Global Labour Policy as Social Policy

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Focusing on the development and market reform agendas of global economic institutions, this paper explores how the transformation of international governance norms, private law rules and business regulation has affected social objectives, especially those relating to redistributive justice. The author argues that social policy in the global arena has effectively been collapsed into labour market policy, and posits that rising inequality within and between states may be linked to a widely accepted macroeconomic program which gives market forces an enhanced role in social and economic ordering. Characteristic of that program is the OECD's highly influential Jobs Strategy, which in both its 1994 and 2006 versions advocates the pursuit of economic growth by increasing labour market flexibility, curbing employment protections, decentralizing collective bargaining, and ensuring that social expenditures and social insurance are designed to "make work pay." Recent OECD findings, however, cast doubt on the basic premise that policies of labour market flexibility generate either improved economic growth or better employment outcomes. In addition, the Jobs Strategy fails to address three major concerns around work in the new economy: unemployment and under-employment; the rise of precarious work; and the labour market consequences of unpaid work, most of which continue to be experienced by women. Given the concurrent emphasis on labour market flexibility, the emerging concept of "core labour rights" is unlikely, on its own, to provide an adequate foundation for a reconstructed system of worker protections. In the absence of evidence showing better labour market outcomes in those countries which have implemented the Job Strategy, and given the indications that labour market institutions may also contribute to better economic outcomes, there appears to be no compelling reason to adopt policies that, ultimately, reverse the decommodification of labour and recontractualize the employment relationship.

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1. INTRODUCTION

It is not difficult to find contemporary discussion of the need for a "fair globalization." To cite just one example, there is a reference to it in the title of the 2004 report of the ILO Commission on the Social Dimension of Globalization.[1] But worries about the social deficit in the emerging international order are neither new nor limited to the ILO. For well over a decade, the United Nations has been grappling with the perceived tilt in the global institutional framework, while scholars, NGOs, activists and, sometimes, governments have been pressing it to do so for at least 20 years.[2] Whether the discussion is articulated in terms of the neglect of social development and workers' rights,[3] the persistent disadvantage of women,[4] the cadre of global poor,[5] or the difficulty of successfully integrating the nations of the South into the global trade regime and ensuring that they benefit from economic growth,[6] there is demonstrable convergence around the idea that the social dimension of globalization should now take a more central place in the international order.

But if the social is now officially part of the development agenda, what form the attention to it should take and what is to be done in terms of a changed programmatic or institutional agenda remains uncertain and deeply contested. Proposals are wide-ranging,

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1 ILO, World Commission on the Social Dimensions of Globalization, *A Fair Globalization: Creating Opportunities for All* (Final Report) (Geneva: ILO, 2004), online: International Labour Organization <http://www.ilo.org/public/english/wcsdg/docs/report.pdf>. See also UNDP, *Human Development Report 1999: Globalization with a Human Face* (New York: Oxford, 1999).

2 See G.A. Cornia, R. Jolly & F. Stewart, *Adjustment with a Human Face* (Oxford: Clarendon Press, 1987).

3 UN World Summit for Social Development, *Copenhagen Declaration on Social Development*, 1995, UN Doc. A/Conf. 166/9, online: World Summit for Social Development Agreements <http://www.un.org/esa/socdev/wssd/agreements.html>.

4 UN Fourth World Conference on Women, *Beijing Declaration*, UN DAW, 1995, online: Division for the Advancement of Women <http://www.un.org/womenwatch/daw/beijing/platform/declar.htm>.

5 See the United Nations Millennium Development Goals, online: <http://www.un.org/millenniumgoals>.

6 WTO, *Doha Ministerial Declaration*, WTO Doc. WT/MIN(01)/Dec/1 (2001), 4th Sess., online: WTO <http://docs.online.wto.org>.

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and include a changed substantive focus, emphasizing issues such as poverty alleviation and the environment; procedural shifts that focus on greater transparency and accountability; and a normative realignment through the introduction of a human rights or public law lens to the international economic order.

