

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

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Introduction

- In recent years, left-leaning heads of state, riding a tide of social movement activism, have been elected in Bolivia, Ecuador, Uruguay, Nicaragua, Argentina, Brazil and Chile, among other American countries south of the U.S. border.
- Bolivia and Ecuador, inspired by Venezuela, have embarked on a constitutionally-driven process of radical egalitarian reform, seeking to reverse the effects of 500 years of colonialism.
- The Bolivarian Alternative for the Americas, or ALBA, an alternative trade network which rejects neoliberalism and is premised on principles of "social development" and solidarity between developing economies of the Americas,³ now includes Venezuela, Cuba, Bolivia and Nicaragua as signatories.⁴

1. © 2007 by Dean Hubbard. All rights reserved. This article is dedicated to the memory of Raymond Seidelman, who knew we could do better. The article has been developed from two shorter papers: Dean Hubbard, *What's Law Got to do with it? Organizing for a Socially Aware Global Economy: The Case of Colombia*, 35 SOC. POL'Y 4, 41-47 (Summer 2005); and Dean Hubbard, *What Kind of Globalization? Organizing for Workers' Human Rights*, 9 WORKINGUSA: J. LAB. & SOC'Y 3, 315-35 (2006).

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3. Diego Azzi & David Evans Harris, *ALBA: Venezuela's Answer to "Free Trade": the Bolivarian Alternative for the Americas*, FOCUS ON THE GLOBAL S., at 6 (2006), <http://www.focusweb.org/pdf/alba-book.pdf> [hereinafter *Venezuela's Answer*].

4. Banbose Shango, *5th Cumbre Alternativa Bolivariana para los Pueblos de Nuestra America*, SOLIDARITY NETWORK (2007), [http://www.vensolidarity.org/Issue%](http://www.vensolidarity.org/Issue%20)

- Ecuador has expelled the World Bank's representative, Venezuela is withdrawing from both the World Bank and the International Monetary Fund, and Bolivia, Nicaragua and Venezuela are withdrawing from the World Bank's International Centre for the Settlement of Investment Disputes.⁵
- These political and economic changes have been made possible in part by the growing strength of grass roots mobilizations throughout the hemisphere, including the massive immigration mobilizations in the U.S., which emerged into the public eye last year.

What do these developments mean for the workers' rights movement? They remind us that the global political economy is the product of conscious policy choices. They suggest that the brand of globalization that op-ed pundit Thomas Friedman⁶ and others claim is as inevitable as the sunrise is in fact vulnerable to the earth's political revolutions.

The United States, which holds itself out as the world's chief proponent of human rights, has instead led the developed nations in establishing a global governance system premised on violations of economic human rights law, both abroad and at home. These abuses, whether carried out by economic, political or military means, are committed with the complicity of international financial institutions to facilitate the pursuit of profit by transnational corporations. They are rationalized, often in good faith, by the ideology of neoliberalism.⁷ This ideology is commonly referred to

20Overview/alba.php [hereinafter *Alternativa Bolivariana*].

5. Alejandro Reuss, *Anti-Neoliberal Backlash: Leaving the IMF and the World Bank Behind*, NACLA REP. ON AM., July/Aug. 2007, at 3, available at http://www.worldandi.com/subscribers/feature_detail.asp?num=25753. See *infra* text accompanying notes 33-52.

6. Thomas Friedman, *Revolution Is U.S.*, in *DEBATING DEMOCRACY: A READER IN AMERICAN POLITICS* 346 (Bruce Miroff, Ray Seidelman and Todd Swanstrom eds., Houghton Mifflin 4th ed. 2003). Friedman argues here, as elsewhere, that the neoliberal model of globalization is inevitable and beneficial, and it is the job of government to help people adjust to it: "I feel about globalization a lot like I feel about the dawn. Generally speaking, I think it's a good thing . . . It does more good than harm. But even if I didn't care much for the dawn there isn't much I could do about it." *Id.*

7. 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* ideology of the Industrial Revolution which was broadly discredited during and after the Great Depression. See JOSEPH E. STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* 74 (W.W. Norton 2002) (1996) (providing a deconstruction of neoliberal economic policy). Neoliberalism, initially championed by economist Milton Friedman and his University of Chicago acolytes, and widely

as the "Washington Consensus," at least with respect to its execution in the Americas.⁸

If the policies implemented by proponents of this ideology are products of conscious choices, it follows that alternatives to the existing order are possible, notwithstanding what the apologists of global corporate power would have us believe. In fact, grass roots visionaries are weaving viable networks of resistance, not only in Latin America but in all parts of the world, actively advancing the struggle for global justice, organizing every day to incorporate economic, social and cultural rights into the daily lives of ordinary people. 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").

This paper outlines a strategy to reimagine workers' rights activism to foster systemic transformation of the global political economy. The first part of the article points out that the provisions of international human rights law, many ratified by the United States, require states to provide means of subsistence and work with dignity to all their people. Instead, international governance and finance institutions charged with protecting these "economic human rights," have enabled the implementation of neoliberal policies, which have raised significant obstacles to the realization of these rights. Nevertheless, while economic human rights are not likely to be litigated, legislated or negotiated into existence under current

implemented beginning in the Reagan-Thatcher era, 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 is not the only force weakening workers' rights globally. However, the prevalence of neoliberalism has exacerbated the impact of and sometimes worked in tandem with other factors, such as technological advances and changes in the structure of work and employment relationships.

8. 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 appli[cation of] the most conservative interpretation of the Consensus' principles by the [International Monetary Fund]." Teddy Chestnut & Anita Joseph, *The IMF and the Washington Consensus: A Misunderstood and Poorly Implemented Development Strategy*, COUNCIL ON HEMISPHERIC AFF. (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. 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.* See *infra* text accompanying notes 33-43.

global political and economic policy structures, international legal protections can and in some cases are providing a normative basis to support transformative SAGE organizing.

The second part of the article outlines a framework to foster egalitarian, popular-democratic, systemic economic and political transformation: The elements of this strategy 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 a genuine transnational solidarity; and (3) applying lessons learned from the struggles and successes of the first two elements of the triad to initiate alternative policies and institutions.⁹ The foundation of this approach is linking local workplace and community organizing for the rights and agency of marginalized people to transnational change networks.

At a minimum, SAGE activists engaged in disparate struggles must share 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 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. For centuries, powerful actors have steadfastly built and defended oppressive economic and political structures premised on colonialism, racism and patriarchy.¹⁰ 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

9. Predicting detailed substantive policies that kind of work will lead to 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.

10. See, e.g., FRANTZ FANON, *THE WRETCHED OF THE EARTH* 303-16 (Grove Press 1963) (exploring the psycho-social impacts of colonization and its implications for building a movement for decolonization); EDUARDO GALEANO, *OPEN VEINS OF LATIN AMERICA: FIVE CENTURIES OF THE PILLAGE OF A CONTINENT* 11-204 (Monthly Review Press 1997) (1973) (narrating a passionate historic account of capitalist underdevelopment in Latin America); EDWARD W. SAID, *CULTURE AND IMPERIALISM* 3-14 (Vintage Books 1993) (weaving an influential study of the roots of imperialism in European culture).

deep-rooted legacy of interrelated class, race and gender oppressions. The paper therefore 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.

I. The Problem: 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.¹¹ 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.¹² Both of these instruments have been duly ratified and are therefore, under our Constitution, treaty obligations which are binding law in the United States.¹³ 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 the right to means of livelihood, including food, housing, clothing, medical care and social income protection.¹⁴ Regionally, the American Declaration on

11. U.N. Charter arts. 55 and 56, *available at* <http://www.un.org/aboutun/charter/>.

12. International Covenant on Civil and Political Rights arts. 8 and 22, G.A. Res. 2200A (XXI), at 52, 21 U.N. GAOR Supp. (No.16), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (Dec. 16, 1966) (entered into force March 23, 1976), *available at* http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

13. U.S. Const. art. II, § 2, cl. 2; *see also id.* art. VI, § 2.

14. Universal Declaration of Human Rights, G.A. Res. 217A (III), (Dec. 10, 1948), *available at* <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 the realization of economic, social and cultural rights, meaning that society has the

the Rights and Duties of Man protects a remarkably similar set of rights.¹⁵ Additionally, 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 Declaration.¹⁶

Workers' human rights are progeny of the grandmother of all the existing international institutions, the International Labor Organization ("ILO").¹⁷ The ILO's 1998 Declaration on

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 his or her 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 establishes that everyone has duties to the community.

15. American Declaration on the Rights and Duties of Man arts. XIV, XVI, XXIII AND XXV, Organization of American States Res. XXX, Inter-Am. C.H.R., (1948), *available at* <http://www.cidh.org/Basicos/English/Basic2.American%20Declaration.htm>.

16. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), at 49, 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (Dec. 16, 1966) (entered into force Jan. 3, 1976), *available at* http://www.unhchr.ch/html/menu3/b/a_ceschr.htm. Article 1(2) of the ICESCR provides that all peoples may, for their own ends, freely dispose of their natural wealth and resources. Article 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 directed 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 mandated 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. Article 13 establishes the right of everyone to education. It states that 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.

17. The ILO was founded in 1919, in the aftermath of World War I, as a product of the Treaty of Versailles, which also brought into being the League of Nations (the predecessor of the United Nations). The ILO is the only surviving institution of that treaty. In 1946, the ILO became the first specialized agency of the UN. Its tripartite

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.¹⁸

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."¹⁹ Of these, to date, the United States has ratified only two: the conventions on the abolition of forced labor and the worst forms of child labor.²⁰

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. What institutional obstacles prevent these economic human rights from being realized? What strategies should SAGE organizers use to change the balance of political and economic power so that the global majority speaks for itself; so that

organizational and decision-making structure (governments, workers and employers) makes it unique among UN agencies.

18. Int'l Lab. Org., *Declaration on Fundamental Principles and Rights at Work*, ¶ 2, 86th Sess. (June 1998), available at http://www.ilo.org/dyn/declaris/DECLARATIONWEB.static_jump?var_language=EN&var_pagename=DECLARATIONTEXT.

