borders to act as agents of broad social change. It is therefore a model which deserves resources and replication.132

3. Challenging the Bretton Woods Institutions

Effective transnational social movements may generate alternative policy formulas and the seeds of new institutional arrangements. For the author to articulate a detailed vision of such arrangements would be inconsistent with the premise that new institutions and policies will be established by disenfranchised people through social movement action. However, when these ideas emerge from SAGE organizing, they too can help reframe dominant discourse and prefigure alternative institutions.

Leading advocates of implementing core labor standards in international instruments have concluded that pursuing a social clause dealing with labor and environmental issues at the World Trade Organization is unlikely to be successful.133 In 1996, the WTO, which has the power to impose sanctions for the violations of its rules, refused to create a social clause, arguing that enforcing international labor standards is the job of the International Labor Organization. The ILO, as we’ve already seen, lacks the power to penalize violations of its conventions. Many supporters of social clauses therefore advocate pursuing them in multilateral trade agreements such as the FTAA. However, social clauses are often opposed by workers’ advocates from developing countries as disguised protectionism.134 Indeed, other advocates of transnational workers’ rights oppose the adoption of international trade agreements at all, as long as such agreements are premised on the neoliberal model, arguing that the focus on social clauses implies the acceptance of an international trade structure and economic order which institutionalizes workers’ exploitation.135

132 The information about WORPHC organizing in Lebrón is drawn from the author’s experience. The author and other WORPHC organizers have been guided by, among others, the work of Harvard epidemiologist and longtime public health activist Paul Farmer, author of Pathologies of Power: Health, Human Rights, and the New War on the Poor. (University of California Press, 2003), as well as the community public health philosophy and methodology expressed in David Werner with Carol Thuman and Jane Maxwell, Where There Is No Doctor: A Village Health Care Handbook (The Hesperian Foundation, 2002). Also see Meredith Fort, Mary Anne Mercer and Oscar Gish, eds., Sickness and Wealth: The Corporate Assault on Global Health (South End Press 2004).


respecting social and cultural differences, working independently of U.S. foreign policy, demanding restructuring of the international economic order, and pursuing labor standards through independent systems of enforcement not controlled by developed countries. 136

Participants in this debate over social clauses and “comparative advantages” often seem to be speaking different languages. The approach undertaken by the Hemispheric Social Alliance (“HSA”) synthesizes these apparently competing strategies, and is therefore worthy of consideration. The HSA is a network of labor organizations and citizens’ coalitions representing more than 45 million people from countries throughout the Americas. Members of the HSA, arguing that the neoliberal economic model has been a disaster for the people of the hemisphere, reject the FTAA as an attempt to extend the principles of NAFTA throughout the Americas. They argue that the FTAA, like other neoliberal trade agreements, would protect the rights of transnational corporations and investors while stripping states of the capacity to protect workers and the environment and develop the education, health and economic well-being of their people.

After five years of democratic deliberation and debate, the members of the HSA came up with an alternative to the FTAA model, called the Alternatives for the Americas. 137 This document spells out in detail the policies which would underlie a Peoples’ Hemispheric Agreement aimed at raising living standards, prioritizing sustainability, and protecting local communities and governance structures in the Americas. It would accept economic integration between the U.S. and the rest of the Americas only if it is implemented consistently with these principles. With respect to labor, the guiding principles of the Alternatives for the Americas include the right of working people and their representatives to participate in national and international decision making regarding any economic agreement among the countries of the Americas, the commitment to respect workers’ rights, and an effective enforcement mechanism as a fundamental aspect of any accord. 138 A process like the one that led to the HSA’s

136 An excellent example of this approach to transnational solidarity is found in the persistent work of the National Lawyers Guild Labor and Employment Committee over the last nine years to develop a relationship with the Cuban labor movement premised on solidarity and mutual respect, and their work within the U.S. labor movement advocating normalization and an end to AFL-CIO support for the economic and political blockade of Cuba. The Committee’s reports of their annual research delegations to Cuba are located at http://www.worksafe.org/nlglaboremploycomm/international.cfm


138 Other essential aspects of any hemispheric trade agreement would include mechanisms to improve living standards of workers through legal norms and universal social protections, and an appropriate adjustment mechanism to provide retraining and jobs to workers whose jobs are displaced by the opening of national economies. The immediate goal is to ensure that transnational trade and investment don’t destroy local autonomy and economies. The long-term goal is to support the upward harmonization of social and economic standards. Certain issues, such as the right to organize unions, must be universally respected. But other standards, such as
Alternatives can help reframe globalization discourse because it emerges from a transnational network of organizations, many of which are engaged in constituency-based local organizing, and the product rejects the neoliberal model, proposing an alternative approach to development modeled on respect for economic human rights.

