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Michael J. Zimmer

Loyola University Chicago, mzimme4@luc.edu

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Chapter 4

Decent Work with a Living Wage

Michael J. Zimmer

1. INTRODUCTION

Globalization has had, and presumably will continue to have, many effects on labor and employment around much of the world.¹ What it has not caused, however, is the end of labor law. The real question is how labor law can respond to the challenges presented by globalization. In order to promote an efficacious labor law, it is my thesis that a new global goal should be added to the labor law agenda – decent work with a living wage. The 1998 Declaration of the ILO setting forth fundamental labor principles should be expanded to include decent work with a living wage. The goal of decent work with a living wage can help keep labor law viable because it can be the organizing principle for a broad array of unions and workers worldwide as well as other interested groups to push for its implementation as a matter of regional and national law. But more importantly, decent work with a living wage can become a rallying cry for pressure on employers who operate around the world. It will be the pressure of all those forces that might work to level the presently tilted playing field of the global economy.

1. Roger Blanpain, Susan Bisom-Rapp, William B. Corbett, Hilary Joseph & Michael J. Zimmer, *The Global Workplace: International & Comparative Employment Law: Cases & Materials* (2007) (hereinafter Blanpain, *The Global Workplace*).

The first section will describe how, at least in the United States, neoliberal thought has come to be the prevailing basis upon which labor policy, as well as public policy generally, is discussed. The next section lays out the parameters of the decent work with a living wage concept. The third section will then explore how the intellectual high ground might come to be recaptured from neoliberalism by the aggressive pursuit of the goal of decent work with a living wage. Section four calls upon unions to act globally to implement the decent work with a living wage agenda. The fifth section shows why unions need all the help they can get from NGOs and other organizations with similar interests if they are to succeed in reaching their goal. The sixth section deals with some secondary issues that are implicated in adopting the decent work principle. One is the need to define a living wage and poverty and second is the need to avoid the unintended consequences of driving more workers into the informal economy. The last section is a brief conclusion.

2. THE NEOLIBERAL ASSUMPTIONS THAT DRIVE THE DISCUSSION

From the viewpoint of someone from a low labor standards country, it seems clear that the future of labor law in the United States, and, presumably elsewhere, depends in important part on a battle of the 'hearts and minds'. Looking at the history of the intellectual assumptions upon which we, in the United States, have proceeded, it was as recent as 1963 when Dr. Martin Luther King, Jr. gave one of the most stirring speeches in our history, his 'I Have a Dream' address to the March on Washington. There followed the enactment of the path-breaking Civil Rights Act of 1964. In economics, Keynesian thought and policy appeared to rule. When Barry Goldwater was routed in the 1964 presidential election, many thought that American conservatism, what many elsewhere call neoliberalism, was dead, or at least moribund. How wrong that was and how quickly the ideology of neoliberalism became ascendent once again.

In 1967, Milton Friedman, the leading American neoliberal economist of the 20th century, took the opportunity of his inaugural address as President of the American Economic Association to call for the renaissance of neoliberalism.² Paul Krugman recently described a number of significant roles that Friedman played, with one, 'Friedman the ideologue, the great popularizer of free-market doctrine'.³ Free markets, Friedman claimed, were far superior to government regulation because free markets led to enhanced economic development and therefore greater individual freedom. Regulation was only justified by clear evidence of

2. 'The Role of Monetary Policy: Presidential Address to AEA', 1968.

3. Paul Krugman, *Who Was Milton Friedman?*, New York Review of Books, February 15, 2007, p. 27 (hereafter, Krugman, *Milton Friedman?*). Krugman gives Friedman much credit for his other roles. First as 'the economist's economist, who wrote technical, or less political analysis of consumer behavior and inflation'. and second, as a 'policy entrepreneur, who spent decades campaigning on behalf of the policy know as monetarism'.

market failure. Friedman found few such exceptions. In a free market, there are winners and losers. That was inevitable, but the best economy was the one with the most robust growth, even if the fruits of that growth were unequally distributed: A rising sea lifts all boats. The free market was the ‘natural law’ of economics to be tampered with at great risk to economic wellbeing. Employers should not be expected to justify their actions if they provided indecent work at less than the living wage, because the market mandated that treatment if there was to be work at all for these people.

There followed a long term, a well financed and quite successful effort, to move the discussion away from the idea of civil rights and collective wellbeing, toward economic individualism.⁴ That drive has been so successful that the natural law of the free market has become deeply implanted in our intellectual and political ideology. It is simply assumed to be true and unchangeable and, therefore, it is not subject to serious reflection. In the United States, the highpoint of neoliberalism’s reign as the predominant basis for economic discussion may have been the Contract with America, crafted by the Republican Party to capture control of Congress from the Democrats.⁵ Internationally, the highpoint no doubt was the creation in 1995 of the World Trade Organization.⁶

The framework of our intellectual discussions today still assume the that the free market is a natural law to be tampered with only at the margins. Paul Krugman describes how ideology, rather than evidence, is the basis for its acceptance. ‘Friedman’s laissez-faire absolutism contributed to an intellectual climate in which faith in markets and disdain for government often trumps the evidence’.⁷ Joseph Stiglitz gives an example of the neoliberal view of unemployment: Neoliberals ‘believe that when markets function normally demand must equal supply, unemployment is a symptom of an interference in the free workings of the market. Wages are too high (for instance, because of union power). The obvious remedy to unemployment was to lower wages; lower wages will increase the demand for labor, bringing more people onto employment rolls’.⁸ The employer paying less than a living wage is,

4. As to Professor Friedman, the effort included a national broadcast television program with accompanying book that glorified free market economics. See, Milton & Rose Friedman *Free to Choose* (1980). The effort to capture the ground rules for economic debate include wide-ranging efforts to create and to expand public policy think tanks and to build a broad network of neoliberal economists within the economic departments of major American universities. See Lewis Lapham, *Tentacles of Rage*, Harper’s 309, no. 1852 (September 2004), 31–41 (American neoliberal foundation, with over USD 2 billion in assets, and neoliberal thinktanks USD 140 spend annually to inculcate the neoliberal message). For a history of the modern libertarian, neoliberal movement, see Rick Perlstein, *Before the Storm* (2001) (Milton Friedman received early support in his populist publications from the Foundation for Economic Education, which ‘spread a libertarian gospel so uncompromising it bordered on anarchism’).
5. See John B. Bader, *Taking the Initiative: Leadership Agendas in Congress and the ‘Contract with American’* (1996).
6. John Ralston Saul, *The Collapse of Globalism and the Reinvention of the World* 115 (2005).
7. Krugman, *Milton Friedman?*, at 30.
8. Joseph E. Stiglitz, *Globalization and Its Discontents* 85 (2002) (hereinafter Stiglitz, *Globalization’s Discontents*).

thus, contributing to the overall economic wellbeing by providing work for those who would otherwise be unemployed.