19. Int'l Lab. Org., *Fundamental ILO Conventions*, INT'L LAB. STANDARDS (2000), available at <http://www-ilo-mirror.cornell.edu/public/english/standards/norm/whatare/fundam/index.htm>. The eight Core Conventions are: Freedom of Association and Protection of the Right to Organize Convention 1948 (No. 87) and Right to Organize and Collective Bargaining Convention, 1949 (No. 98) (Freedom of Association); Forced Labour Convention, 1930 (No. 29) and Abolition of Forced Labour Convention, 1957 (No. 105) (Abolition of Forced Labour); Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and Equal Remuneration Convention, 1951 (No. 100) (Equality); and Minimum Age Convention, 1973 (No. 138) and Worst Forms of Child Labour Convention, 1999 (No. 182) (Elimination of Child Labour). *Id.*

20. Conventions 105 and 182 respectively. Int'l Lab. Org., *Ratifications of the Fundamental ILO Conventions*, INT'L LAB. STANDARDS (2007), available at <http://webfusion.ilo.org/public/db/standards/normes/appl/appl-ratif8conv.cfm?Lang=EN#2ratif>. The U.S. has the dubious distinction of sharing with Myanmar (formerly Burma) the status of having ratified only two of the eight Core Conventions. Myanmar has ratified the Forced Labor (29) and the Freedom of Association and Protection of the Right to Organize (87) Conventions. *Id.*

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.²¹ 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.²² But, in fact, the five permanent members of the Security Council²³ and its ten 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,²⁴ a single permanent member can block action on any issue. On issue after issue, the more broadly representative (and arguably more democratic) General Assembly has the authority to make only nonbinding recommendations to the Security Council.²⁵ And if the Security Council has decided to exercise jurisdiction over a matter, "the General Assembly shall not make any *recommendation* with regard to that dispute or situation unless the Security Council so requests."²⁶

With respect to the enforcement of the economic human rights established by the Universal Declaration of Human Rights, states are mandated to make reports on their progress in implementation of those rights to the Secretary General and to the Economic and Social Council.²⁷ However, the Economic and Social Council makes

21. "[I]t is a general conception of [international] law that every violation of an engagement involves an obligation to make reparation. . . ." *Factory of Chorzów*, 1928 P.C.I.J. (ser. A) No. 17, at 29, *quoted in* Peter Barnacle, *Promoting Labour Rights in International Financial Institutions and Trade Regimes*, 67 SASKATCHEWAN L. REV. 2, 613 (2004) (arguing that labor rights are an integral part of the human rights framework under international law, and that human rights law is as entitled to enforcement and protection as international trade regimes).

22. U.N. Charter art. 2, para. 1.

23. 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, all economic and military powerhouses.

24. U.N. Charter art. 27, para. 3.

25. *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.

26. *Id.* art. 12. Emphasis added.

27. *Id.* art. 16.

reports and recommendations to the General Assembly, which, as already noted, makes only recommendations to the Security Council.²⁸ In addition, placing the sole burden for implementation on states is a serious structural shortcoming given that, as discussed below, even developing states that 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 some states baldly represent only the interests of their economic and political elite.

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.²⁹ However, it faces the same structural problems 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.³⁰

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 the ILO has no power to take action that compels ratifying or non-ratifying states to comply with any of its conventions.³¹ 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

28. *Id.* arts. 62, 63, 71.

29. International Court of Justice, *How the Court Works*, <http://www.icj-cij.org/court/index.php?p1=1&p2=6> (last visited Oct. 21, 2007). According to its website, "the ICJ is the principal judicial organ of the United Nations. It was established in June 1945 by the Charter of the United Nations and began work in April 1946 The Court's role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies." The International Court of Justice, *The Court*, <http://www.icj-cij.org/court/index.php?p1=1> (last visited Oct. 21, 2007).

30. U.N. Charter art. 94.

31. Int'l Lab. Org., *Follow-up to the Declaration*, ILO DECLARATION ON FUNDAMENTAL PRINCIPLES & RTS. AT WORK, http://www.ilo.org/dyn/declaris/DECLARATIONWEB.static_jump?var_language=EN&var_pagename=DECLARATIONFOLLOWUP (last visited Oct. 21, 2007).

impossibly difficult.³²

This governance structure helps reify the power of the political and economic elites of developed nations, transforming the UN's promise of global egalitarianism into a disappointingly familiar neocolonial universalism. These power relations are also reflected in the policies established and implemented by the international financial institutions ("IFIs") established under the auspices of the United Nations. Thus, in addition to obstacles posed by the UN's governance structure, policies implemented by the IFIs also bear significant responsibility for the fact that the promises of economic human rights law exist more in theory than in practice.

The U.N. 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 ("IMF") and the World Bank (hereinafter "Bretton Woods institutions") 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.³³ Both the World Bank and the IMF, which are dominated by the U.S. and other developed countries,³⁴ have used "structural

32. See *infra* text accompanying notes 107-109.

33. See, e.g., SIIGLITZ, *supra* note 7, at 14, 18. David C. Korten, *The Failures of Bretton Woods*, in *THE CASE AGAINST THE GLOBAL ECONOMY* 21-22 (Jerry Mander & Edward Goldsmith eds., Sierra Club Books 1996) (arguing that policies of the Bretton Woods institutions are causing economic, environmental and social crises); Walden Bello, *Structural Adjustment Programs: 'Success' for Whom?*, in *id.* 285-96 (detailing the nature and impact of the imposition of structural adjustment programs on developing economies by international financial institutions); Lori Wallach & Patrick Woodall eds., *WHOSE TRADE ORGANIZATION? A COMPREHENSIVE GUIDE TO THE WTO* 163-64 (The New Press 2004) (arguing that countries that have resisted imposition of the "IMF-WTO model" have fared better than those which complied).

34. 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. and appointed by the U.S. President. The World Bank Group, *About Us: Organization*, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20040580~menuPK:1696997~pagePK:51123644~piPK:329829~theSitePK:29708,00.html> (last visited Oct. 21, 2007). The IMF is a specialized agency of the United Nations system set up by treaty in 1945. It 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 Oct. 21, 2007).

adjustment programs" ("SAPs") to pressure developing countries to open their borders and fundamentally change their economies in ways that adversely impact the economic human rights of their residents.³⁵ The concentration of market power has moved beyond the reach of national governments, not only through the use of SAPs, but as a result of the emergence of both trade agreements negotiated under the GATT³⁶ and institutions such as the World Trade Organization ("WTO"),³⁷ which act 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.³⁸ In effect, governance decisions have been transferred to transnational corporations, which by definition serve only the interests of their dominant shareholders.³⁹

As Nobel laureate Joseph Stiglitz and author and global justice activist David Korten argue, 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 distributing the fruits of this prosperity. The gap between rich and poor is widening.⁴⁰ Credible reports suggest that the world has

35. Although no longer using the term "structural adjustment program," both the IMF and the World Bank continue to apply economic leverage to impose neoliberal policies, using different nomenclature. Barnacle, *supra* note 21, 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 33, at 286.

36. Including regional agreements such as the North American Free Trade Agreement, U.S.-Mex.-Can., Dec. 17, 1992 ("NAFTA"), the Central America-Dominican Republic-United States Free Trade Agreement, Aug. 5, 2004 ("CAFTA") and the proposed Free Trade Area of the Americas ("FTAA").

37. The WTO emerged from the "Uruguay round" of the GATT and went into effect on January 1, 1995. Although its architects claimed that it was simply a new global institution to regulate the terms of trade, activists argued that its 800-plus pages of secretly negotiated rules codified a neoliberal political economy for the planet, mandating privatization, deregulation, "harmonization" of national workers' rights and environmental laws with the pro-business policies of the WTO, altering trade rules to protect multinational enterprises, and creating new private property protections. Wallach & Woodall, *supra* note 33, at 1-5.

38. *Id.* at 239.

39. 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 popular democracy at all levels of institutions which influence the lives of ordinary people, be they putatively state or private entities.

40. United Nations Development Program, *Human Development Report 2005* at 32-39 (2005), http://hdr.undp.org/reports/global/2005/pdf/HDR05_chapter_1.pdf.

more poor people today than ever.⁴¹ Global violence is tearing nations, communities and families apart. The Bretton Woods institutions, steeped in neoliberal or so-called “free market”⁴² ideology, have empowered the super rich to lay claim to the world’s wealth at the expense of its working and poor people, as well as at the expense of the planet’s ecosystem.⁴³

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.⁴⁴ However, as Peter Barnacle notes, 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 institutions, “as they were never intended to be outside of the political and social context in which they were established.”⁴⁵ Moreover, in terms of enforcement, in many countries, including the U.S., duly ratified international law is enforceable under domestic law as a treaty obligation.⁴⁶ U.S.

41. Economist Robert Wade, among others, has persuasively deconstructed the sunny contrary claims of the World Bank. Compare Robert Wade, *Globalization, Poverty and Income Distribution: Does the Liberal Argument Hold?* (Development Studies Working Paper series no. 02-33, (2002), available at <http://www.lse.ac.uk/collections/DESTIN/pdf/WP33.pdf>, with The World Bank, *About Us: “Millennium Development Goals”*, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20104132~menuPK:250991~pagePK:43912~piPK:44037~theSitePK:29708,00.html> (last visited Oct. 21, 2007).

42. The term is a misnomer. Market transactions are always regulated. A dense network of trade, contract, property, tort, tax, and other laws governs, structures and makes the very existence of markets possible. See, e.g., Robert W. Gordon, *Some Critical Theories of Law and Their Critics*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE*, THIRD EDITION 651-652 (David Kairys ed., Basic Books 1998); Peter Gabel and Jay Feinman, *Contract Law as Ideology*, in *id.* at 497-498, 504-509; Richard L. Abel, *Torts*, in *id.* at 452.

43. STIGLITZ, *supra* note 7, at 11-22. Korten, *supra* note 33, at 22.

44. 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.

45. Barnacle, *supra* note 21, at 625. 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 consider norms of customary international law under the principles of *jus cogens* and *opinion juris*. *Id.* at 612. See *infra* note 103 and accompanying text.

46. In the U.S., generally only “self-executing” treaties and those implemented by acts of Congress are given effect in domestic courts. Frederic L. Kirgis, *International*

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 U.S. courts to enforce internationally recognized human rights.⁴⁷ 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.⁴⁸ 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 much-maligned North American Agreement on Labor Cooperation ("NAALC") to publicize violations of workers' economic human rights in support of organizing campaigns.⁴⁹ Under certain circumstances, this type of legal strategy is 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 can do more than simply legitimate class power and capitalist exploitation.⁵⁰

Agreements and U.S. Law, AM. SOC'Y INT'L LAW (May 1997) <http://www.asil.org/insights/insigh10.htm>.

47. See *infra* note 102. However, as I 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. See *infra* text accompanying notes 116-123.

48. 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 the European Union measures 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).

49. See *infra* text accompanying notes 124-130.

50. Even a "traditional" Marxist analyst like Balbus acknowledges that, while law mirrors and helps reproduce the dominant political and economic systems, it is sometimes sufficiently autonomous to permit results inconsistent with the immediate interests of capitalists. Isaac Balbus, *Commodity Form and Legal Form: An Essay on the 'Relative Autonomy' of the Law*, 11 LAW & SOC'Y REV. 571 (1977). Critical legal theorists go further, amplifying Thompson's insight that legal institutions may be "assimilated" to the ruling class, but 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* 260-66 (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 33, at 548-49 [hereinafter Klare, *Critical Theory*]. Law is a "contingent product of human

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.⁵¹ 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.⁵² Thus, at the same time as U.S. political and economic decision-makers express hostility to the use of domestic or international legal mechanisms to remedy violations of workers' human rights, they advocate using international law and institutions to restrict state action protecting workers.⁵³ Their commitment to the neoliberal

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 97-131.