On a global scale, it is important to note the World Social Forum (WSF), which got its start in Porto Alegre, Brazil in 2000. Porto Alegre was chosen because it was controlled by the Brazilian Workers’ Party, a coalition of unions, environmental, feminist and human rights organizations, which over a period of years organized and obtained political power through the electoral process. The WSF intentionally shies away from self-defining as an “organization,” but is nevertheless one of the most well-known, if not effective, TANs. The WSF describes itself as

“The open meeting place for ...democratic debate of ideas, formulation of proposals, and inter-linking for effective action, by groups and movements of civil society that are opposed to neo-liberalism and to domination of the world by capital and any form of imperialism, and are committed to building a society centered on the human person."

The WSF is the key convocation for groups around the world which are engaged in local and regional SAGE organizing to network and strategize transnationally. While the HSA and the WSF do not themselves model specific grass roots organizing strategies, they are significant TANs in that they provide forums for workplace and community organizers and activists to come together across borders, compare tactics, develop strategies, and articulate credible alternatives to failed neoliberal policies.

C. Framing a Socially Aware Global Economy

1. Dispensing with the “TINA” argument.

Neoliberal apologists argue that “there is no alternative” to the neoliberal global

wages, would vary depending what would constitute a living wage in that country at that time. Alternatives, supra note 135, at 39-44.

139 Dan Clawson, The Next Upsurge: Labor and the New Social Movements 162 (Cornell University Press 2003). Brazilians went on to elect their President from the Workers’ Party: Luiz Ignacio Lula da Silva, known as “Lula,” a former steelworker and union activist.

But market forces do not automatically generate humane social policies. The human rights that people have anywhere, such as they are, have been largely achieved through social movement struggle. And, as Clawson points out, virtually all significant social changes have taken place at a time when conventional wisdom deemed them impossible.

The critique of neoliberal capitalism is widespread, if not orthodox, outside the borders of the United States. As I argued at the outset, in the Americas alone, a diverse array of popular movements opposed to the neoliberal agenda have made significant advances towards establishing alternative political and economic arrangements. The fulcrum of the institutional obstacles, the primary resistance to moving away from neoliberalism towards a Socially Aware Global Economy, resides within the U.S. This is not to detract from the critical importance of social movements worldwide, nor to imply that the institutional barriers to a Socially Aware Global Economy are not global. Rather, it is to point out the critical importance for people everywhere of the struggle for egalitarian economic and political transformation of the United States, of the need to redouble our efforts to build a bottom up, grass roots, globally conscious movement at home aimed at shifting both discourse and policy regarding the global economy. Until the United States is successfully transformed by its own residents, acting in concert with others (or, less hopefully, by a shattering economic or political crisis), to make sustainable democratic development a priority, globalization on the will continue on its current deeply destructive path.

The bottom line is that economic human rights will not be enforced under either international or domestic law, and a Socially Aware Global Economy will not come into existence, until working and poor people have the political and economic power to make it happen. Attaining that kind of power will require a coming together of a broad array of social movements built by millions of people committed to militant, long term, strategic, grass roots transnational organizing.

2. Reframing Economic Human Rights Discourse for SAGE Organizing

That kind of coalescence can’t happen without a broad set of principles or values framed so that participants in diverse movements not only agree on them, they are motivated to act. However, one of the few things that most activists organizing for a Socially Aware Global Economy agree on is that there is no single “one size fits all” model alternative to the neoliberal world order. Many argue that diverse, decentralized movements are a necessary antidote to the anti-democratic authoritarianism and neocolonial universalism of the neoliberal global hegemonists. Others argue that countering the power of integrated global institutions demands a degree of central communication and coordination. Some emphasize participatory democracy