The clarion call of neoliberalism is, therefore, for ‘labor market flexibility’.⁹ It sounds like a reform movement to make the labor market work better, ‘but as applied [it] has been simply a code name for lower wages, and less job protection’.¹⁰

While acknowledging that there would have been a swing back toward laissez-faire policies even without Friedman’s work, Krugman summarized Friedman’s influence as a popularizer and ideologue of neoliberalism: ‘By any measure – protectionism versus free trade; regulation versus deregulation; wages set by collective bargaining and government minimum wages versus wages set by the market – the world has moved a long way in Friedman’s direction. And even more striking than his achievement in terms of actual policy changes has been the transformation of the conventional wisdom: most influential people have been so converted to the Friedman way of thinking that it is simply taken as a given that the change in economic policies he promoted has been a force for good’.¹¹

Facts can overcome or undermine ideology as those facts come to be recognized: Paradigms can shift.¹² There is now clear evidence that undermines the notion that neoliberalism is inevitable, unchangeable and the best that can be done to promote the wellbeing of people. Since neoliberalism has come to be the unquestioned superstructure for American policy discussion, the gains in living standards have become less robust.¹³ In part this is because of slower overall economic growth than during the Keynesian period that preceded it. It also is because of the spectacular increase in economic inequality. ‘[A]s the minimum wage was allowed to fall behind inflation and unions largely disappeared as an important factor in the private sector, working Americans saw their fortunes lag behind growth in the economy as a whole’.¹⁴ In addition to increasing inequality, there is now a tremendous increase in the volatility of family income. Given a geometric increase in personal bankruptcy, the increasing involuntary loss of middle class jobs along with the erosion of workplace benefits, ‘American family incomes are on a frightening roller coaster, rising and falling much more sharply from year to year than they did a generation ago. Indeed, the instability of families’ incomes has risen faster than the inequality of families’ incomes’.¹⁵ What

9. For example, in 2002, Mexican President Vincent Fox tried to implement labor law reform, justified by the need for increasing flexibility necessary to the competitiveness of Mexican industry. The so-called Abascal Project failed in a politically divided Congress. See Blanpain, *The Global Workplace*.

10. Stiglitz, *Globalization’s Discontents* at 84.

11. Paul Krugman, *Who Was Milton Friedman?*, *New York Review of Books*, February 15, 2007, p. 29.

12. See Thomas S. Kuhn, *The Structure of Scientific Revolutions* (1962).

13. Krugman, *Milton Friedman?*, at 30.

14. *Id.*

15. Jacob S. Hacker, *The New Economic Insecurity – And What Can Be Done About It*, 1 Harv. L. & Pol’y Rev. 111, 112–113 (2007).

all this adds up to is ‘a massive transfer of economic risk from broad structures of insurance, both corporate and governmental, onto the fragile balance sheets of American families’.¹⁶ Both the actual and the perceived risk to a sense of security has increased substantially.

Perhaps the beginning of a turn by the general public in the United States away from the neoliberal assumptions occurred early in President George W. Bush’s second term when he proposed fundamentally restructuring the retirement insurance provided by Social Security. His proposal would be a first step toward transforming the existing government insurance against the risk financial insecurity in old age into a system in which the workers would bear the market risk. This would further diminish the limited retirement security Americans had left after employers had generally moved the investment risk to their employees in whatever private retirement plans they provided to their workers.¹⁷ These proposals of the President were dead on arrival. That may suggest a shift from unquestioned acceptance of neoliberalism toward some greater questioning of the underlying assumption that each individual should bear his or her own economic risks and an increasing skepticism towards such risk shifting in public policy. This happened in part because the American people responded to the proposals as a threat to what little security they felt they had left.

One way to see the difference between the Keynesian era and the Friedman era that followed is to look at the contrast between the 1944 Philadelphia Declaration of the International Labour Organization, and its 1998 Declaration on Fundamental Principles and Rights at Work. The comparison is instructive at how much the nature of the discussion of labor rights has changed, how much more narrowly drawn that discussion is today than it was as World War II was drawing to a close. The 1944 Declaration, for example, declares in Article I that ‘(a) labour is not a commodity’ and ‘c) poverty anywhere constitutes a danger to prosperity everywhere’. In Article III, the member states undertook to further, among other things, ‘(a) full employment and the raising of standards of living’, ‘(d) policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection’, and ‘(f) the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care’.¹⁸ In terms of the neoliberal agenda, these objectives cannot be reached through legal regulation but only through an unfettered free market economy.

Contrast those broad social justice objectives with the four fundamental principles articulated in the 1998 Declaration: 1) Freedom of association and the right to collective bargaining; 2) elimination of all forms of forced labor; 3) the effective abolition of child labor; and 4) the elimination of discrimination. It cannot be

Note: Please provide footnote text for footnote cue 17.

16. *Id.* at 115–116.

17.

18. The ILO Declaration echoes Article 55 of the Charter of the United Nations, which calls for the promotion of ‘higher standards of living, full employment, and conditions of economic and social progress and development’.

gainsaid that these four goals are anything but extremely significant and are a far way from being achieved. To successfully implement these goals would be a tremendous accomplishment.¹⁹ But the range of goals set by the 1998 Declaration are more consistent with neoliberal assumptions than with the collective wellbeing goals set forth in the 1944 Declaration. At least several of the 1998 principles are ones that even some neoliberal economists might accept as those rare examples of market failure justifying regulation of the free market.²⁰

At the most basic level, the objectives of the 1944 Declaration have not been achieved. Today, labor is once again considered a commodity.²¹ Labor is not the same as corn or copper because it is not a fungible good. Labor involves motivation, cognition and emotion, so the conditions under which work is performed influence significantly the value that a worker contributes to the work. A free market approach to labor simply looks to the value of each worker as determined by the price the person can sell her skills. A free agent baseball player has much greater value on the labor market than most law professors. But law professors do much better than most workers who lack a high school diploma or a green card. All workers, be they baseball players, law professors or unskilled assemblers, differ in their job performance by a whole range of factors, many that depend on the circumstances in which their work is provided. The 1944 Declaration set as goals the maximization of those circumstances, while the 1998 Declaration appears to assume that in general such goals can only be achieved by freeing the market from controls so the total size of the economy will grow, thereby allowing those goals to be achieved through expanded individual choice.