51. Barnacle, *supra* note 21, at 610.

52. Korten, *supra* note 33, at 22. Indeed, according to the IMF, "[E]conomic growth is the only way to improve living standards in developing countries, and this is best achieved through globalization." IMF Staff, *Globalization: A Framework for IMF Involvement*, INT'L MONETARY FUND (2002) <http://www.imf.org/external/np/exr/ib/2002/031502.htm>. In contrast to the IMF, a former president of the World Bank, in a May 2004 report, stated his intention to press the bank to include human rights issues in its future lending criteria, but acknowledged he faced opposition from his board. Jason Nisse, *World Bank President Challenges Board Over Human Rights Pledge*, INDEP., May 16, 2004, quoted in Barnacle, *supra* note 21, at 216. However, his successor as president, the now disgraced neoconservative Paul Wolfowitz, was the intellectual co-architect of the Bush Administration's National Security Strategy, which provided the rationale for the preemptive invasion of Iraq and described a "free market" economy as a necessary element of political democracy. GEORGE W. BUSH, THE WHITE HOUSE, THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA 12-18 (2002), <http://www.whitehouse.gov/nsc/nss.pdf>.

53. See, e.g., Letter from William H. Taft, U.S. State Dept. Legal Adviser, to Louis Overdorfer, U.S. District Judge in the still pending case of Doe, et al. v. Exxon-Mobil, et al., 01-CV-1357 (DDC) (July 29, 2002) (arguing that adjudicating case alleging that Exxon Mobil violated U.S. and international law by paying and directing Indonesian security forces that carried out murder, torture and rape "would risk a potentially serious adverse impact on significant interests of the United States"), available at <http://www.laborrights.org/> (follow "News and Press" hyperlink; then follow "ExxonMobil / Aceh, Indonesia" hyperlink; then follow "State Department Opinion Regarding ExxonMobil Litigation (PDF)" hyperlink) (last visited Oct. 25, 2007; for subsequent history of case, see *infra* note 115 and accompanying text). See also, The Federalist Society, *International Law & American Sovereignty*, <http://www.fed-soc.org/publications/id.3/spdetail.asp> (last visited Oct. 21, 2007) (presenting a list of apposite articles and speeches by members of this conservative lawyers' organization who include about two dozen members of the Bush Administration). See, e.g., Christian

policy prescription remains unshaken, notwithstanding widespread global popular opposition and, as discussed below, growing empirical evidence that the medicine is more likely to kill than cure.

Marc Steinberg has argued that collective action discourse should be understood as a dialogue between power holders and challengers, and that social movement actors can fashion new frames "by artfully transforming the meaning of discourses used to dominate them."⁵⁴ 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 reclaiming economic human rights discourse to provide a *normative* frame for grass roots mobilizations tied to transnational networks to build the power to make the systemic political and economic transformation 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 describes 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 and other developed countries. Countless researchers have traced the hemorrhage of well-paid unionized manufacturing jobs

G. Vergonis, *The Federalism Implications of International Human Rights Law*, FEDERALIST SOC'Y, Sept. 5, 2002, at 2, 13, http://www.fed-soc.org/doclib/20070325_vergonis_humanright.pdf (criticizing adoption of "modern, internationalist vision of human rights" by U.S. courts and arguing against creation of causes of actions for violations of international human rights law); John Bolton, *Address at the Federalist Society 2003 National Lawyers Convention*, FEDERALIST SOC'Y, Nov. 13, 2003, at 7-8, 9-10, 18-20, http://www.fed-soc.org/doclib/20070324_bolton.pdf (arguing that enforcement by the Security Council of international law with respect to the use of force impinges on U.S. sovereignty, and that U.S. constitutional system legitimates specific unilateral actions by the U.S., even in contravention of international law); Tina Potuto Kimble, *The World Trade Organization*, FEDERALIST SOC'Y, May 20, 2003, at 15-20, http://www.fed-soc.org/doclib/20070325_wtopaper.pdf (generally supporting WTO's authority to issue binding decisions, rejecting argument that this infringes on national sovereignty, reasoning that WTO brings needed stability to international trade).

54. Marc Steinberg, *Towards a More Dialogic Analysis*, in SOCIAL MOVEMENTS: IDENTITY, CULTURE AND THE STATE 224 (Meyer, Whittier & Robnett eds., Oxford University Press 2002).

from the U.S. to the policies of the Washington Consensus.⁵⁵ 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 that 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.⁵⁶ At the same time, the enactment of neoliberal policy has 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.⁵⁷ 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.⁵⁸ Formal enterprises as prominent as Wal-Mart, and countless others, benefit from this exploitation of undocumented workers but insulate themselves legally by entering

55. See, e.g., Kate Bronfenbrenner, *Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages and Union Organizing* (U.S. Trade Deficit Review Commission 2000) (reporting results of study of NLRB cases which suggests that the specter of capital mobility and threats of plant closings have dampened union organizing activity and led to a reduction in wages of U.S. workers). BENNETT HARRISON & BARRY BLUESTONE, *THE GREAT U-TURN: CORPORATE RESTRUCTURING AND THE POLARIZING OF AMERICA* (1998) (analyzing the negative impacts of growing internationalization on living standards of workers in the United States). See also Bruce Nissen, *Alliances Across the Border: U.S. Labor in the Era of Globalization*, WORKINGUSA: J. OF LAB. & SOC'Y, May/June 1999, at 44-45; David Bacon, *National Security or International Solidarity*, WORKINGUSA: J. OF LAB. & SOC'Y, Spring 2001, at 85, 94-95.

56. IMMANUEL NESS, *IMMIGRANTS, UNIONS AND THE NEW U.S. LABOR MARKET* 13-57 (Temple University Press 2005). JENNIFER GORDON, *SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANTS RIGHTS*, 39-44 (Harvard University Press 2005). See also HARRISON & BLUESTONE, *supra* note 55.

57. NESS, *supra* note 56, at 47, 181-184.

58. *Id.* at 13-39. GORDON, *supra* note 56, at 22-26, 46-48.

into subcontracting relationships with informal enterprises.

When a transnational corporation such as Wal-Mart squeezes a garment supplier so that it closes a unionized factory in the U.S. paying \$10 dollars an hour⁵⁹ plus benefits, then buys from a maquila in Mexico paying \$1.20 an hour⁶⁰ without benefits, which goes out of business because Wal-Mart can buy for less from a supplier in China which pays 75 cents an hour,⁶¹ which closes when Wal-Mart moves its business to a Bangladesh supplier paying 25 cents an hour,⁶² the problem of unfettered capital mobility by unregulated corporate behemoths is obvious. The threat to democracy should be equally clear. Wal-Mart has fifty-five times the annual revenue of the entire country of Bangladesh. What hope does its government have of effectively regulating such a massive economic steamroller in the interests of its people? And, as argued above, international organizations such as the World Trade Organization, which theoretically could function as a regulatory counterweight to the world's 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 the collective power of organized working people could compose a strong force for a Socially Aware Global Economy, the ascendance of neoliberalism has profoundly impacted the organization of work and the density and power of unions in the U.S. and many other parts of 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

59. U.S. DEP'T LAB., BUREAU OF LABOR STATISTICS, MAY 2006 NATIONAL INDUSTRY-SPECIFIC OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES, NAICS 315200 - CUT AND SEW APPAREL MANUFACTURING, PRODUCTION OPERATIONS (2006), http://www.bls.gov/oes/current/naics4_315200.htm#b51-0000. 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 Part II, 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.

60. John Ross, *Maquila Meltdown: Plants Flee Mexican Wages*, NOW ONLINE EDITION, Nov. 28, 2002, http://www.nowtoronto.com/issues/2002-11-28/news_story4.php.

61. JUDITH BANISTER, U.S. DEP'T LAB., MANUFACTURING EMPLOYMENT AND COMPENSATION IN CHINA 74, tbl.6, (2005), <http://www.bls.gov/fls/chinareport.pdf>. Exchange rate computed on Nov. 9, 2007 at <http://finance.yahoo.com/currency?u>.

62. U.S. DEP'T STATE, BANGLADESH: COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2004, § 6.e (2005), <http://www.state.gov/g/drl/rls/hrrpt/2004/41738.htm>. Exchange rate computed on Nov. 9, 2007 at <http://finance.yahoo.com/currency?u>.

in “informal” sectors of the economy.⁶³ In the U.S., 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.”⁶⁴ 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.”⁶⁵ And this disability is imposed only where workers already have collective bargaining rights. Unorganized workers have no binding means to collectively address their terms and conditions of work. As is well known, the percentage of workers who are unionized in the United States has declined from a high of 35 percent in the 1950s to less than 13 percent today. In the private sector, only 7.4 percent of the workforce is unionized.⁶⁶ The situation is even worse for undocumented workers, who the United States Supreme Court has decided are not entitled to reinstatement or back pay if they are fired in retaliation for collective organizing.⁶⁷ 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, too often immigrant workers are unaware of these legal rights, underfunded government agencies lack the power or the will to enforce them and unscrupulous employers take advantage of workers’ fear of deportation to evade them.⁶⁸

63. Marty Chen, Harvard University WIEGO, Rethinking Formalization: Who, What, Why, and How?, Presentation to U.N. Department of Economic and Social Affairs (DESA), Development Forum on Productive Employment and Decent Work (May 9, 2006) (on file with author). See also Dean Hubbard, *Contingent Work: Contingent Rights*, AM. B. ASS’N LAB. & EMP. COMMITTEE ANN. MEETING PROGRAM BOOK PAPERS, 1997 (on file with author).

64. Human Rights Watch, *Unfair Advantage: Workers’ Freedom of Association in the United States under International Human Rights Standards*, Aug. 2000, at 13, <http://www.hrw.org/reports/2000/uslabor>.

65. *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981). See also, *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203 (1964).

66. U.S. DEP’T LAB., UNION MEMBERS SUMMARY: UNION MEMBERS IN 2006, (Jan. 25, 2007), <http://www.bls.gov/news.release/union2.nr0.htm>.

67. *Hoffman Plastic Compounds v. NLRB*, 122 S. Ct. 1275 (2002); *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883 (1984). The Hoffman decision has been challenged in regional human rights fora by lawyers working with SAGE organizers. See *infra* text accompanying notes 127-29.