Analysts in a variety of disciplines, ranging from feminism to development economics, have long argued that there is an observable bias against social welfare concerns in the policies and priorities of first-generation reforms.[7] For those at the receiving end, the structural adjustment programs (SAPs) promoted by the international financial institutions (IFIs) came to be emblematic of a pervasive deficit in development thinking and policy, not simply in terms of social development but of democratic legitimacy and control as well.[8] In response to pressure on this front, the World Bank has formally embarked on a modified approach to development and market reform. This "second generation" path complexifies the singular focus on economic growth that marked the first phase of global market integration, and aims to mitigate its harshest effects through, among other things, greater attention to the "structural, social and human" side of development.[9] The reformed agenda involves, on the one hand, holding stable the pre-existing commitments to the macroeconomic policies and market reforms identified with first-generation reforms: liberalization of trade and financial transactions; privatization; macroeconomic stabilization and fiscal discipline; the protection of property rights; and the "deregulation" of labour, product and service markets.[10] On the other hand, it gives heightened

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7 Cornia *et al.*, *supra*, note 2; D. Elson, "Male Bias in Adjustment Policies," in D. Elson, ed., *Male Bias in the Development Process* (Manchester: Manchester University Press, 1991).

8 See B. Rajagopal, *International Law from Below* (Cambridge: Cambridge University Press, 2003); G. Esteva & M.S. Prakash, *Grassroots Postmodernism: Remaking the Soil of Cultures* (London: Zed Books, 1998).

9 J.D. Wolfensohn, *A Proposal for a Comprehensive Development Framework (A Discussion Draft)* (1999), online: World Bank <http://www.worldbank.org/cdf/cdf.text.htm>. For a discussion, see K. Rittich, "The Future of Law and Development: Second Generation Reforms and the Incorporation of the Social," in D.M. Trubek & A. Santos, eds., *The New Law and Economic Development: A Critical Appraisal* (Cambridge: Cambridge University Press, 2006) 203.

10 J. Williamson, "Democracy and the Washington Consensus" (1993), 21 World Development 1329.

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emphasis to a series of governance concerns — for example, respect for the rule of law and the protection of human rights and property rights — and identifies a defined list of social concerns, from primary education and health care to gender equality, that now warrant more attention.

Yet despite calls to include the social in the agendas and activities of the global economic institutions[11] — whether by including a social clause in the WTO,[12] by subordinating the international economic and financial institutions to international law[13] and other public law norms,[14] or by reading human rights norms and values into the existing trade regimes[15] — it is clear that the social has long been there. To put it another way, if the argument is that a correction on the social side is now in order, it would be a mistake to begin with the assumption that a social dimension or social vision was somehow absent from the development and market reform policies of those institutions in the first place.

The canonical legal way to articulate concerns about social deficits in the international order is in the language or framework of human rights.[16] Yet whatever the utility of human rights and other public law norms as vehicles for legal reform and institutional transformation, there is a compelling reason to look elsewhere too.

11 ILO, *A Fair Globalization*, *supra*, note 1.

12 WTO, *Singapore Ministerial Declaration*, WTO Doc. WT/MIN(96)/DEC, reprinted in (1997) 36 I.L.M. 218, 221.

13 J. Pauwelyn, *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law* (New York: Cambridge University Press, 2003).

14 See, for example, the project on Global Administrative Law in B. Kingsbury, N. Krisch & R. Stewart, "The Emergence of Global Administrative Law" (2005), 68 Law and Contemp. Probs. 15.

15 R. Howse & M. Mutua, "Protecting Rights in a Global Economy: Challenges for the World Trade Organization" (2000), online: Rights and Democracy <http://www.ichrdd.ca/site/publications>.

16 Office of the High Commissioner for Human Rights, *Report on the Eighteenth and Nineteenth Sessions*, UN ECOSOCOR, 1998, Supp. No. 2, UN Doc. E/C. 12/1998/26; Committee on Economic, Social and Cultural Rights, *Poverty and the International Covenant on Economic, Social and Cultural Rights*, UN ECOSOCOR, 25th Sess., UN Doc. E/C.122001/10 (2001), online: United Nations Committee on Economic, Social and Cultural Rights <http://www.unhchr.ch/tbs/doc.nsf>; *Beijing Declaration*, *supra*, note 4.