In sum, free market ideology prevails as the background structure of American labor law. Neoliberalism is treated as a natural law. Employers providing indecent work at below a living wage are not required to justify that treatment. Instead, it is assumed that these conditions are the best the market can provide if there is to be employment at all.

3. THE CONCEPT OF DECENT WORK WITH A LIVING WAGE

So, how to begin to change the nature of the discussion, to move it toward a more robust view of the rights of workers? One option, which may well happen, is that national economic barriers will once again be erected to slow and potentially

19. To see a litany of the continuing failure to achieve these goals, see *A Fair Globalization: Creating Opportunities for All*, World Commission on the Social Dimension of Globalization, paragraphs 417–423, pp. 91–92 (ILO 2004).

20. For example, Jagdish Bhagwati, one of the principal defenders of unfettered globalization, does support regulation to end child labor. See Jagdish Bhagwati, *In Defense of Globalization*.

21. Bruce Kaufman has demonstrated that, from the perspective of economics, human labor cannot be treated as a commodity. See his presentation at The Global Workplace: Learning from Each Other conference at Modena, Italy. The Fifth International Conference in Commemoration of Professor Marco Biagi.

reverse economic globalization. President Chavez of Venezuela appears to be moving his country with some other Latin American countries in this direction, though much of his power is based on oil and its importance to the global economy. John Ralston Saul argues that globalism is already dead and that nationalism is again in the ascendancy.²² Should an earlier regime of tariffs and trade barriers of various types once again prevail, it is not clear that it would be good for workers generally.

Such dramatic repudiation of globalization would pour out the baby with the bathwater. Joseph Stiglitz argues forcefully that globalization has brought some real progress, but that the version of neoliberalism that presently prevails is anything but a true free market. Instead, it is neither free nor fair because the rules by which the global regime operates are strongly tilted toward the interests of the developed countries and their most significant economic actors.²³ He sets out a program by which the global playing field can be leveled in a good number of ways across a wide array of policy areas.

As to labor law, 'decent work' is already being advanced as a major worldwide goal. The World Commission on the Social Dimension of Globalization was established by the International Labour Organization to address the challenges of globalization. In its 2004 report, *A Fair Globalization: Creating Opportunities for All*, the Commission concluded that 'the dominant perspective on globalization must shift more from a narrow preoccupation with markets to a broader preoccupation with people. [...] The social dimension of globalization is about jobs, health and education – but it goes far beyond these. It is the dimension of globalization which people experience in their daily life and work: the totality of their aspirations for democratic participation and material prosperity'.²⁴ Among its main recommendations is to make decent work a key goal of economic policy at the national, regional and global levels. Decent work is described as 'giving priority to employment creation, protecting fundamental rights at work, strengthening social protection, and promoting social dialogue'.²⁵ Further, '[d]ecent work for all should be made a global goal and pursued through more coherent policies with the multilateral system. All organizations in the multilateral system should deal with international economic and labour policies in a more integrated and consistent way'.²⁶ Moving forward from the recommendations of its World Commission, the ILO Director-General, Juan Somavia, announced that, 'The primary goal of

22. In *The Collapse of Globalism and the Reinvention of the World* (2005), Saul describes how neoliberal ideology is still the mindset of the present generation of technocratic political leaders limiting their ability to conceptualize and deal with the problems nations face. That creates a vacuum of policy. That vacuum then comes to be filled by various forces and groups, including a resurgent nationalist ideologies and groups demanding recognition.

23. See Joseph Stiglitz, *Making Globalization Work* (2006).

24. *A Fair Globalization: Creating Opportunities for All*, World Commission on the Social Dimension of Globalization vii (ILO 2004) (hereinafter, *A Fair Globalization*).

25. *Id.* at 142.

26. *Id.* at 145.

the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity'.²⁷

One problem with the objective of 'decent work' as articulated by the ILO is that it fails to address directly a key element of what decent work entails, and that is a income, a living wage. Professor Harry Arthurs, serving as the Commissioner of the Canadian Fairness at Work: Federal Labour Standards for the 21st Century Commission, filled in that gap of what constitutes 'decent work' in the report, *Fairness at Work: Federal Labour Standards for the 21st Century*. He defined the fundamental principle by which the Canadian federal labor standards should be judged:

Labor standards should ensure that no matter how limited his or her bargaining power, no worker in the federal jurisdiction is offered, accepts or works under conditions that Canadians would not regard as 'decent'. No worker should therefore receive a wage that is insufficient to live on; be deprived of the payment of wages or benefits to which they are entitled; be subject to coercion, discrimination, indignity or unwarranted danger in the workplace; or be required to work so many hours that he or she is effectively denied a personal or civic life.²⁸

It is important to add a living wage component to the concept of decent work because that creates a much stronger rallying cry to win the 'hearts and minds' of people around the world. To the extent it could be successfully implemented, it would end poverty as a systemic problem of the present global economy.

As amended to include the concept of a living wage, it would be appropriate to amend the 1998 Declaration to add 'decent work' to the list of fundamental goals of the ILO. Doing so, however, would implicate Article 5 of the Declaration, providing that 'labour standards should not be used for protectionist trade purposes . . . [and] the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up'. Raising the issue of decent work, including a living wage, would raise the issue of the use of labor standards as a further protectionist device of the developed world against the developing one. Given that background, it is hard for someone from the developed world to present the brief for the adoption of a decent work with a living wage principle as part of the ILO fundamental principles. Nevertheless, the time is at hand to again address the issue because circumstances have changed.

This issue, of course, goes back to the creation of the World Trade Organization. In the First Ministerial Conference of the WTO in Singapore in 1996, the United States proposed linking core labor standards compliance to the WTO trade enforcement regime. The proposal was soundly rejected, principally by the developing countries who feared that enforcing labor standards through trade sanctions

27. Even more recently, the EU has announced that it will add 'decent work' as an objective to its social goals. Press Release, December 4, 2006, of EU Council of Ministers.