68. GORDON, *supra* note 56, 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.⁶⁹ The textbook example 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 widespread and well-documented murder and torture, imposed 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 disastrous recession.⁷⁰

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 six 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.⁷¹ 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

69. David Bacon, *The U.S. Arrests Iraq's Union Leaders*, GLOBAL EXCHANGE, Oct. 20, 2003, <http://www.globalexchange.org/countries/iraq/1344.html>. See also David Bacon, *Iraq's Workers Strike to Keep Their Oil*, TRUTHOUT, June 9, 2007, http://www.truthout.org/docs_2006/060907A.shtml.

70. Bello, *supra* note 33, at 289-92.

71. See, e.g., Dean Hubbard, *NLG Members Observe Nicaraguan Presidential Elections*, 21 GUILD NOTES 4, 12-16 (2001). Hugo Cabieses, *Peru's Cocaleros on the March*, NACLA REP. ON AM., Nov./Dec. 2003. Joaquín M. Chávez, *An Anatomy of Violence in El Salvador*, NACLA REP. ON AM., May/June 2004, at 31. Nazih Richani, *Columbia at the Crossroads: The Future of the Peace Accords*, NACLA REP. ON AM., Jan./Feb. 2002, at 17. Alejandro Bendaña, *Washington and the Caudillos: Calculation and Miscalculation in Managua*, NACLA REP. ON AM., Jan./Feb. 2002, at 12.

murders of thousands of trade unionists there over the last several years are not simply a matter of government vs. guerrillas; but rather, these killings are intrinsic to a strategy by transnational corporations, many of them based in the U.S.,⁷² and their allies among Colombia's ruling elite to consolidate control over and profitably access economic resources, particularly natural resources.⁷³ As Mauricio Salgar, Director of Operations for Colombia's state-owned oil firm, told the *New York Times*, "for the military, the priority is to protect and provide confidence for investors, in particular in the petroleum sector."⁷⁴ 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.⁷⁵ 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."⁷⁶

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.⁷⁷ 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*

72. See *infra* text accompanying notes 105-122.

73. Dean Hubbard, *Defending Workers' Rights in a Global Economy: Report from Inaugural Meeting of International Commission for Labor Rights*, NAT'L LAW. GUILD LAB. & EMP. COMMITTEE NEWSLETTER (NLG Labor & Employment), Oct. 2003, at 6.

74. Juan Forero, *Safeguarding Colombia's Oil*, N.Y. TIMES, Oct. 22, 2004, at W1.

75. See, e.g., Gary Leech, *Colombians Protest IMF-imposed Austerity Measures*, COLUM. J. ONLINE, Aug. 6, 2000, <http://www.colombiajournal.org/columbia22.htm>.

76. Juan Forero, *Assassination is an Issue in Trade Talks*, N.Y. TIMES, Nov. 18, 2004, at W1.

77. This is not to ignore the role that left guerrilla groupings such as the Fuerzas Armadas Revolucionarias de Colombia ("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. According to Amnesty International, in 2005, 49% of the killings of unionists were carried out by paramilitaries, 42% by government security forces and just 2% by guerilla forces. Amnesty International, *Colombia: Killings, arbitrary detentions, and death threats—the reality of trade unionism in Colombia*, AMNESTY INT'L DOCUMENT LIBR., July 3, 2007, <http://web.amnesty.org/library/index/engamr230012007> [hereinafter Amnesty Colombia Report].

*literally 99.9% of the cases.*⁷⁸ 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.⁷⁹

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 government security forces, often without charges, always without convictions, and often for many months. A case in point is Hernando Hernandez, the president of Colombia's oil workers' union, who was arrested on terrorism charges and detained in custody for fourteen months before being released in April 2004 without further charges.⁸⁰

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."⁸¹ 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."⁸² 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

78. Hubbard, *supra* note 73, at 6. See also Int'l Commission for Lab. Rts., *Launch of Colombia Mission Report*, INT'L COMMISSION FOR LAB. RTS. (2004) <http://labourcommission.org/Colombiamission.htm>.

79. Hubbard, *supra* note 73, at 6.

80. Sarah Lucy Cooper, *Violations of the Right to Life of Trade Unionists in Colombia, A Report by the Bar Human Rights Committee*, INT'L COMMISSION FOR LAB. RTS., May 18, 2004, ¶¶ 46, 48, <http://labourcommission.org/Cooper.doc>.

81. AFL-CIO News for Working Families, *Terror War on Colombia's Unions Claims More Lives*, AFL-CIO (2002) <http://www.aflcio.org/issuepolitics/globaleconomy/ns05172001.cfm>.

82. Quoted in Phillip Dement, *Economic Rights: The Big Comeback*, UNESCO COURIER, Nov. 2001, http://www.unesco.org/courier/2001_11/uk/droits.htm. Carrillo and fifteen colleagues were arrested in 1996, and Carrillo spent eighteen months in prison. At the end of 1998, following the murder of his lawyer, Eduardo Umaña Mendoza, Carrillo was forced into exile after receiving death threats.

not exist. And what meaning do political and civil rights have where people lack the basic means of human existence?⁸³

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 world's hours worked yet receive only a tenth of the income.⁸⁴ "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 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, and ultimately the family, realm. Women disproportionately bear this burden, as the worldwide gender-based division between productive and reproductive work remains firmly entrenched.⁸⁵

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.⁸⁶ In fact, the FTZs are

83. 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*, AM. CENTER FOR INT'L LAB. SOLIDARITY (2006) <http://www.solidaritycenter.org/files/ColombiaFinal.pdf>.

84. International Confederation of Free Trade Unions, *Export Processing Zones-Symbols of Exploitation and a Development Dead End*, Sept. 2003, at 10-11, <http://www.icftu.org/www/pdf/wtoepzreport2003-en.pdf> [hereinafter "ICFTU"]. See also CATHERINE A. MACKINNON, *SEX EQUALITY* 149, 176-77, 193-95 (Robert C. Clark *et al.* eds., Foundation Press 2001).

85. *Id.*

86. "Free trade zones (FTZs) and export processing zones (EPZs) are sites where foreign or domestic merchandise may enter without a formal customs entry or the payment of customs duties or government excise taxes. EPZs are dedicated to manufacturing for export, whereas FTZs also handle imports . . . Host countries, states, and regions offer a variety of incentives, including preferential custom duties, taxation and financing." International Labor Organization, *Globalization and Workers' Rights, National Framework for Globalization*, ILO/ACTRAV BUREAU FOR

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.⁸⁷ Nevertheless, many FTZ employers 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 these practices in the maquilas.⁸⁸ In the Dominican Republic, the ICFTU has documented numerous cases of sexual harassment and rape of FTZ workers. Efforts by women workers in the FTZs to organize collectively for mutual self-protection are often ruthlessly suppressed.⁸⁹ 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 twenty hour work days, Disney responded by closing its factory and moving the work elsewhere.⁹⁰

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 grassroots, transnational strategies which attempt to make economic human

WORKERS' ACTIVITIES(1997), <http://www.itcilo.it/actrav/actravenglish/telearn/global/ilo/frame/national.htm#Special%20Economic%20Zones>. The International Confederation of Free Trade Unions notes, however, that "... the incentives designed to attract investors often go beyond the boundaries of a specific zone or enclave, with entire countries, provinces or towns being qualified as a 'zone.'" ICFTU, *supra* note 84, at 8. In 2002 there were around 3000 FTZs employing some 43 million people, worldwide, the vast majority of whom were women. *Id.* at 8, 10.

87. *Id.* at 6-7. See also, e.g. Megan Rowling, *Women Workers in the Free Trade Zones*, CENT. AM. WOMEN'S NETWORK (2000) http://www.cawn.org/newsletter/13/free_trade_zones.html. See also *infra* text accompanying notes 147-149.

88. ICFTU, *supra* note 84, at 11.

89. *Id.* at 6, 12-13.

90. THE HIDDEN FACE OF GLOBALIZATION (Crowing Rooster Arts 2003).

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. This article concludes 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 of the reasons unions organize is to help workers develop meaningful human agency. Active leadership of workers at the grass roots level is a necessary prerequisite to this kind of change. A second critical element is magnifying that agency through the power of coordinated, collective action. Experience has repeatedly proven that grass roots community and workplace organizations that facilitate ordinary people's coordinated struggles to gain control over their political, economic and cultural lives are the most effective vehicles for systemic change.⁹¹

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

91. ROBERT P. MOSES & CHARLES E. COBB, JR., *RADICAL EQUATIONS: CIVIL RIGHTS FROM MISSISSIPPI TO THE ALGEBRA PROJECT* 3-90 (Beacon Press 2001). Wade Rathke, *Tactical Tension*, 9 SOC. POL'Y 3, 10-15 (2001). STEVE BACHMANN, *LAWYERS, LAW AND SOCIAL CHANGE* 35-107 (Unlimited Publishing 2001).

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.⁹²

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.⁹³ 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 action networks ("TANs") provide alternative channels for communication. They multiply and amplify voices that may be silenced 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 use information strategically to create leverage over seemingly invulnerable corporate and state actors. TANs are often committed to looking beyond mainstream conceptions of policy towards 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 can also serve as vehicles for activists from different cultural and political backgrounds to negotiate the meaning of their collective endeavor.⁹⁴

The number of TANs has grown exponentially in the last twenty years in response to global integration. Sociologists Keck and Sikkink identify a "boomerang pattern," which emerges when a domestic government (or, as 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

92. MOSES & COBB, *supra* note 91, at 18-20. GARY DELGADO, ORGANIZING THE MOVEMENT: THE ROOTS AND GROWTH OF ACORN 63-90 (Temple University Press 1986). SAUL D. ALINSKY, RULES FOR RADICALS: A PRACTICAL PRIMER FOR REALISTIC RADICALS 113-125 (Vintage Books 1989).

93. MOSES & COBB, *supra* note 91, at 172-93.

94. MARGARET E. KECK & KATHRYN SIKKINK, ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS 1-38 (Cornell University Press 1998).

corporations from other angles, and international contacts “amplify the demands of domestic groups, pry open space for new issues, and then echo back these demands into the domestic arena.”⁹⁵

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

95. *Id.* The tactics of TANS include:

- 1) Information Politics: Generating politically usable information and moving it to where it will have most 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.

Id. at 12-13.

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.

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 constituency-based organizing supported by direct action across transnational networks as an essential building block for institutional alternatives to globalized neoliberalism.