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Governance norms and legal reforms touching on private law rules, business regulation, and institutional design currently circulating in the international order and embedded in the development and structural reform agendas of the IFIs also exercise an impact on social objectives, to such an extent that we could say that much of economic governance is really social policy as well. A wide range of legal and institutional reforms are now justified in the name of growth and the efficient operation of markets, although sometimes they are defended in terms of the demands of a globally integrated and competitive economy or simply on the basis of unarticulated assumptions about the legal underpinnings of "free" markets.[17] However, these reforms have the collateral effect, and sometimes the purpose, of advancing or impeding other normative goals and of reshaping social objectives; to a greater or lesser extent, they are destined to play a role in the fate of the newly recognized social dimension of development, especially to the extent that they remain essentially intact. Distributive justice concerns, in particular, are likely to be affected in pervasive and powerful ways by preferences and decisions about the legal rules that structure economic activity.[18]

Part 2 of this article describes the realignment of labour market and social policy within the current governance norms of the international financial and economic institutions. Part 3 places those governance norms within the context of growing economic inequality, and describes the role that labour market and other regulatory and policy reforms might play in both producing and mitigating that inequality. Part 4 outlines the Jobs Strategy that emerged from the 1994 OECD *Jobs Study*, and identifies three issues central to work in the new economy which the recently restated Jobs Strategy fails to engage: risks of unemployment and under-employment; the rise of precarious work; and the labour market consequences of unpaid work. Part 5 briefly considers the impact of core labour rights on the current consensus about labour market reform. Part 6 suggests alternatives to the economic and legal analyses that underpin the Jobs Strategy, which lead to different, and more promising, conclusions about the role of labour market institutions in the new economy.

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17 World Bank, *Doing Business* (Washington, D.C.: World Bank, various years).

18 This argument is developed in K. Rittich, *supra*, note 9.

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2. LABOUR MARKET INSTITUTIONS AS SOCIAL POLICY: TRANSFORMING THE LANDSCAPE

Although distributive concerns are embedded in virtually every dimension of the governance agenda, labour market regulation and social policy remain key frontiers of inquiry for a number of reasons.

First and foremost is that labour market regulation so clearly straddles the two sides of the development agenda: it is the place where they speak most directly to each other. Workers' rights and social rights are widely associated with social objectives, and the disenfranchisement of workers and the disparity in the balance of power between labour and capital have been fundamental elements of the social critique of global economic integration.[19] Labour market flexibility (LMF), on the other hand, is an entrenched part of good governance norms, and structural reforms that "deregulate" labour markets and alter entitlements to social insurance and other social protection schemes are a central part of the matrix of reforms designed to promote economic growth.[20] The effective result is two global regulatory projects in respect of work and labour markets, each project operating with very different impulses and logic. The first, LMF, is the more entrenched and well-elaborated: it is concerned with the efficient operation of labour markets and the integration of ever-growing numbers of workers into markets. As described below, LMF has been translated into injunctions to weaken or dismantle labour market institutions and employment standards. The second project, core labour rights, is more recent, more limited and, so far, much more ephemeral: it involves the recognition of basic

19 *Copenhagen Declaration*, *supra*, note 3.

20 World Bank, *World Development Report 1995: Workers in an Integrating World* (New York: Oxford University Press, 1995); IMF, *World Economic Outlook: International Financial Contagion* (Washington, D.C.: IMF, 1999), especially chap. IV, "Chronic Unemployment in the Euro Area: Causes and Cures," online: International Monetary Fund, <http://www.imf.org/external/pubind.htm>; IMF, *World Economic Outlook: Growth and Institutions* (Washington, D.C.: IMF, 2003), especially chap. IV, "Unemployment and Labour Market Institutions: Why Reforms Pay Off," online: International Monetary Fund <http://www.imf.org/external/pubind.htm>.

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entitlements of workers as individuals — freedom of association and freedom from discrimination, child labour and forced labour.[21]

Labour market institutions are also of interest due to the connection between work and questions of fairness and equality in the international order. Rising inequality is increasingly linked to earnings inequality,[22] and some of the central distributive justice struggles of the new economy — labour/capital, north/south, male/female — are effectively resolved in the context of work. Moreover, the specific issues around which these struggles turn — who works, who doesn't, who does what type of work, on what terms, and with what material and other consequences — are not simply a function of technological innovation and global economic integration;[23] they are also linked in important ways to the rules and institutions that govern work, as well as those that structure the alternatives to market work. Although global economic pressures exercise an impact on the employment bargain, local, national, regional and even transnational regulatory frameworks can play a decisive role in shaping contracts about work. The advantages and disadvantages accruing to the parties can be both mitigated and aggravated by the manner in which bargaining power is structured through legal rules and institutions.