28. Federal Labour Standards Review Commission, *Fairness at Work: Federal Labour Standards for the 21st Century* 47 (2006) (emphasis added). The principle, both explicitly and implicitly, is much broader than just guaranteeing a living wage. For example, it would raise the issue of job security, which would have special implications for the at-will rule of American employment law.

would be a vehicle for the developed countries to protect the high wages of their workers to the disadvantage of competition based on lower labor costs in the developing world.²⁹ Instead, the resulting Ministerial Declaration pronounced that labor issues were beyond the WTO's competence and that the ILO was the competent body to deal with those standards. It was that declaration that led the ILO to undertake its review leading to the promulgation of its 1998 Declaration.³⁰

In November 1999, the issue of trade-labor linkage again erupted, this time in Seattle, where representatives of 135 nations met to set the agenda for upcoming negotiations about the future of the WTO. In the 'Battle of Seattle', thirty to forty thousand protesters disrupted the meeting with one of their issues being the failure of the WTO to address labor and human rights issues.³¹ The United States, with the support of the European Union, again proposed raising the possibility of a linkage between labor standards and free trade. The proposal met with decisive opposition from the developing world.³² Subsequently at the Doha Ministerial Conference in 2001 and the Cancun Ministerial Conference in 2003, the antipathy of a trade-labor linkage at the WTO level was reaffirmed.

Whether or not the WTO should now address the issue of the trade-labor linkage,³³ the ILO should address the issue.³⁴ What, if anything, has changed that might persuade the developing countries that setting decent work with a living wage as a fundamental principle would not interfere with its interests? For one important thing, whatever was the conventional wisdom about the WTO setting a level playing field between the developed and the developing countries when the WTO was created in 1995, it is now clear that the WTO rules tilt decisively in favor of the developed countries and, more specifically, the dominant economic interests headquartered in the developed world. In response to the creation of the WTO, '[d]eveloping countries rushed to open their capital markets'.³⁵ Yet, the economic development that was expected has been sorely lacking across all of the developing world. In its report, the ILO's World Commission documented that '[g]rowth has been unevenly distributed across countries, among both industrialized and developing countries. In terms of per capita growth, only 16 developing countries grew at more than 3 per cent per annum between 1985 and 2000. In contrast,

29. Sarah H. Cleveland, *Why International Labor Standards?*, in *International Labor Standards: Globalization, Trade, and Public Policy*, 129, 148–149 (Robert J. Flanagan & William B. Gould IV (eds), 2003).

30. *Id.* at 152.

31. Clyde Summers, *The Battle in Seattle: Free Trade, Labor Rights, and Societal Values*, 22 U. Pa. J. Int'l Econ. L. 61 (2001).

32. Ewell E. Murphy, Jr., *The World Trade Organization*, in *International Labor and Employment Laws 45-1*, 3–4 (2nd edn, William L. Keller & Timothy J. Darby, eds., 2003).

33. See Andrew T. Guzman, *Global Governance and the WTO*, 45 Harv. Int'l L.J. 303, 328–337 (2004) (proposing the WTO's competence be expanded to create separate departments dealing with subjects including labor).

34. See Sungjoon Cho, *Linkage of Free Trade and Social Regulation: Moving beyond the Entropic Dilemma*, 5 Chi. J. Int'l L. 625, 668–669 (2005) (calling for 'a calm, modest yet incrementally effective approach to linkage, using soft law and cooperative networking').

35. Krugman, *Milton Friedman?*, 30.

55 developing countries grew at less than 2 per cent per annum, and of these 23 suffered negative growth. . . . At the same time, the income gap between the richest and poorest countries increased significantly'.³⁶ While China, India and the 'Asian tigers' have experienced considerable growth,³⁷ the rest of the developing world has not been a beneficiary of globalization. '[T]he perception of most Latin Americans is that "neoliberal" policies have been a failure: the promised takeoff in economic growth never arrived'.³⁸ In light of that overwhelming evidence, the developing world may no longer stand so strongly and so uniformly in opposition to the articulation of new global labor standards including the goal of decent work with a living wage.

While the 1998 ILO Declaration links protectionism and interference with comparative advantage, implementing the goal of decent work with a living wage is not necessarily connected to protectionism or interference with comparative advantage. Just as the elimination of child labor or forced labor worldwide will not interfere with any legitimate sense of comparative advantage,³⁹ so too providing for decent work with a living wage merely sets a level playing field among all the nations of the world. The cost of living varies widely across the globe and provides considerable comparative advantage to developing countries even if workers earn a living wage set by each nation's cost of living. Not linking the decent work with a living wage standard to WTO trade sanctions further lessens the prospect that this standard could be used as a proxy for protectionism.⁴⁰

There are significant prospects that the goal of decent work with a living wage can be a galvanizing organizational force politically all across the world. The Battle in Seattle as well as strong protests across the world over the failure of the WTO to address labor standards is good evidence that labor standards can be such a galvanizing force. Further, the broad international support among consumers to force

36. *A Fair Globalization*, 35–36. While in 'three Asian emerging economies [. . .], trade growth had a generally favourable effect on employment and wages in manufacturing. In contrast, in Latin American countries such as Brazil and Mexico, employment in manufacturing has either not risen appreciably or has fallen. Real wages of unskilled workers have tended to decline and the wage differential between skilled and unskilled workers has increased relatively sharply'. *Id.* at 38.

37. The experience of both China and India further support rejecting full free market economics since neither adopted the full laissez-faire program – the Washington Consensus – and, as a result of much more careful and limited entry into the global economy, did much better than those developing countries that adopted the entire neoliberal program. See Joseph Stiglitz, *Making Globalism Work*.

38. Krugman, *Milton Friedman?*, 30. During the period of the 'Mexican miracle', for example, which lasted from the end of World War II until the mid 60s, the wage set pursuant to the 'living' wage mandate in the Mexican Constitution actually achieved that objective, providing a worker with enough income for shelter, food, clothing and enough money to send the children to school. Since then the minimum wages mandated by law have fallen far short of achieving that objective.

39. The ILO has made it clear that implicit in the pledge not to interfere with comparative advantage 'is that no country should achieve or maintain comparative advantage based on ignorance of, or deliberate violations of, core labour standards'. *A Fair Globalization*, 92.

40. That raises the issue of how the decent work with a living wage goal can be implemented transnationally. The next section will describe how enforcement can be addressed.

brand name companies to adopt Corporate Codes of Conduct that bind themselves and their suppliers to decent labor standards also shows the power that comes from articulating goals such as decent work with a living wage.⁴¹

In sum, it is time that a global goal of decent work with a living wage be articulated by the ILO and other international, regional and national institutions. Simply adding words to the page will not, however, actually help workers around the world achieve decent work with a living wage. The next section will address implementation.