1. Administering CPR to International Human Rights

While grass roots organizing linked to transnational networks may provide the best route towards a Socially Aware Global Economy, economic human rights law can provide critical normative and functional support to the movements to which such organizing is tied. Lawyers acting in coordination with those movements can help create a climate in which organizers seeking to resuscitate workers' human rights can work in greater safety.⁹⁶

As we have already seen, binding international laws such as the U.N. Charter, the Universal Declaration of Human Rights ("UDHR") and the Covenant on Civil and Political Rights, all of which have been signed by the United States, specifically recognize and protect economic human rights. In December 2003, a coalition of fifty key U.S. civil liberties and social justice groups launched a new "U.S. Human Rights Network" devoted to enforcing economic

96. The principal attorneys' TAN on a global scale is the International Association of Democratic Lawyers ("IADL"), <http://www.iadllaw.org> (last visited Oct. 23, 2007), a U.N.-affiliated NGO. In terms of transnational defense of workers' rights, the International Commission for Labor Rights ("ICLR"), <http://www.labourcommission.org> (last visited Oct. 23, 2007), and The International Centre for Trade Union Rights, <http://www.ictur.org> (last visited Oct. 23, 2007), are key legal players. Regional lawyers' TANs include the American Association of Jurists ("AAJ"), <http://www.aaj.org.br/index.asp> (last visited Oct. 23, 2007), and the Association of Latin American Labor Attorneys ("ALAL") <http://www.alal.info/> (last visited February 17, 2007). The primary U.S. progressive lawyers organization engaged in transnational organizing is the National Lawyers Guild, <http://www.nlg.org> (last visited Oct. 23, 2007), and its Labor and Employment Committee, <http://www.worksafe.org/nlglaboremploycomm/international.cfm> (last visited Oct. 23, 2007), International Committee, <http://www.nlginternational.org/> (last visited Oct. 23, 2007), and International Labor Justice Working Group, <http://www.nlginternational.org/com/main.php?cid=4> (last visited Oct. 23, 2007). Each of these organizations is, to varying degrees, engaged in programmatic initiatives aimed at supporting workers and other social movement actors who are organizing for a Socially Aware Global Economy, both defensively and offensively.

human rights in the United States courts.⁹⁷ These groups, which range from the ACLU to Human Rights Watch, 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.’”⁹⁸ 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 enumerated in the UDHR are interdependent, universal, and include economic human rights, not just the civil and political rights that have traditionally been recognized in the U.S. Especially promising is the core principle 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.⁹⁹ 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 downplayed 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.¹⁰⁰ They have tended instead to rely on the rights provided under the

97. Common Dreams News Center, *Over 50 US Human Rights Groups to Launch Network to Address “Alarming State of Human Rights in the US,”* U.S. HUM. RTS. NETWORK, Dec. 5, 2003, <http://www.commondreams.org/scriptfiles/news2003/1205-10.htm>. The Network is organized with a caucus structure. “Caucuses function as working groups that share information, identify strategies and capacity building needs, as well as explore potential collaborations.” United States Human Rights Network, *Caucus*, <http://www.ushrnetwork.org/issues> (last visited Oct. 23, 2007). The fourteen caucuses include legal, workers’ rights, organizing, and economic and social rights groups. The Economic and Social Rights Caucus “takes its leadership from poor communities – those most affected by economic and social rights violations. It supports the organized poor and takes the position that nothing short of the elimination of poverty meets universal human rights standards. The current mandate of ESRC is to increase public understanding of poverty as a human rights violation, and to support within a human rights framework the efforts of poor people to claim their human rights.” United States Human Rights Network, *Economic and Social Rights Caucus*, http://www.ushrnetwork.org/issues/economic_social (last visited Oct. 23, 2007). The mandate of the legal caucus is to “educate the legal community on the international human rights obligations of the United States, and to implement collective strategies to develop mechanisms, whether judicial or legislative, to enforce these obligations.” United States Human Rights Network, *Legal Caucus*, <http://www.ushrnetwork.org/issues/legal> (last visited Oct. 23, 2007).

98. Common Dreams News Center, *supra* note 97.

99. United States Human Rights Network, *Core Principles & Goals*, http://www.ushrnetwork.org/about_us/coreprinciples_goals (last visited Oct. 23, 2007).

100. *But see* text accompanying notes 21, 45-50.

U.S. Constitution. In recent years, however, U.S. courts, including the Supreme Court, have increasingly cited international human rights standards in their decisions regarding, for example, the death penalty for juveniles, women's rights, and the accountability of U.S. companies for wrongful conduct overseas.¹⁰¹

a. The Case of Colombia

The most universally accepted human rights are referred to in U.S. law as "the law of nations"¹⁰² and under international law as a principle known as "*jus cogens*."¹⁰³ 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 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 decade, workers' human rights advocates have developed a transnational action network which has had some success suing U.S.-based transnationals under the ATCA. At least two cases involve the killings of union activists employed by U.S. transnationals 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)

101. See, e.g., *Roper v. Simmons*, 543 U.S. 551, 623 (2005) (citing the United Nations Convention on the Rights of the Child in holding the death penalty unconstitutional for juveniles); *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) (recognizing an Alien Tort Claims Act claim based on the law of nations must rest on a specifically defined international norm accepted by the civilized world); *Grutter v. Bollinger*, 539 U.S. 306, 344 (2003) (Ginsburg, J., concurring) (upholding the University of Michigan's affirmative action program, and citing 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); *Lawrence v. Texas*, 539 U.S. 558 (2003) (relying in part on rejection of sodomy laws by European Court of Human Rights). Courts of other nations have long referred to workers' rights established by international instruments in interpreting domestic law. Barnacle, *supra* note 21, at 620-21. The ILO has a database of domestic court decisions based on international labor law. *Id.* at 621.

102. Terry Collingsworth, *The Alien Tort Claims Act: A Vital Tool for Preventing Corporations from Violating Fundamental Human Rights*, INT'L LAB. RTS. FUND (2003) <http://www.laborrights.org/publications/ATCA.pdf> (last visited Nov. 9, 2007).

103. 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 21, at 613.

and the executive director of the International Rights Advocates (Terry Collingsworth). The institutional plaintiff in the Drummond litigation is Sintramienergetic, a Colombian mine workers union. Plaintiffs are represented by International Rights Advocates in that case as well.¹⁰⁴

The 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.¹⁰⁵ 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.¹⁰⁶ 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 the investigation and reports of its Commissioners would help in influencing the ILO to change its position. The ICLR's Colombia Commission was hosted by the Colectivo de Abogados Jose Alvear Restrepo, a lawyers' collective involved in protecting 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, at its June 2005 meeting, the Chair of the Committee on Freedom of Association promised to "visit" Colombia "and meet with all interested parties."¹⁰⁷

104. See International Labor Rights Forum, <http://www.laborrights.org> (last visited Oct. 23, 2007); International Rights Advocates, *US Courts*, <http://www.iradvocates.org/uscourts.html> (last visited Oct. 23, 2007). International Rights Advocates was formerly the litigation arm of the International Labor Rights Fund. *Id.*

105. See also Common Dreams News Center, *supra* note 97.

106. Cooper, *supra* note 80, at ¶ 3.

107. Press Release, Int'l Labour Org., Committee on Freedom of Association Cites

Meanwhile, in the summer of 2005, the ICLR sent a second Commission 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 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.¹⁰⁸

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 were 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

Cambodia, Colombia, the Islamic Republic of Iran, Myanmar and Zimbabwe (June 17, 2005), *available at* http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Press_releases/lang-en/WCMS_005172/index.htm.

108. "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." Press Release, Int'l Labour Org., ILO Governing Body Concludes 297th Session: Considers Labour Situation in Myanmar, Belarus and Other Countries, (Nov. 17, 2006) *available at* http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Press_releases/lang-en/WCMS_080622/index.htm.

boycott of Coca-Cola products led by corporate campaign veteran Roy Rogers.¹⁰⁹

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 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 nearly half from 2003 to 2005,¹¹⁰ 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 Alvaro Uribe.¹¹¹ 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."¹¹²

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. The warrants were issued against three soldiers who had been trained by U.S. Special Forces under a new Bush Administration

109. Campaign to Stop Killer Coke, <http://killercoke.org> (last visited Oct. 23, 2007). 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. The Coca-Cola Company, *Coke Facts: The Truth about the Coca-Cola Company Around the Globe*, <http://www.cokefacts.org> (last visited Oct. 23, 2007).

110. Amnesty Colombia Report, *supra* note 77. Cooper, *supra* note 80, at ¶ 9. US/LEAP, *Colombia Fact Sheet: Murders of Trade Unionists and Impunity Under Uribe 2* (2007), <http://usleap.org/files/September%20Impunity%20Analysis.pdf> (last visited Nov. 9, 2007) [hereinafter US/LEAP].

111. US/LEAP, *supra* note 110.

112. Editorial, *Colombia's Capitulation*, N.Y. TIMES, July 4, 2005, at A12. Since the amnesty was granted, the numbers of murders of unionists has begun creeping back upward. Amnesty Colombia Report, *supra* note 77.

initiative allegedly intended to protect the pipelines and facilities of U.S. multinational Occidental Petroleum from guerillas.¹¹³ Nevertheless, over three years after the warrants were issued, not one of the soldiers has been convicted, nor has any effort been made to prosecute more senior military commanders who may have been involved in the murders.¹¹⁴

Whatever their immediate impact, the results in the ATCA cases illustrate the potential strategic dangers of resting the fate of SAGE movements 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.¹¹⁵ Then, in *Sosa v. Alvarez-Machain*,¹¹⁶ the Bush Administration joined with transnational corporate interests¹¹⁷ 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

113. Juan Forero, *Bogotá Says Colombian Troops Assassinated 3 Union Leaders*, N.Y. TIMES, Sept. 8, 2004, at A3.

114. Amnesty Colombia Report, *supra* note 77.

115. Collingsworth, *supra* note 102, at 5-8. See also *supra* note 53. The District Court responded by dismissing the ATCA causes of action, but not the common law tort claims. *Doe v. Exxon Mobil Corp.*, 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 v. Exxon Mobil Corp.*, 473 F.3d 345, 357 (D.C. Cir. 2007).

116. 542 U.S. 692 (2004), *rev'g* 331 F.3d 604 (9th Cir. 2003) (en banc).

117. Including, *inter alia*, the U.S. Chamber of Commerce, the U.S. Council for International Business, the Business Roundtable, the American Petroleum Institute, and the National Association of Manufacturers. Brief for the National Foreign Trade Council et al. as Amici Curiae Supporting Petitioner, *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) (No. 03-339), available at <http://www.ccr-ny.org/v2/legal/docs/sva17.pdf>. Brief for the National Association of Manufacturers as Amici Curiae Supporting Petitioner, *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) (No. 03-339), available at <http://www.ccr-ny.org/v2/legal/docs/sva18.pdf>. See also Int'l Chamber of Commerce, *Supreme Court Asked to Stop Abuse of Alien Tort Statute*, INT'L CHAMBER OF COM., Jan. 26, 2004, <http://www.iccwbo.org/iccccec/index.html>.

