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REFORMING LABOR LAW FOR THE NEW CENTURY

Lance Liebman†

The two articles that follow are the first published fruit of a conversation that was initiated in 1998 under the auspices of “Labor Law Reform for Developed Countries in the 21st Century,” several years of conferences leading to the May 2000 Tokyo Conference of the International Industrial Relations Association. This project has had generous support from the Center for Global Partnership of the Japan Foundation and from the Parker School of Foreign and Comparative Law at Columbia Law School.

The participants have been labor law professors from Europe, Japan, and the United States. The group has focused its research and its comparative discussions on four topics: security and flexibility in employment, work and family, aging societies, and globalization. All participants agreed that these socio-economic realities engage and challenge labor law as the new century opens. We anticipate that future issues of the *Comparative Labor Law and Policy Journal* will contain additional articles stimulated by this project.

Bob Hepple and Sean Cooney were the first participants to complete their articles. (Sean, an Australian, is an honorary American for purposes of this conversation because he was in residence at Columbia University when he joined the project.) The topics they illumine are in the absolute center of significance as the planet shrinks and as the nature of work changes. Labor law in developed countries is a twentieth century response to the nineteenth century workplace. In every country there developed over the past one hundred years wage and hours laws, minimum wages, safety and health regulation, rights to organize and to bargain collectively, anti-discrimination laws, and social welfare protections. Now jobs move to lower-wage sites: for example, American doctors dictate notes about their patients that are transcribed in India. Can we imagine, much less create, world labor law?

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Professor Hepple is clear, thorough, and balanced. The movement for government promulgation of labor standards, as a matter of public international law, crested two decades ago. More recently, we have been in a period of what he calls TNCs (transnational corporations). TNCs obtain human labor where their calculus of efficiency points. But, as the paper shows, that can but does not necessarily mean a race among countries to provide the most oppressive sweatshops. Efficient production may require decent conditions for workers. Customers in developed countries may (or may not) reward companies that produce decently. Non-governmental organizations may achieve influence when they set standards and publicize evaluations. Governments, individually or collectively, may act. Professor Hepple's conclusion is that recent experience is sobering, but may point the way to effective institutional responses. Certainly we now have substantial evidence of ineffective interventions.

Sean Cooney's article intersects perfectly with Bob Hepple's. Mr. Cooney brings modern theory to the unhappy story of the International Labour Organization. The ILO has long been seen as a bureaucratic structure with lofty goals that has had, to be generous, modest achievements. This paper illumines the reasons: The impossibilities, in a world of sovereign states, each with their own political and economic structures, for norms apparently promulgated by the rich nations in Geneva to have major impact on worker conditions in poorer lands. The analysis is so convincing that the reader will wonder whether there is any hope for a body that represents the world government ideal to be significant in the radically decentralized contexts of human labor across the globe.

Sean Cooney's achievement is to propose the most promising ways, based on contemporary theory, for the ILO to advance the conditions of workers. Applying the ideas of Charles Sabel, Cooney recommends pragmatism, decentralization, and participation. But he realizes that the effort must be anchored in "shared moral convictions evolving from dialogue between peoples." The ILO had that when it was created. If there is hope for the ILO today, it must be based on a renewed and more broadly based agreement on moral principles, which is then applied creatively and incrementally to the extraordinarily diverse worlds of work.

Sean Cooney also sees that the structures of work are changing rapidly. This too argues for applying principles with decentralized and participatory flexibility. He may not convince with his argument that the ILO can succeed. But he certainly persuades that his program is the best available agenda for an institution of world government dedicated to improvement of the lives of workers.