Much of this is the province of labour and employment law. Collective bargaining rules and labour standards have always been complexly related to social and economic objectives. For example, the (im)balance of power between the contracting parties is the central preoccupation behind both the procedural and substantive

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21 Core labour rights are derived from the ILO's Declaration on Fundamental Principles and Rights at Work, 86th Sess. (1998), online: International Labour Organization <http://www.ilo.org/public/English/standards/decl/index.htm>. They are discussed more fully in K. Rittich, "Core Labour Rights and Labour Market Flexibility: Two Paths Entwined?" Permanent Court of Arbitration/ Peace Palace Papers, in *Labor Law Beyond Borders: ADR and the Internationalization of Labor Dispute Resolution* (Kluwer Law Int'l, 2003) 161.

22 G.A. Cornia, "Liberalization, Globalization and Income Distribution," Working Paper No. 157 (Helsinki: UNU/WIDER, 1999), online: United Nations University, World Institute for Development Economics Research <http://www.wider.unu.edu/publications/wp157.pdf>; UNDP, *Human Development Report 1999: Globalization With a Human Face*, *supra*, note 1.

23 M. Castells, *Rise of the Network Society*, 2d ed. (Oxford: Blackwell, 2000).

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reforms that such laws introduce into the contract of employment. Indeed, much of employment law can be understood in terms of the dual objectives of allocating risk between the parties to the employment contract and curbing the unilateral authority that the employer is otherwise understood to hold at work in virtue of his or her property and contract rights.[24] Collective bargaining laws fundamentally reconfigure the bargaining relationship, and in so doing, alter to some degree the ultimate distribution of resources and authority at work. However, labour market institutions and social entitlements such as employment insurance and other work-related benefits also serve to "decommodify" labour, that is, to make workers and other citizens less subject to raw market forces for their basic welfare.[25]

The concern with the distribution of power and resources, and the enduring preoccupation with reducing the commodification of labour, are neither accidental nor peripheral. Labour laws, employment protections and social entitlements respond, to varying degrees and in different ways, to the detrimental consequences of market-centered economic and social ordering. The benefits of market ordering are so well known that at this point they need no rehearsal; however, the problems are also recurring and foreseeable. They range from the outright exclusion of some groups from particular labour markets, and the participation of others under disadvantageous terms, to structural problems which periodically beset labour markets as a whole.

Exclusion from labour markets or disadvantageous terms of work may result from social or cultural norms and barriers on ascriptive bases such as gender, ethnicity, race or caste; the presence of non-market duties or tasks such as obligations of care that impinge on workers', usually women's, ability to engage in market activity; persistent disparities in bargaining power, leading to systematically disadvantageous contract terms for classes of market actors such as workers; or simply unequal access to capital and other resources with which to transact in the first place. However, labour market institutions also address the periodic inability of even the relatively well-positioned to insulate themselves from the vagaries of markets.

24 S. Deakin, "The Contract of Employment: A Study in Legal Evolution" (2001), 11 Historical Studies in Industrial Relations 1.

25 G. Esping-Anderson, *The Three Worlds of Welfare Capitalism* (Oxford: Blackwell, 1990).

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Along with other markets, labour markets are subject to cyclical downturns, and the structural unemployment that typically results can be both widespread and long-lasting. In the absence of unemployment insurance or other forms of social protection and insurance, those without alternative sources of income are likely to suffer both immediate hardship and longer-term disadvantage in the labour market.