4. RECAPTURING THE HIGH GROUND

A major reason to articulate the goal of decent work with a living wage is that it expresses a value that can be used to organize pressure for its adoption and its implementation both as a labor standard imposed by law and implemented by employers independent of any legal obligation. That decent work with a living wage can be a rallying call all around the world is supported by the evidence of the protesters at the Battle of Seattle and the other WTO meetings. These protesters were not acting out of protectionist motives or goals. Their rallying cry is global social justice, which they see being frustrated by the WTO and other international institutions, such as the World Bank and the International Monetary Fund, that have furthered the implementation of the neoliberal regime. The rallying cry of decent work with a living wage might well resonate world wide, including people throughout the developed and developing world.

The World Bank and the International Monetary Fund have come to soften their starkly neoliberal policies by coming to recognize the need to address social justice issues raised in a globalizing economy.⁴² In face of the facts about the impact of globalization, governments and even some pragmatic supporters of neoliberal theory may now be coming to see the necessity of actions that would level the playing field in the global economy among the developed and developing nations as well as among workers within nations and across national borders.

5. UNIONS SHOULD ACT GLOBALLY TO ACHIEVE DECENT WORK WITH A LIVING WAGE

Enlightened self interest only goes so far. It would be naive to assume that those interests that have benefited so handsomely under the present globalized economic

41. See Harry Arthurs, 'Private Ordering and Workers' Rights in the Global Economy: Corporate Codes of Conduct as a Regime of Labour Market Regulation', in *Labour Law in and Era of Globalization: Transformative Practices & Possibilities* (Joanne Conaghan, Richard Michael Fischl, & Karl Klare eds., 2004) 471.

42. See, for example, *Toward a Better Globalization*, by Horst Kohler, Managing Director of the IMF, Inaugural Lecture on the Occasion of the Honorary Professorship Award at the Eberhard Karls University in Tübingen, October 16, 2003.

system would readily accept any change in that system or its intellectual underpinnings.⁴³ A cynic would say that they spent tremendously in terms of effort and capital to establish the present system and would not want to see their investment lost.⁴⁴ So, those who want the decent work with a living wage goal implemented and enforced will need to organize. Workers have the most direct interest in achieving this objective and workers are members of and represented by unions. Thus, unions appear to be the natural leaders of the movement to challenge failures to provide decent work with a living wage. At the international level, the union movement has made 'globalizing social justice' its prime objective for the new millennium.⁴⁵ In part, unions need to demonstrate that they are not just an artifact of the predominantly industrial era that is rapidly disappearing.

If unions work together transnationally, they may be able to follow business interests globally to attempt to put pressure on employers to provide decent work with a living wage. The lion's share of global economic activity is undertaken by transnational or multilateral enterprises.⁴⁶ They operate on a principle of selective exit and selective entry into the markets of different countries around the world.⁴⁷ Given the reduction in a variety of barriers to entry and exit from national markets, including that have come with a globalizing economy, enterprises can act 'rationally': Enterprises can select where and when to perform all the different aspects of their business in order to enhance overall efficiency. This includes buying, making, servicing and selling and allows businesses to pick different places to undertake different activities that together form the entire business. All sorts of factors, such as different taxation schemes and other national regulatory differences, including the enforceability of contracts, are evaluated in terms of what is most efficient for the enterprise. Labor costs and labor standards do play a significant part in the strategy of selective entry and exit.⁴⁸ Thus, for example, labor costs may sometimes be reduced by offshoring various components of the

43. See Rick Perlstein, *Before the Storm* (2001) for a description of the intense ideological commitment of some conservatives to the neoliberal agenda. They would be unlikely to change viewpoints no matter what they were confronted with.

44. Government actors as well as private interests have substantial vested interests in the neoliberal system as it is presently constructed.

45. World Congress Report, *Globalizing Social Justice: Trade Unionism in the 21st Century*, International Confederation of Free Trade Unions, Durban, April 2000.

46. 'Multinational corporations (MNCs) dominate the global economy, accounting for two-thirds of global trade in goods and services'. Ronen Shamir, 'Corporate Social Responsibility: A Case of Hegemony and Counter-Hegemony', in *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Boaventura de Sousa Santos & Cesar A. Rodriguez-Garavito eds, 2005) 92.

47. The concept of 'exit' as applied to businesses is taken from Harry Arthurs, *Compartmented to What? The UCLA Comparative Labor Law Project and the Future of Comparative Labor Law*, CLPE Research Paper 2/2007, vol. 03 No. 01 (2007).

48. Exit and entry decisions are not only based on labor costs. For example, German, Japanese and Korean automobile manufacturers have chosen to undertake a considerable amount of production within the United States, even though the U.S. would not have the lowest labor costs of all the places in the world where production might be located. Obviously, important business factors trump low labor costs in such situations.

overall business to subsidiaries set up in various different countries. And, whether offshored or not, other components of the business can be outsourced to other enterprises if the enterprise concludes that it is not necessarily most efficient at performing any particular component of its business.⁴⁹ The absence of high barriers to entry or exit allows a business to pick what to do, where, to best serve its interests as it determines those interests to be. This, while neoliberalism assumes, without much empirical support, that individuals are ‘rational actors’ who act to maximize individual economic wellbeing.

Historically, unions have been institutions created and operated at the nation state level within national economies. While the ILO has provided the framework for connections of national unions, until recently those connections have not led to operational interaction in very much of an organized or coordinated way. And, the various national union movements have operated within their respective domains in a wide range of different ways – from the more business oriented, ‘bread and butter’ unions of the United States and Canada to the more politically directed ones in Mexico and France.⁵⁰

Unions, however conceived and operated, generally tend to support initiatives benefitting all the workers in their respective countries and not just members of the unions. Some are starting to look toward a greater role internationally in order to serve their members and the interests of workers generally. One of the unintended consequences of the labor side accord to NAFTA is that an increasing number of unions in the three member countries have come to have connections across borders at much more of an operational level.⁵¹ Looking across borders has for some U.S. unions extended beyond the NAFTA countries. Andy Stern, the president of the Service Employees International Union (SEIU), has been spearheading efforts of American unions to think and to act globally. Stern’s union has partnered with England’s Transport & General Workers’ Union (TGWU) to organize janitors in London. The TGWU has reciprocated by putting pressure on a British bus company that was resisting unionization of operations it owned in the United States.⁵² Recently, Amicus, the United Kingdom’s largest private sector union, has reached agreements with IG-Metall, the predominant German engineering union, and the United Steel Workers and International Association of Machinists from the United States to work together transnationally. With a total membership of some 6.3 million members, this amalgam is beginning to work together to try to prevent companies from playing off their members in the three countries against each other. Derek Simpson, general secretary of Amicus, said: ‘Our goal is to create a powerful single union that can transcend borders to challenge the global forces of capital’.⁵³

49. It goes without saying that many types of business, far beyond industrial production of goods for sale, engage in selective exit and entry.