142 Clawson, supra note 139, at 26, 203.

143 These inroads have occurred over the last five years in, among others, Argentina, Brazil, Chile, Venezuela, Uruguay, Bolivia and Ecuador. See, e.g., Fred Rosen ed., Social Movements: Building from the Ground Up, 38 NACLA Report on the Americas 5, 13-40 (2005).
and consensus, others emphasize effectiveness. Some focus on lobbying and litigation to influence policy, others swear by Alinsky-style adversarial action. Some devote themselves to liberating specific identity groups, others argue for the unity of all so-called subaltern peoples.144

Experience teaches that elements of all these approaches are necessary. The forms of struggle against oppression are as diverse as the aspects in which injustice appears. Structural inequality has culturally and geographically specific guises, often rooted in perceptions of and ignorance about difference, which cannot be uniformly attributed to the forces of the global political economy. Nevertheless, in an era of intensified global integration, understanding that many struggles faced by people in different parts of the world do have a common source in the world’s economic and political institutions is a critical first step to exploring the viability of globally aware grass roots efforts to establish popular democratic and egalitarian alternatives. If global justice advocates share a bottom line goal, perhaps it is to make the needs, the rights and the dignity of ordinary people the primary concern of all economic, political and cultural policy.145

However, even in the U.S., different groups should and do organize autonomously around different issues and identities, whether they are women’s, environmental, African-American, Latino, Asian-American, LGBT, labor, indigenous, community, or movements not even dreamed of today. Some decentralization and autonomy are indispensable to the ability of marginalized people to construct meaningful human agency. At the same time, movements can be so diffuse that they are unable to build the combined strength necessary to loosen and redistribute entrenched concentrations of power.

Steinberg argues that through “partial reworking of dominant genres,” and “by artfully transforming the discourses used to describe them,” movements of marginalized people can

144 Perhaps these differences are descendants of the historically murderous debates between advocates of competing versions of left ideology, which made their own singular contribution to the triumphal ascent of globalized market messianism.

145 Without preordaining the results of SAGE organizing, one could posit that an alternative foundation of trade policy would be to nurture just, sustainable, secure and democratic communities. Williamson, Alperovitz and Imbroscio argue that a democratic community requires, at a minimum, the material means of survival (food, shelter, education, and health) for all its members and the ability of its members to exercise meaningful self-determination over economic and political life. In addition, their conception of a just community values the particularities, traditions, and other distinct qualities of a place; elements that together constitute a culture that characterizes and constitutes that community. Policies that run roughshod over those particularities, at least those which impact human rights and democratic participation, are to be cast aside. Policies which do not undermine stable communities are important because they are a precondition for a popular or participatory democracy in which people have meaningful self-governance; that is, an effective say in the decisions which effect their lives. Thad Williamson, Gar Alperovitz, and David Imbroscio, Making a Place for Community: Local Politics in a Global Era 295-297 (Routledge Books 2002).
“both provide their claims with credibility and cast doubt on the often assumed truths power
holders voice through these words.”

Human rights discourse can move beyond the legal
arena to frame transformative, emancipatory actions by the global majority, but to do so it must
reflect broadly held values which encourage bold coordinated action by seemingly disparate
social actors. In order for mass movements for democratic social transformation to arise,
millions of people must be inspired to devote their time and energy, to invest their hopes and
take huge risks despite their fears. For that to happen, people must connect on a very deep and
fundamental level to these movements. SAGE organizers must articulate and embody
strong, widely held values that arise from people’s lived experiences. The four following shared
principles could help diverse movements transform economic human rights discourse to inspire
egalitarian social change.

a. The SAGE Movement’s Ace in the Hole: Difference.
   Our Strength Comes From Our Diversity.

   Movements on the religious right share the advantage of fundamentalist theologies. This
discourse provides religious extremisms with an organizing edge which conventional wisdom
holds the secular left does not share. In the U.S., the neoliberal, neoconservative and religious
rights, which on their faces seem to have little in common, have managed to bury their
differences and build a highly effective coalition by adopting the rhetoric and framing of
Christian fundamentalism.