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."¹¹⁸ 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.¹¹⁹

In another ATCA case brought by International Rights Advocates, 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 is not responsible for the action or inaction of its franchisees.¹²⁰

Then, on July 26, 2007, an Alabama federal jury found that Drummond was not liable under the ATCA for the murders of three trade union leaders who represented its workers in Colombia. The trial judge refused to allow four witnesses who plaintiffs' lawyers said would have testified to Drummond's payments to paramilitary members to carry out the assassinations.¹²¹

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.¹²² This alone should encourage SAGE organizers, given the heavy damage inflicted on the economic human rights of ordinary people by policies promulgated in the corridors of power

118. *Sosa*, 542 U.S. at 732.

119. Linda Greenhouse, *Human Rights Abuses Worldwide are Held to Fall Under U.S. Courts*, N.Y. TIMES, June 30 2004, at A21.

120. *Sinaltrainal v. Coca-Cola*, 256 F. Supp. 2d 1345 (S.D.Fla. 2003). See International Rights Advocates, *Coca-Cola I*, <http://www.iradvocates.org/coke1.html> (last visited Oct. 23, 2007).

121. Terry Collingsworth, *Drummond Verdict on July 26, 2007*, INT'L RTS. ADVOCATES (2007), http://www.iradvocates.org/Drummond_Verdict_on_July_26.doc. International Rights Advocates is pursuing appeals in both cases.

122. For example, the 2003 National Convention of the Federalist Society featured half a dozen major presentations on the dangers allegedly posed to U.S. national sovereignty by international human rights standards that have not been ratified by the U.S. government. See Int'l Relations Center, *Right Web Profile-The Federalist Society*, <http://rightweb.irc-online.org/org/federalist.php> (last visited Oct. 23, 2007). Among others, the Society was addressed on the subject by U.N. Ambassadors John Negroponte and John Bolton. See, e.g., John Negroponte, U.S. Ambassador to the U.N., Address at The Federalist Society 2003 National Lawyers Convention (Nov. 13, 2003), http://www.fed-soc.org/publications/pubID.60/pub_detail.asp (follow "John Negroponte Address Before The Federalist Society at the 2003 National Lawyers Convention" hyperlink).

in Washington, D.C. 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, especially 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 the International Criminal Court to the invasion of Iraq.

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 UE¹²³ 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 151.¹²⁴ 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 NCCS §§ 95-98, into conformity with the freedom of association principles . . ." ¹²⁵ An advocate

123. 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. UE Union, *North Carolina Rights Abuses Target of ILO Complaint*, UE NEWS, Dec. 9, 2005, <http://www.ranknfile-ue.org/newsupdates/news.php?topid=229&pageID=uenews&pagetype=article>.

124. *Id.* Interview with Jeanne Mirer, Co-Founder, ICLR, in Portland, Oregon (Oct. 30, 2005). Telephone interview with Polly Halfkenny, General Counsel, UE (Apr. 21, 2006). In February 2006, Public Services International, the global public sector union, joined the UE in its complaint.

125. UE Union, *UN Labor Panel Finds U.S. in Violation, Calls for Repeal of NC Bargaining Ban*, UE NEWS, Apr. 13, 2007, <http://www.ranknfile-ue.org/newsupdates/news.php?topid=308&pageID=uenews&pagetype=article>. The UE also submitted complaints to the Inter-American Commission on Human Rights ("IACHR") and under

thinking in conventional legal terms might dwell on the obvious federalism questions raised in calling upon the federal government to promote state public sector collective bargaining legislation. A SAGE organizer would be much more attuned to the powerful organizing tool the ILO handed to UE Local 150 in its ten-year campaign for public sector collective bargaining rights in North Carolina. In fact, on July 3, 2007, the Judiciary Committee of the North Carolina House of Representatives approved a bill to revoke the ban on collective bargaining by employees of the state and local government.¹²⁶ Under the right circumstances, international political pressure in support of a grass roots workers' rights mobilization can have far more powerful impact than legal hairsplitting.

SAGE advocates are increasingly finding legal legitimizing of 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. NLRB*¹²⁷ 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.¹²⁸ While this particular legal action does not appear to have been tied to a social movement campaign and therefore may not itself have directly supported SAGE organizing, it paved the way for cases which do, including the UE case discussed above and the following case, which is premised on the IACHR advisory opinion regarding *Hoffman Plastic*.

In April 2005, a coalition of Mexican unions and U.S. immigrant workers' advocates filed a petition with the National Administrative

the North American Free Trade Agreement ("NAFTA") side accords regarding North Carolina's ban on organizing by public sector workers. *Id.* In early November 2007, the National Administrative Office of Mexico, responsible for enforcing the NAFTA labor accords, submitted a list of questions to its U.S. counterpart querying what the governments of the U.S. and North Carolina have done to implement the recommendations of the ILO's Freedom of Association Committee. International Federation of Chemical, Energy, Mine and General Workers' Unions, *Mexican Government Cites US over Public Sector Bargaining in North Carolina State*, ICEM In Brief, November 5, 2007, <http://www.icem.org/en/78-ICEM-InBrief/2453-Mexican-Government-Cites-US-over-Public-Sector-Bargaining-in-North-Carolina-State>.

126. UE Union, *North Carolina Bargaining Bill Approved By Legislative Committee*, UE NEWS, July 16, 2007, <http://www.ranknfile-ue.org/newsupdates/news.php?topicid=321&pageID=uenews&pagetype=article>.

127. 535 U.S. 137 (2002).

128. Advisory Opinion OC-18/03, Inter-Am. C.H.R., Report No. 18, Ser. A (Sept. 17, 2003) available at http://www.corteidh.or.cr/docs/opiniones/seriea_18_ing.pdf.

Office of Mexico (established under the North American Agreement on Labor Cooperation, or "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 9-11.¹²⁹ The 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. As such, 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

129. Petition on Labor Law Matters Arising in the United States, Submitted to the National Administrative Office of Mexico under the North American Agreement on Labor Cooperation Regarding the Failure of the United States to Effectively Enforce Laws Protecting the Rights of Immigrant Workers, Centro de Investigación Laboral v. U.S., Apr. 13, 2005, available at <http://www.dol.gov/ilab/media/reports/nao/submissions/2005-01petition.htm> [hereinafter NAALC Petition Regarding Immigrant Workers in the U.S.]. In a supplemental petition filed in March 2006, the Petitioners requested, *inter alia*, that Mexico's Secretary of Labor take the following steps, with each successive action to follow if the preceding step is unsuccessful in resolving the matter: 1) begin ministerial consultations with the U.S. Secretary of Labor; 2) require the establishment of an Evaluation Committee of Experts; 3) initiate a Dispute Resolution Action under Article 28 of the NAALC; and 4) request an arbitral panel under Article 29 of the NAALC. Addendum to NAALC Petition Regarding Immigrant Workers in the U.S. at 11-12, Centro de Investigación Laboral v. U.S., Mar. 30, 2006, available at http://brennancenter.org/dynamic/subpages/download_file_35782.pdf.

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.¹³⁰

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 attempts 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*¹³¹

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 actually 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 seeking to transform their working conditions.¹³² 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 2006 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

130. THOMPSON, *supra* note 50, at 260-266.

131. The term "transformative organizing" was inspired by the title of Karl Klare's essay, *Horizons of Transformative Labor Law*. Klare, *Horizons*, *supra* note 50, at 3.

132. See, e.g., GORDON, *supra* note 56; NESS, *supra* note 56. See also Steven Kest, *ACORN and Community-Labor Partnerships*, 6 WORKINGUSA: J. OF LAB. & SOC'Y 4, 84-100 (2003).

to affiliate with state and local labor movements.¹³³ Worker centers are community-based coalitions that advocate for the rights of unrepresented and often undocumented immigrant workers. Historically, the labor movement had kept its distance from 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 as 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 in the organization of the Immigrant Workers Freedom Ride and the creation of a category of associate membership in the AFL-CIO.¹³⁴ Some of the most intriguing of recent immigrant organizing efforts, which have been written about elsewhere, include the successful organizing of home care workers in L.A., and of greengrocery, supermarket delivery and vehicle for hire workers in New York City.¹³⁵

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.¹³⁶ 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

133. Jon Hiatt, *AFL-CIO Enters Groundbreaking Partnership with National Day Laborers Organizing Network*, NEWSLETTER LAB. & EMP. COMMITTEE (Nat'l Lawyers Guild, Oakland, C.A.), Oct. 2006, at 1.

134. This innovation draws on Freeman and Rogers' idea for "open source unionism" and Rathke's proposal for an American Workers Association. Richard B. Freeman & Joel Rogers, *A Proposal to American Labor*, THE NATION, June 24 2002, at 18. Wade Rathke, *Majority Unionism*, <http://waderathke.net/index.php?id=102>.

135. Klare, *Horizons*, *supra* note 50, at 20-28. NESS, *supra* note 56. GORDON, *supra* note 56. Janice Fine, *Non-Union, Low-Wage Workers Are Finding a Voice as Immigrant Workers Centers Grow*, LAB. NOTES, Aug. 2003, <http://labornotes.org/node/735>. Another innovation in nontraditional organizing of day laborers is being conducted by students affiliated with the Sarah Lawrence College Institute for Policy Alternatives, in coalition with 1199 SEIU, Obreros Unidos de Yonkers (United Workers of Yonkers) and various faith and civic organizations. See Dean Hubbard, *Institute for Policy Alternatives Report of Activities, 2005-2006*, June 2006 (on file with author). See also Ernie Garcia, *Sarah Lawrence to Aid Day Laborers*, J. NEWS (Westchester County, NY), Jan. 28 2005, at 3B.

136. See, e.g., Jeff Crosby, *Democracy, Density and Transformation: We Need Them All*, AFL-CIO, Mar. 17, 2005, at 19-20, <http://www.aflcio.org/aboutus/ourfuture/upload/crosby.pdf>.

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 ("ICFTU") have divided themselves into ten global federations representing unions in various economic sectors.¹³⁷ Five of the ten ICFTU global union federations have had some success in pressuring transnational corporations to enter into so-called "Framework Agreements."¹³⁸ In August 2005, UNI, the global service union, announced an international campaign to organize Wal-Mart workers.¹³⁹ 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.¹⁴⁰ 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.

In terms of so-called global unionism, SAGE trade union activists generally agree that building transnational solidarity does not mean that U.S. unions should organize in other countries. Rather, U.S. unions can help provide resources and create the

137. The major institutions of the international trade union movement have adopted the name "Global Unions." Global Unions, *About Global Unions*, <http://www.global-unions.org/displaydocument.asp?Language=EN&Index=991209025> (last visited Oct. 23, 2007).

138. Int'l Confederation of Free Trade Unions, *Global Union Federation Framework Agreements with Multinational Enterprises* (2004), <http://www.icftu.org/displaydocument.asp?Index=991216332&Language=EN>. 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 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.