50. See Blanpain, *The Global Workplace*.

51. *Id.*

52. Rick Kirkland, ‘The new face of labor’, *Fortune*, October 10, 2006, money.cnn.com/magazines/fortune/fortune_archive/2006.

53. Harry Kelber, *Global Labor Giants Formed by British, German and 2 U.S. Unions*, *The World of Labor*, January 5, 2007, www.laboreducator.org/laborgiant.htm.

Unions face many challenges if they are to develop as forceful and effective players on the international scene. First, given the widely different ways in which unions are organized and operate, it may be hard for unions to find ways to work together compatibly. For example, it is easier for Canadian and U.S. unions to cooperate with the newer emerging unions in Mexico than with those traditional unions within the CTM confederation that have been established by the PRI led government and that at one time played key roles in the ‘corporatist’ organization of Mexican society. CTM affiliated unions sometimes have been so-called ‘ghost’ unions, recognized by employers as the representatives of the workers without the workers even being aware of the union’s existence. Even as Mexico trends toward a more polycentric power structure, these establishment unions still play a considerable role in the Mexican economy and could prove to be useful allies in united cross border activities. Indeed, such involvement might help these unions make a successful transition to independence. Another example comes from China, where the All China Federation of Trade Unions (ACFTU) is government-controlled; some would describe it as a lapdog for the Communist Party. Recently, the ACFTU reached an agreement with Wal-Mart to represent the workers in its mainland stores.⁵⁴ In one sense, that merely reflects China’s labor law but, in another, it may lead to greater activity by the union in actually representing the workers. The recently proposed amendments to China’s labor law includes several proposals that have been quite controversial for the foreign direct investment community because they provide for a heightened role for the union at all places of employment.⁵⁵ Less extreme, but nevertheless organizationally-important differences among union structures, appear across the globe that can make full cooperation, much less any sense of integration, quite difficult.⁵⁶

Perhaps more fundamentally, as institutions organized within each nation state, unions have had a natural inclination to support the national interests of their state of organization and of the interests of the workers of its country of origin versus the interests of workers in other countries. With, however, the

54. *Id.* More recently, McDonald’s has agreed to union representation of some of its workers.

55. It may be that the Communist Party desires its ACFTU unions to play a more activist role representing workers in order to ameliorate the protests of workers of employer misconduct, which protests have been endemic as the Chinese economy has moved from one dominated by state-owned enterprises to joint ventures funded by foreign direct investors.

56. James Atelson has described some of the difficulties: ‘[T]he apparent necessity for transnational union cooperation should not disguise the difficulty of seeking and obtaining this goal. [...] Differences of culture, language, and history provide serious obstacles to cooperation. The argument for greater coordination does not mean that the unions [...] necessarily favour transnational cooperation, let alone bargaining, not least because workers, suppliers, communities, states, and provinces and countries are all in competition for production facilities and for jobs and taxes which they generate. Moreover, workers in different countries may well see foreign workers as competitors, as part of “the problem”.’ James Atelson, ‘The Voyage of the Neptune Jade: Transnational Labour Solidarity and the Obstacles of Domestic Law’, in *Labour Law in an Era of Globalization: Transformative Practices & Possibilities* (Joanne Conaghan, Richard Michael Fischl, & Karl Klare eds., (2002) 399.

worldwide decline in union density,⁵⁷ the connection of unions to the countries of their organization and membership may have to be trumped by transnational objectives if the unions are to have a renaissance. Attaching one's star to the declining power of nation states to protect workers exposed to global competition appears to be a recipe for continued decline, if not disaster. For example, with union density in the private sector in the United States below 8 percent,⁵⁸ unions are rapidly becoming irrelevant in setting labor standards as well as in influencing labor policy generally.⁵⁹ To say it another way, if unions are to continue to be relevant, they will need to take the high ground by claiming they are working toward the betterment of the lives of workers everywhere.⁶⁰

Another reason for unions to act in ways that can be characterized as protectionist is that perceived threats to workers' jobs, their job security and status based on their employment are powerful issues to be used to organize workers. In 1979, psychologists Daniel Kahneman and Amos Tversky proved that most people have a much greater fear of losing what they have than failing to gain an opportunity that would be even more beneficial.⁶¹ The AFL-CIO in the United States has historically been associated with protectionist activities because it aimed to protect the jobs and labor standards of its members and of American workers more generally. This 'loss aversion' may be seen in the recent protests over the decision of Airbus to reorganize to cut 4,300 jobs in France out of 10,000 across Europe over the next four years.⁶² One of the issues raised by the French union was that more cuts would be made in France than in Germany. The German unions did not strike and so this episode may demonstrate how loss aversion may be a very successful way to organize workers but that may lead to national competition rather than unity across borders among unions.⁶³

The reaction in France against the provision in the *Contrat Premiere Embache* (CPE), or first employment contract, is another example. After the riots in France in October and November 2005 had been traced in large part to the very high

57. Union density differs tremendously across the globe but, with the exception of the Scandinavian countries, the general trend has been a decline.

58. See *Union Members in 2006*, USDL 07-0133 (January 25, 2007), www.bls.gov/cps/ (in 2006, 7.4 percent of private sector workers were union members).

59. But see Lance Compa, *Remarks for Panel 'New Ways of Governing the Workplace'*, Section on Labor Relations and Employment Law, American Association of Law Schools Annual Meeting, January 5, 2007 (decline in union density in many ways is a regional phenomenon and unions 'are still a major force in key economic sectors and regions').

60. Unions have generally pushed for improvement of labor standards for all workers, even those not represented by unions. Assuming that has not been done altruistically but to best serve the unions interests among the workers they do represent, unions now need to expand that focus across nation state lines in order to take account of the impact of globalization.

61. Prospect Theory: An Analysis of Decisions Under Risk, 47 *Econometrica* 263 (1979).

62. Nicola Clark & Katrin Bennhold, 'Airbus Workers in France Strike', *International Herald Tribune*, Wednesday, March 7, 2007, p. 1 (organizers said more than 15,000 people marched in protest in Toulouse as well as workers striking for five hours at four Airbus assembly lines).