   The progressive left actually has an even stronger potential frame for coordinated action. This
is an unbeatable strength, if it is effectively harnessed. Paradoxically, this potentially
unifying discourse arises from the very diversity of egalitarian struggles. A movement for
progressive social change intrinsically consists of people of all beliefs and no belief, of every
race, gender and nation. The interdependence of life on this planet means that mutual aid and
respect are an absolute condition for survival. This shared reality transcends boundaries of
religion, nation, race, gender, even species. It unites every progressive social movement and is
reflected in the teachings of all the world’s major religions and secular ethics. Equality premised
on not just accepting but celebrating interdependent difference provides a strong a moral frame
for progressive social change.

b. Prefigurative Politics and Intrinsic Interdependence

   In his famous essay on the individual and socialism, Che Guevara argued that humans
need to evolve to the point at which each of us works because we are aware that our existence is
mutually dependent; to the point at which we make art out of the very act of coming together in
community to do what we do to survive. He argues that when we move towards that kind of

146 Steinberg, supra note 46, at 224.

147 Clawson, supra note 139, at 205.

148 See, e.g. George Lakoff, Don’t Think of an Elephant! Know Your Values and Frame the Debate 6-11, 81-88
(Chelsea Green 2004).
community, we’ll be fulfilling what we’re really supposed to be as humans. 149 Two obvious questions arise: How do we get there? What do we do in the meantime? The practice of prefigurative politics contains an element of the answer to both.

Engaging in “prefigurative” politics means rejecting the idea (advocated, ironically, by Che Guevara among others) that until the world experiences a total economic, political and social transformation, making social change requires adopting methods similar to those who have achieved and maintained power through the kind of inhumane, undemocratic and criminal tactics on display not only in Colombia, not only in the FTZs and the exploitation of undocumented workers, but in places like Guantanamo and Abu-Ghraib. It means recognizing that the very short time that each individual has on this planet is all we have; that we should try in the here and now, as much as possible, to be the kind of world we’d like to build. In other words, SAGE organizers should try to “prefigure” a popular democratic, egalitarian systemic transformation in the way they struggle for it. The kinds of changes SAGE organizers are struggling for will be a long time in coming. Many of us won’t live to see them at all. But we can take solace from the fact that we’re part of a continuum that stretches back long before any of us were born, and do our best to live the ideals we fight for while we’re here.

c. Fusion

With these shared principles, perhaps SAGE movements could move beyond forming tactical alliances to actually integrating each others’ concerns into the core of their programs and cultures. We’ve already seen how the U.S. labor movement could benefit by working more closely with immigrant workers. But feminists could give greater priority to low wage women workers. Environmentalists should emphasize organizing coalitions with low income communities of color to stop toxic dumping. Historically, Clawson argues, movements have blossomed when they have broken out of their existing constructs and blended with new constituencies and networks. 150 The struggle to realize internationally recognized human rights, reframed to support SAGE organizing, could provide a shared normative formula for movements engaged in creating this “fusion”.

d. Building the World We Really Want

Finally, SAGE organizers struggle for what they really want. Why do even some otherwise savvy activists assume that neoliberal capitalism is immutable? It is a social construct, like any other political or economic system. Let the defenders of the status quo ride to its rescue.


150 Clawson, supra note 139, at 194-195.
As a wise man once said, the job of revolutionaries is to make revolution. To put it another way, the job of social change agents is to make social change. We will always achieve less than we seek. We may as well struggle for the kind of world we really want. If economic and political life is something we literally dream up, something we collectively imagine and create, why not consciously contemplate the world we really want, then work to build it?

In a speech at the 2003 World Social Forum, Indian novelist/activist Arundhati Roy summed up the creative rethinkig of advocacy needed to build democratic and humane alternatives to the existing global order as well as anyone:

Our strategy should be not only to confront empire, but to...deprive it of oxygen. To shame it. To mock it. With our art, ...our stubbornness, our joy, our brilliance, our sheer relentlessness--and our ability to tell our own stories. Stories that are different from the ones we’re being brainwashed to believe. The corporate revolution will collapse if we refuse to buy what they are selling; their ideas, their version of history, their wars, their weapons, their notion of inevitability. Remember this: We be many and they be few. They need us more than we need them. Another world is not only possible, she is on her way. On a quiet day, I can hear her breathing.151

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151 Arundhati Roy, Confronting Empire, ZNet (2003), http://www.zmag.org/content/showarticle.cfm?SectionID=51&ItemID=2919 (last visited April 2, 2007).