139. See, e.g., Evelyn Iritani, *Unions Go Abroad in Fight With Wal-Mart*, L.A. TIMES, Aug. 24, 2005, at A1, available at <http://www.latimes.com/news/printedition/la-fi-walmart24aug24,1,4207256.story>. See also Union Network Int'l., *Programme to step up organising in Wal-Mart*, UNI GLOBAL UNION, Aug. 23, 2005, <http://www.union-network.org/unicongress2005.nsf/d3071c6b926d59f4c1257063004d187d/4d4a040557305a97c1257066004d08fd?>.

140. Wade Rathke, *Leveraging Labor's Revival: A Proposal to Organize Wal-Mart*, 14 NEW LAB. F. 2, 59-66 (2005).

conditions, through pressure on the U.S. government and U.S.-based transnationals, to enable workers to organize more effectively in their own countries. At the same time, union activists abroad can help U.S. workers in their struggles.¹⁴¹ As Bill Fletcher recently stated,

[G]lobal 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.¹⁴²

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 and the historic relationship between the AFL-CIO and U.S. foreign policy objectives.¹⁴³ This last factor has contributed to a tendency among workers in the U.S. to identify with the perceived interests of the nation state (as articulated by political

141. Robin Alexander & Peter Gilmore, *The Emergence of Cross-Border Labor Solidarity*, 28 NACLA REP. ON AM. 1, 42-48 (1994). See also *Sister Shops – Building Solidarity in the Global Economy*, UE NEWS, 2003, [http://www.ueinternational.org/Solidarity Work/sister_shops.html](http://www.ueinternational.org/Solidarity%20Work/sister_shops.html).

142. Bill Fletcher, Jr., *Globalization Labor and Justice*, 8 WORKINGUSA: J. OF LAB. AND SOC'Y 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, Nov. 4, 2005, <http://www.union-network.org/uniflashes.nsf/58f61ccf5875fe90c12567bb005642f9/0f43655f99163c08c1256fe0003b1da0?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 *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 & Karl Klare eds., Oxford University Press 2002).

143. See, e.g., Fletcher, *supra* note 142, at 261-262. Bacon, *supra* note 55, at 96-97. Nissen, *supra* note 55, at 44. BETH SIMS, *WORKERS OF THE WORLD UNDERMINED, AMERICAN LABOR'S ROLE IN U.S. FOREIGN POLICY* (South End Press 1992). Kim Scipes, *It's Time to Come Clean: Open the AFL-CIO Archives on International Labor Operations*, 25 LAB. STUDIES J. 2, 4-25 (2000). Judi Ancel, *On Building an International Solidarity Movement*, 25 LAB. STUDIES J. 2, 26-35 (2000).

rulers who are often hostile to workers' needs) to a far greater degree than common class interest with workers in other countries, and to a resulting sense of rivalry between U.S. workers and their counterparts abroad.¹⁴⁴ It is imperative, however, that unions move forward to establish strategic international alliances. Ultimate success will require systemic changes. But large changes begin with what sometimes appear to be "impossibly small steps."¹⁴⁵

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 unions, which include 1199 SEIU (New York's powerful health care workers' union), as well as the militant Transport Workers Union Local 100 (which shut down New York's massive public transportation system with a bold strike in December 2005), and District Council 1707 of AFSCME (representing workers in the non-profit sector). In October of 2002, WORPHC convened an historic conference in the Dominican Republic, which, for the first time ever, brought together over 400 health care workers' advocates from nineteen 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 the resolution into practice. For example, WORPHC-affiliated unions supported the successful 2003 anti-privatization strike by Salvadoran health care workers; they have organized numerous 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; and they have facilitated several public health research delegations to Cuba.¹⁴⁶ WORPHC activists are now preparing for a second major inter-

144. Nissen, *supra* note 55, at 44, 50. Bacon, *supra* note 55, at 85.

145. Alexander & Gilmore, *supra* note 141.

146. The U.S. delegations travel to Cuba under the "General License" exception to the U.S. travel restrictions for professional research. WORPHC functions as a program consultant to Marazul Charters, Inc., which makes the travel and program arrangements under a "Travel Service Provider" license issued by the U.S. Office of Foreign Assets Control.

American meeting of health care workers and their organizations, which they hope will take place in Guatemala in 2008.

One of the most interesting developments arising from the WORPHC is its work through its affiliate ODOSALUD (Organización Dominicana para la Salud) 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 were the leaders and participants in the Lebrón Project. Residents working in concert through the neighborhood organization pressured 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.¹⁴⁷ WORPHC organizers saw the community health project as a prelude to organizing in the zona franca. They believed that residents who gained confidence and developed leadership skills through successful community organizing struggles would be more likely to be successful in applying the same set of skills to collectively addressing their conditions of work in the zona franca. WORPHC has applied the lessons learned in Lebrón to extend the project to other Dominican communities, most recently the impoverished city of Moca. WORPHC organizers are finalizing an agreement with the University of Santo Domingo to provide ongoing institutional support, including 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, WORPHC has had to overcome a number of obstacles. The most notable of these include the difficulty of articulating the importance of this work to U.S. labor leaders, who are still more attuned to traditional workplace-based organizing for collective bargaining

147. 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.

agreements, and foundations, which are more attuned to traditional public health projects. These perspectives have translated into a corresponding lack of institutional resources for the project, and the organizers have relied instead on persistent grass roots fundraising among rank and file trade unionists and Dominican-Americans. Other significant impediments to the project included internal disputes among Lebrón residents spurred by Dominican party politics, and reliance upon U.S.-based organizers (of Dominican origin) who have had to travel frequently to and from the Dominican Republic. These obstacles have also been overcome in Moca with the training and retention of a cadre of dedicated Dominican volunteer organizers and clear, consistent communication by those organizers to community residents of the non-partisan principles of ODOSALUD. It is too soon to predict the long-term 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, WORPHC's work in the Dominican Republic addresses the suppression of organizing by and discrimination against women workers in free trade zones, meets the SAGE criteria of local organizing of disempowered people to make demands on 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 warrants replication.¹⁴⁸

3. *Challenging the Bretton Woods Institutions*

Effective transnational social movements may generate alternative policy formulas and the seeds of new institutional arrangements. To independently articulate a detailed vision of such arrangements would be inconsistent with the premise that new institutions and policies will be established by previously marginalized people through social movement action. However,

148. 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 by David Werner with Carol Thuman & Jane Maxwell in *WHERE THERE IS NO DOCTOR: A VILLAGE HEALTH CARE HANDBOOK* (The Hesperian Foundation, 2006). See also *SICKNESS AND WEALTH: THE CORPORATE ASSAULT ON GLOBAL HEALTH* (Meredith Fort, Mary Anne Mercer & Oscar Gish eds., South End Press, 2004).

when these kinds of 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.¹⁴⁹ 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. As already observed, the ILO 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.¹⁵⁰ 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.¹⁵¹ Solidarity, according to these advocates, means 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.¹⁵²

149. Pharis J. Harvey, Terry Collingsworth, Bama Athreya, *Developing Effective Mechanisms for Implementing Labor Rights in the Global Economy: A Plan of Action for Including a Social Clause in U.S. Trade Policy*, in *WORKERS IN A GLOBAL ECONOMY* 42 (Lance Compa & Maria Cook eds., Cornell University School of Industrial and Labor Relations, International Labor Rights Fund, Institute for Policy Studies & Economic Policy Institute 2000) available at <http://www.laborrights.org/projects/globalecon/ilrf/>. Advocates of a social clause essentially argue that the international labor rights violations arising from "globalization" are best addressed through negotiation of labor rights standards into international trade instruments, as they can't be resolved by rank and file direct action (at least under a national industrial union model). This position gives short shrift to the transformative potential of transnational networks of rank-and-file social actors and is implicitly premised on working within the existing institutional infrastructure of the global political economy.

150. See, e.g., Ashwini Sukthankar & Scott Nova, *Human and Labor Rights Under the WTO*, in Wallach & Woodall, *supra* note 33, at 227-228 (discussing history of attempts to link social rights to trade in international agreements).

151. David Bacon, *Will a Social Clause in Trade Agreements Advance International Solidarity?*, *Z MAGAZINE*, Jan. 2000, <http://www.zmag.org/zmag/articles/jan2000bacon.htm>. Fletcher, *supra* note 143, at 259-268.

152. *Id.* A fine example of a nongovernmental network advocating this approach to transnational solidarity can be found in the persistent work of the National Lawyers

Participants in this debate over social clauses and “comparative advantages” often seem to be engaged in parallel discourses, with each camp adopting its own rhetoric and specialized vocabulary. The approach undertaken by the Hemispheric Social Alliance (“HSA”) synthesizes these apparently competing strategies. The HSA is a network of labor organizations and citizens’ coalitions representing more than 45million 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 Free Trade Area of the Americas (“FTAA”)¹⁵³ as an attempt to extend the principles of the North American Free Trade Agreement (“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*.¹⁵⁴ 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

Guild Labor and Employment Committee. Over the last decade they have worked: 1) to develop a relationship with the Cuban labor movement and labor bar premised on solidarity and mutual respect; 2) within the U.S. labor movement advocating normalization and an end to AFL-CIO support for the economic and political blockade of Cuba, as well as supporting efforts to organize immigrant workers, and; 3) with the new NLG International Labor Justice Working Group, the Canadian Association of Labor Lawyers (“CALL”) and the Association of Latin American Labor Lawyers (“ALAL”) to build an inter-American network of progressive workers’ rights lawyers. The NLG L&E Committee’s reports of its annual research delegations to Cuba are located at Nat’l Lawyers Guild Lab. and Emp. Committee, <http://www.worksafe.org/nlglaboremploycomm/international.cfm> (last visited Oct. 23, 2007).

153. The official FTAA website refers to the FTAA as “[t]he effort to unite the economies of the Americas into a single free trade area . . . in which barriers to trade and investment will be progressively eliminated.” *Antecedents of the FTAA Process*, FREE TRADE AM., http://www.ftaa-alca.org/View_e.asp (last visited Oct. 23, 2007). The FTAA process began in 1994 with an agreement among thirty-four heads of state at the Summit of the Americas in Miami, and was supposed to have been concluded by 2005. *Id.* However, the process has been substantially delayed, if not permanently derailed, by the focused opposition of transnational social movement actors and the emergence of alternatives such as ALBA. See *infra* text accompanying notes 159-163.

154. Hemispheric Social Alliance, *Alternatives for the Americas* (Dec. 2002), <http://www.asc-hsa.org/pdf/Alternativas%20ene%202003%20english.pdf> [hereinafter *Alternatives*].

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* 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.¹⁵⁵ A process like the one that led to the HSA's *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 discuss the World Social Forum ("WSF"), which started in Porto Alegre, Brazil in 2000. Porto Alegre was chosen because it was governed 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.¹⁵⁶ 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

[A]n 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.¹⁵⁷

155. 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 do not 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 wages, would vary depending what would constitute a living wage in that country at that time. *Id.* at 39-44.

156. 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.