63. The European Metalworkers' Federation, a confederation located in Brussels, called for another day of strikes and protests across Europe on Friday, March 8, 2007.

unemployment among young people of Arab ethnic origin, the response of the government was to try to help reduce the high levels of unemployment among all young people – about 25 percent of all persons under age 26 were unemployed – by permitting employers who hired any workers under age 26 for their first jobs to terminate them at-will during an initial two-year probationary period. Pushed through Parliament using emergency procedures that limited debate, the law drew a response of massive demonstrations and strikes as young people, students and unions all protested what was viewed as a significant erosion of employment security, the camel's nose of at-will employment being allowed within the tent of job security.⁶⁴ The law did not take away the jobs of any workers; indeed, it was supposedly enacted to encourage employment of the very people who protested the most. So, in some sense, the protest was not organized around the aversion to loss of one's job. In another, more profound sense, the motivating force was loss aversion, effectively denying young workers the labor protections that are deeply entrenched for French workers generally.⁶⁵ Thus, French young people reacted very strongly to the perceived loss of something they never had – strong job security – but its prospect when they finally would get a job.

Thus, unions can articulate issues to draw on the powerful emotions of aversion to loss, even if workers may never have had what they feel they are at risk of losing. This is, however, tricky ground because it could all too easily fall into protectionism. But, still, to be effective at following multinational or transnational businesses as they organize their activities at many places and in many different ways around the world, unions need to maintain the high ground by organizing their activities around the claim of decent work with a living wage for all workers around the world. As long ago as 1973, Lord Wedderburn made the point quite forcefully:

The true correlative to an international agreement securing the right to capital the right to move and, therefore, organize across the boundaries of national states would be an agreement securing to collective organizations of work-people the right to take common action in negotiating, bargaining with and, if need be, striking against the multinational enterprises. [. . .] It is not true free movement of labour but free international trade union action which is the true counterpart to free movement of capital.⁶⁶

Even if unions are successful at reorienting their goals toward world wide labor standards, such as the goal of decent work with a living wage, they do face some significant legal obstacles based on the labor laws of many nations. James Atleson traced the attempts of unions around the world to coordinate their responses to a

64. See Meg Bortin & Craig S. Smith, *Hundreds of Thousands Protest Against Labor Law in France*, www.nytimes.com/2006/03/28/international/europe/28end-france.html.

65. Jim Hoagland, 'Protests Demonstrate Need to Deal with Pressures of Globalization', (syndicated column, April 3, 2006).

66. K. Wedderburn, 'Industrial Relations', in *Nationalism and the Multinational Enterprise* (H.R. Hahlo, J. Graham Smith, & R.W. Wright, eds., 1973) 249.

labor dispute over privatization that originally arose at the port in Liverpool, England. A ship that had been loaded in Liverpool during the dispute prompted a picket line and a refusal of longshore workers to unload it first in Oakland, California, then in Vancouver, British Columbia, and again in Yokohama, Japan.⁶⁷ While the ship was not unloaded at any of those ports, Atleson reports that the actions by the unionized workers to support the English union were illegal in all three jurisdictions – the United States, British Columbia and Japan.⁶⁸

In sum, unions appear to be the natural leaders of a movement to push for decent work with a living wage at a global level. But, because unions have historically been organized and operated at the nation state level, it will be quite difficult for unions to redirect their efforts to include operations transnationally. Overcoming those difficulties may, however, be necessary if unions are to survive in a meaningful way. By reaching beyond their national borders to lead the drive for decent work with a living wage may be the path to their future wellbeing, as well as the wellbeing of workers across the world.

6. UNIONS NEED TO COORDINATE WITH OTHER ORGANIZATIONS

While unions are the logical organizations to lead the movement toward decent work with a living wage, many other types of organizations⁶⁹ can be called upon to join an international coalition to lead countries and employers to implement the decent work with a living wage goal. There already are more than 25 Framework Agreements between Global Union Federations and multinational enterprises. ‘While the content of these agreements differs, most cover the core international labour standards and some also cover issues such as a ‘living wage’ and health and safety matters’.⁷⁰

The ‘soft law’ approach of voluntary agreements of enterprises to adopt Corporate Codes of Conduct can have promise where they can work.⁷¹ They are based

67. James Atleson, ‘The Voyage of the Neptune Jade: Transnational Labour Solidarity and the Obstacles of Domestic Law’, in *Labour Law in an Era of Globalization: Transformative Practices & Possibilities* (Joanne Conaghan, Richard Michael Fischl, & Karl Klare eds, (2002) 379.

68. *Id.*

69. The ILO’s World Commission has called for the International Organization of Employers to be among those organizations. *A Fair Globalization*, at 123.

70. *Id.*

71. While Harry Arthurs has made a good argument that these codes could be enforced as legally binding contracts in the right factual circumstances, Harry Arthurs, ‘Private Ordering and Workers’ Rights in the Global Economy: Corporate Codes of Conduct as a Regime of Labour Market Regulation’, in *Labour Law in and Era of Globalization: Transformative Practices & Possibilities* (Joanne Conaghan, Richard Michael Fischl, & Karl Klare eds., 2004) 471, so far the most prominent case, the attempted action against Wal-Mart for its failure to enforce its code of conduct against its subcontractors around the world, has been dismissed, at least temporarily, as failing to state a legal claim upon which relief could be granted. *Jane Doe I v. Wal-Mart Stores, Inc.*, – F. Supp. – (C.D. Ca. 2006).

on a political action model that seeks to link the social values of consumers to the social justice claim of workers. Some NGOs, frequently in conjunction with unions, have spearheaded these efforts. Multinational or transnational enterprises agree to these codes in the hope of heading off adverse publicity that can negatively impact their businesses. This is of particular concern to brand name companies. Thus, corporate codes work best when the enterprise is based on a brand-name business model so that potential consumers of its products can be motivated to put pressure on the enterprise or if the enterprise under pressure can somehow be linked to such a brand-name business. For many enterprises it might prove difficult to link them to the types of consumers who might make their consumption decisions based on social justice issues. Engaging a wide variety of social justice organizations may help establish and expand those links.

Further, some multinational or transnational enterprises have engaged in their program of selective entry and exit across the globe at least in part to escape the imposition of higher standards. 'At stake here, then, is the very possibility of subjecting [multinational or transnational enterprises] to labor regulation. The infamous quote of a former CEO of General Electric – 'Ideally, you'd have every plant you own on a barge' – embraces the extreme version of TNCs' efforts to exploit the opportunities of globalization and capital mobility to exempt themselves from labor regulations'.⁷² As one technique used to mask where elements of their enterprises are performed and under what conditions, many multinational or transnational corporations rely on offshore outsourcing through contractual arrangements with supposedly independent enterprises to perform particular functions of the enterprise. In face of claims that these independent contractor relationships involve trade secrets, it can prove daunting for unions to trace where and under what conditions functions necessary to the business of a multinational or transnational enterprise are performed. Cesar A. Rodriguez-Garavito further describes how, with cross border actions by unions and other interested organizations, a maquila enterprise in Mexico, that contracted to produce goods for Nike, was finally forced to accept an independent Mexican union and to agree to a collective bargaining agreement that improved the wages, hours and conditions of employment for its workers.⁷³ The role of Nike was key because of its fear of bad publicity flowing from the action of its subcontractor. Michael Posner and Justine Nolan describe how the effort to monitor and therefore enforce these codes of conduct have led to four different categories, with ever increasing outside participation in monitoring as these categories developed.⁷⁴

72. Cesar A. Rodriguez-Garavito, 'Nike's Law: The Anti-Sweatshop Movement, Transnational Corporations, and the Struggle Over International Labor Rights in the Americas', in *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Boaventura de Sousa Santos & Cesar A. Rodriguez-Garavito eds., 2005) 70.

73. *Id.*

74. 'Can Codes of Conduct Play a Role in Promoting Workers' Rights?', in *Labour Law in an Era of Globalization: Transformative Practices & Possibilities* (Joanne Conaghan, Richard Michael Fischl, & Karl Klare eds., 2002) 207.

In sum, unions and other organizations with similar objectives need to work together to attempt to get multinational or transnational enterprises to agree to provide decent work with a living wage for their workers as well as the workers of their subcontractors who perform functions necessary to the operation of the enterprise.

7. SEVERAL SECONDARY ISSUES TO BE RESOLVED

If efforts to implement the goal of decent work with a living wage are to be successful, there needs to be developed better metrics for judging progress or the lack of it. Better ways of measuring, in universal terms, what it means to be in poverty and what is a living wage in each country must be developed.⁷⁵ Further a consistent way of defining and measuring informal economies must be established.⁷⁶ Sometimes the term used is 'nonstandard' or 'contingent' work.⁷⁷ However defined and measured, the implementation of the goal of decent work with a living wage cannot succeed unless workers are actually protected by the decent work with a living wage standard.

When some American enterprises first began to look at placing parts of their enterprise in low labor cost countries and when NAFTA was first implemented, they were shocked to discover that, while a comparatively low labor cost country, Mexico in fact was a high labor standard country, if you looked at the requirements of its Federal Labor Law.⁷⁸ It legally mandated benefits, such as job security, paid vacations, yearly profit sharing and other benefits, that were unheard of in the United States. While the labor standards in the formal economy are high, over 60 per cent of workers in Mexico, some twenty-four million people, are engaged in informal employment, that is, wage and self-employment 'that is not recognized, regulated or protected by existing legal or regulatory frameworks and non-remunerative work undertaken in an income-producing enterprise'.⁷⁹ Given the predominance of informal work, over 40 percent of the population was beneath the poverty level.⁸⁰ Because of the availability of unskilled workers, enterprises can demand that workers accept work not protected by labor law. Workers, needing income to survive, lack the ability to do anything other than to accept the work on the employer's terms.⁸¹

75. See Sanjay G. Reddy & Thomas W. Pogge, *How Not to Count the Poor*, www.socialanalysis.org, October 29, 2005.

76. *Women and Men in the Informal Economy: A Statistical Picture* (ILO. 2002).

77. See Peggy R. Smith, *Contingent Workers: Lesson 5*, 5 *Emp. Rts. & Emp. Pol'y J.* 661 (2001); Gillian Lester, 'Careers and Contingency', 51 *Stan. L. Rev.* 73 (1998); Jonathan P. Hiatt, 'Policy Issues Concerning the Contingent Workforce', 52 *Wash. & Lee L. Rev.* 739 (1995).

78. See Blanpain, *The Global Workplace*.

79. *Women and Men in the Informal Economy: A Statistical Picture* (ILO. 2002).

80. See Foreign Labor Trends – Mexico 2002, www.dol.gov/ILAB/media/reports/flt/mexico-2002.htm.

81. Not all workers who are outside the formal economy are victims of adhesion agreements with the entities with whom they contract. See Blanpain, *The Global Workplace*.

Simply enacting a law does not mean that the perceived goal of the legislation will actually be effectuated. In his review of Canadian federal labor standards, Harry Arthurs adds an important corollary to his decent work with a living wage principle: 'Labour standards should be designed and implemented so as to avoid unintended harm to workers who are the intended beneficiaries of the legislation, and to avoid unnecessary costs and inconvenience for employers who are intended to be regulated by it'.⁸² Adopting a requirement that employers provide decent work with a living wage raises labor standards in many situations. Raising labor standards, however, should not result in the creation of an incentive for more enterprises to push their workers out of the formal labor economy and into the informal one. To adopt the decent work with a living wage as an enforceable labor standard while doing so in a way that minimizes the unintended consequence of pushing workers out of the formal economy and into the unregulated informal one will require very creative strategies. If the neoliberalism of Milton Friedman left us with any valuable lesson, it is that regulation must be carefully and strategically crafted to be as effectively implemented as possible. Implementing decent work with a living wage as an efficacious law likely will require the development of enforcement mechanisms beyond those implemented by Ministry of Labor inspectors.⁸³ While it is beyond the scope of this paper, there are some examples of imaginative proposals that advance important labor standard objectives in a way that also minimizes their unintended consequences.⁸⁴

8. CONCLUSION

In conclusion, the ILO should amend its 1998 Declaration to include as a fundamental principle the concept of decent work with a living wage. The inadequacies of the presently operating system of economic and social globalization justify focusing on this important issue and may be the basis for overcoming objections based on the prevailing neoliberal paradigm. Unions, along with other like minded organizations, should use the principle of decent work with a living wage as a rallying cry for its adoption as regional and national law across the world and for its implementation through legal and 'soft law' measures. This is a tremendous challenge but the goal is worth the effort.

82. *Fairness at Work*, at 55.

83. Harry Arthurs, in *Compacted to What? The UCLA Comparative Labor Law Project and the Future of Comparative Labor Law*, CLPE Research Paper 2/2007, vol. 03 No. 01 (2007), notes that '[s]tate labor law, finally, is increasingly made not by labor departments, but in other ministries and agencies of state. Fiscal, monetary, social welfare, education, immigration and trade policies – not labor statutes – determine structural and cyclical changes in the labor market and their consequences for workers'.

84. See Jacob S. Hacker, 'The New Economic Insecurity – And What Can Be Done About It', 1 *Harv. L. & Pol'y Rev.* 111 (2007).