157. World Social Forum India, *Welcome to the World Social Forum India*, <http://www.wsfindia.org> (last visited Oct. 23, 2007). The WSF's languages web site is at World Social Forum, http://www.forumsocialmundial.org.br/index.php?cd_language=2&id_menu= (last visited Oct. 23, 2007).

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.

These efforts are starting to bear institutional fruit. In the state sector, the Bolivarian Alternative for the Americas (ALBA), discussed at the outset, has emerged as a concrete example of a socially-oriented trade network independent of the developed countries. The agreement was initially proposed by the government of Venezuela as an alternative to the FTAA. From the beginning, ALBA's proponents took both inspiration and ideas from the HSA's Alternatives proposal.¹⁵⁸ The ALBA was consciously developed as an alternative to the FTAA, which ALBA's proponents view as premised on a discredited neoliberal model designed to subject the rest of the Americas to the power of U.S.-based transnationals. The ALBA is intended to demonstrate the viability of a model which bases trade on principles of economic human rights and social solidarity.¹⁵⁹ Cuba, Nicaragua, and Bolivia have now joined Venezuela as parties to the agreement, and several other countries are on the verge of joining or have signed cooperation agreements.¹⁶⁰

158. *Venezuela's Answer*, *supra* note 3, at 15.

159. Among other provisions, under ALBA Cuba provides doctors, health workers, and other medical assistance to Venezuela, and Venezuela provides low cost oil to Cuba. In exchange for providing access to its plentiful natural gas, Bolivia receives doctors, teachers, technical assistance, and a market for its soy beans. *Venezuela's Answer*, *supra* note 3, at 4. Nicaragua received forgiveness of \$32 million in debt to Venezuela. *Nicaraguan National Assembly Ratifies the ALBA*, NICANET: NICARAGUAN NETWORK, Apr. 3, 2007, http://www.nicanet.org/hotline_april032007.php#topic2 (last visited Aug. 4, 2007).

160. Argentina, Brazil, and Uruguay have all signed bilateral agreements with Venezuela, based on the principles of the ALBA. *Alternativa Bolivariana*, *supra* note 4, at 1. Haiti and Ecuador are also contemplating becoming parties to ALBA. Chris Carlson, *5th ALBA Summit in Venezuela Strengthens Regional Integration*, VENEZUELAN VIEWS, NEWS AND ANALYSIS, Apr. 29, 2007, <http://www.venezuelanalysis.com/news.php?newsno=2284> [hereinafter *5th ALBA Summit*]. In addition, much to the alarm of U.S. policymakers, in July 2005 the ALBA countries entered into a cooperation agreement with the CARICOM nations (the Caribbean Community and Common Market) to form PetroCaribe, a body "aimed at facilitating the development of energy policies and plans for the integration of the nations of the Caribbean through the sovereign use of natural energy resources to directly benefit their peoples." Energy Cooperation Agreement PETROCARIBE, June 19, 2005, Embassy of the Republic of Guyana, Caracas Venezuela,

In vision, ALBA goes far beyond the scope of typical trade agreements, calling for ambitious development projects, including the extension of free health care and education programs to Haiti, Nicaragua, and Ecuador, a regional communication network including the 'Television of the South' ("TeleSur"), a Development Bank of the South, and a regional petroleum company.¹⁶¹ Unlike the FTAA, the ALBA specifically calls for the participation of social movement and civil society organizations in its construction and development. As the accord was negotiated at the level of the heads of state, popular participation in its initial stages was limited. However, presidents Chavez of Venezuela and Morales of Bolivia have been promoting the ALBA at WSF and other social movement gatherings, and receiving increasingly warm responses.¹⁶² Nevertheless, ALBA's ultimate utility as a vehicle for grass roots participation in construction of a SAGE economy in the Americas, while hopeful, is as yet unproven.

C. Framing a Socially Aware Global Economy

1. *Dispensing with the "TINA" argument*

Market apologists argue that "there is no alternative" to the neoliberal global political economy.¹⁶³ 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 Dan Clawson points out, virtually all significant social changes have taken place at a time when conventional wisdom deemed them impossible.¹⁶⁴

The critique of neoliberal capitalism is widespread, if not orthodox, outside the borders of the United States. As previously stated, 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

available at http://www.guyana.org/spanish/petro_agreement.html. In addition to preferential financing for oil purchases, PetroCaribe allocates funds to development projects in the poorest countries of the region. *Venezuela's Answer*, *supra* note 3, at 23. The signatory nations include Antigua and Barbuda, the Bahamas, Barbados, Belize, Cuba, Dominica, the Dominican Republic, Grenada, Guyana, Jamaica, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname, and Venezuela.

161. *5th ALBA Summit*, *supra* note 160, at 1. *Alternativa Bolivariana*, *supra* note 4, at 1.

162. *Venezuela's Answer*, *supra* note 3, at 12-14.

163. Friedman, *supra* note 6, at 346. PAUL KRUGMAN, *THE ACCIDENTAL THEORIST* 85 (W.W. Norton & Co., 1998).

164. CLAWSON, *supra* note 156, at 26, 203.

arrangements.¹⁶⁵ 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 recognition does not detract from the critical importance of social movements worldwide, nor does it imply that the institutional barriers to a Socially Aware Global Economy are not global. Rather, it points out the critical importance to people everywhere of the struggle for egalitarian economic and political transformation within the United States. It emphasizes 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 will continue on its current deeply destructive path.

The bottom line is that economic human rights will be enforced under international and domestic law, and a Socially Aware Global Economy will come into existence, when working and poor people have the political and economic power to make it happen. Achieving that kind of shift in power relations 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*

The necessary coalescence is unlikely to take place without a broad set of principles or values framed so that participants in diverse movements not only agree, but they are also motivated to act. However, one of the few precepts on which most activists organizing for a Socially Aware Global Economy concur 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

165. These inroads have occurred over the last five years in, among others, Argentina, Bolivia, Brazil, Chile, Ecuador, Nicaragua, Uruguay, and Venezuela. See, e.g., Fred Rosen ed., *Social Movements: Building from the Ground Up*, 38 NACLA REP. ON AM. 5, 13-40 (2005). As noted above, SAGE organizing has resulted in, among other things, the formation of ALBA, a potentially viable alternative multilateral trade structure for the Americas.

institutions demands a degree of central communication and coordination. Some are process-oriented, emphasizing participatory democracy and consensus, others are ends-oriented, emphasizing effectiveness. Some focus on lobbying and litigation to influence policy, others swear by Alinsky-style¹⁶⁶ adversarial action. Some devote themselves to liberating specific identity groups, others argue for the unity of all so-called subaltern peoples.¹⁶⁷

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 realize the promises of economic human rights law. 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.¹⁶⁸

However, within the U.S. and around the world, different

166. Beginning in the crucible of 1930s Chicago, Saul Alinsky developed the fundamental principles of grass roots organizing from which all subsequent practitioners of the art have arguably drawn, from the Student Nonviolent Coordinating Committee (SNCC) in the 1960s to today's Association of Community Organizations for Reform Now (ACORN). In a nutshell, Alinsky's model is designed to change society by empowering marginalized people to collectively address, through direct action, the issues that most directly impact them. *See, e.g., ALINSKY, supra* note 92.

167. 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.

168. 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 affect their lives. THAD WILLIAMSON, GAR ALPEROVITZ, & DAVID IMBROSCIO, *MAKING A PLACE FOR COMMUNITY: LOCAL POLITICS IN A GLOBAL ERA* 295-297 (Routledge Books 2002).

groups should and do organize autonomously around different issues and identities, whether they are workers', women's, environmental, African American, Latino, Asian American, LGBT, indigenous, labor, immigration, housing, or issues not yet conceived. Some degree of 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 dominate them," movements of marginalized people can "both provide their claims with credibility and cast doubt on the often assumed truths power holders voice through these words."¹⁶⁹ 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 popular 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 basic level to these movements.¹⁷⁰ 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 extremists 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.¹⁷¹

169. Steinberg, *supra* note 54, at 224.

170. CLAWSON, *supra* note 156, at 205.

171. See, e.g., GEORGE LAKOFF, DON'T THINK OF AN ELEPHANT! KNOW YOUR VALUES

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 community, we'll be fulfilling what we're really supposed to be as humans.¹⁷² 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, in the FTZs and in the exploitation of undocumented workers in the U.S., but in places like Guantanamo, Abu-Ghraib, and New York on September 11, 2001. It means recognizing that the very short time each individual has on this planet is all we have; that we should try in the here and now, as

AND FRAME THE DEBATE 6-11, 81-88 (Chelsea Green 2004) (outlining how U.S. conservatives have successfully framed issues, and offering strategies for progressives to reframe political discourse to reflect their values).

172. Ernesto "Che" Guevara, *Socialism and Man in Cuba*, MARCHA (1965), available at <http://www.ils.unc.edu/~michm/Che/writings.html>.

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, SAGE movements can move beyond forming tactical alliances to actually integrating each others' concerns into the core of their programs and cultures. Historically, Clawson argues, movements have blossomed when they have broken out of their existing constructs and blended with new constituencies and networks.¹⁷³ We've already seen how the U.S. labor movement could benefit by working more closely with immigrant workers. When feminists place priority on the interests of lowwage women workers,¹⁷⁴ when environmentalists organize with communities of color to end environmental racism,¹⁷⁵ they transcend the artificially cramped constraints of narrowly defined interests and breathe life into economic, social and cultural rights. 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. As a wise man once said, the job of revolutionaries

173. CLAWSON, *supra* note 156, at 194-95.

174. Such as New York's Domestic Workers United, an offshoot of the Committee Against Anti-Asian Violence. See Domestic Workers United, <http://www.domesticworkersunited.org> (last visited Oct. 23, 2007).

175. See, e.g., the Southwest Organizing Project's campaign against environmental racism. Southwest Organizing Project, <http://www.swop.net/envirojust.htm> (last visited Oct. 23, 2007).

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?

Conclusion

In a speech at the 2003 World Social Forum, Indian novelist/activist Arundhati Roy summed up the creative rethinking 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.¹⁷⁶

SAGE organizing can transform the global political economy, overcoming the obstacles neoliberal policy places in the way of realizing the economic human rights of the global majority. To do their part, SAGE workers' rights activists should strategically 1) reimagine and rebuild the labor movement through grass roots, transnational organizing; 2) revitalize economic human rights law by marrying legal work to transformative organizing; and 3) facilitate popular participation in the construction of alternative institutions and policies. SAGE organizers in discrete struggles can build a powerful, cohesive global justice movement based on their shared dedication to celebrating interdependent difference, practicing prefigurative politics, creating fusion, and having the courage to create a world which reflects their deepest convictions.

176. Arundhati Roy, *Confronting Empire*, ZNET, Jan. 28, 2003, <http://www.zmag.org/content/showarticle.cfm?SectionID=51&ItemID=2919>.