In addition to historic links between the operation of labour markets and distributive justice, there are two other compelling reasons to zero in on labour market institutions and social entitlements. The first is that, by subjecting local markets and producers to new sources of competition, market integration itself heightens the risk of economic dislocation; thus, a commitment to market integration itself raises the issue of the presence and adequacy of redistributive mechanisms. The second is that work and labour markets have become newly important to the realization of the social dimension of contemporary development and market reform projects. Participation in markets and/or engagement in higher-value market work are not only figured as the principal vehicle for poverty reduction, but have also emerged as the royal road to realizing a host of interlinked social and economic objectives, from gender equality and social inclusion to rural development.[26] Indeed, what is most distinctive about the approach of the IFIs to the dilemmas of social justice is how heavily they rely upon the market to further social objectives and how centrally market measures and benchmarks, such as labour market participation rates, figure in measuring "success" in the realm of the social. The result is development and market reform agendas that freight increasingly more upon markets, not only to generate economic growth and thereby create the foundations of improved social welfare, but to directly advance social and distributive justice causes as well.[27]

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26 K. Rittich, *supra*, note 9.

27 An exemplary case concerns property rights. Reforms to land law have long been central to economic development strategies. But while property rights were formerly defended as being critical to attracting investment, an important part of the argument for land reform now is that property rights are good, indeed most important, for the poor. See H. de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (New York: Basic Books, 2000); World Bank, Policy Research Report, *Land Policies for Growth and Poverty Reduction* (Washington, D.C.: World Bank, 2003).

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This is strikingly visible in the World Bank's efforts to address the question of gender equality. Following arguments that economic policies like the SAPs disproportionately harmed women, arguments that came to occupy centre stage at the United Nations Fourth World Conference for Women in Beijing in 1995,[28] the Bank responded by flipping the central charge on its head. In a policy research report, *Engendering Development*, issued in 2001,[29] the Bank advanced a series of interconnected arguments about the positive links between market reforms and gender equality. *Engendering Development* proposed that women could expect to benefit more than men in relative terms from economic growth, and argued that the new market opportunities generated by growth would induce families to invest more in the education of women and girls. It could even be expected, the report suggested, that women's increased participation in markets would break down the gendered division of unpaid labour at home.[30] As a result, not only was there a strong "business case" that women and gender equality were important to development,[31] but that markets themselves were good for gender equality.

In the effort to "engender" development, however, the Bank also weighed in on the nature and conception of gender equality itself. For example, in the name of respecting both women's individual "choices" and cultural differences among societies, the report rejected outright the pursuit of substantive equality for women. Moreover, it measured progress with respect to gender equality by reference to only three indicators: levels of secondary education, mortality rates, and the extent of political participation.[32] *Engendering Development* then identified a list of regulatory and policy reforms meant to advance gender equality that seem, on the one hand, selective and deeply contestable to anyone versed in the international norms governing gender equality and, on the other,

28 For a range of analyses of the gendered structure of development policy and Washington Consensus economic reforms, see (1993), 23 World Development (Symposium issue).

29 World Bank, *Engendering Development: Through Rights, Resources and Voice* (Washington, D.C.: World Bank, 2001).

30 *Ibid.*

31 *Ibid.*

32 *Ibid.*

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arbitrary and even puzzling, at least from the standpoint of the indicators on which the report itself relied to measure progress in gender equality. The result was a new market-centred model for gender equality, one that departed in significant ways from the established legal norms and political commitments around gender equality in the international order. At the same time, the pursuit of gender equality became anodyne, something that any rational person would embrace and any policy-maker could painlessly endorse.[33]

The centrality of markets to the achievement of goals such as gender equality is, in itself, new. However, the reliance on market mechanisms represents something more than novelty at the level of strategy or technique; as *Engendering Development* reveals, in the end, it becomes transformative of social justice itself. As markets mechanisms come to play a more central role, it appears that the medium itself becomes the message: in the reformed, second-generation agenda for development, the mechanisms turn out to reconfigure the very social objectives that they purport to serve. As market participation itself becomes the goal and the marker of success, other substantive social values and measures fall into abeyance; sometimes they disappear from the map entirely.

A similar transformation appears to be under way with respect to labour market institutions and social policy. If markets and social justice are now intermingled, and if economic imperatives are now redefining social aims, nowhere is this more visible than in the realm of work. And if work is indeed central to the realization of social and distributive justice, then tracing the path of the labour market institutions which now shape the world of work should provide an important window on the character of the emerging social world.

3. TRACKING GLOBAL INEQUALITY

There is little argument that dire poverty is a proper subject of concern in the context of development and globalization,[34] and calls

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33 K. Rittich, "Engendering Development/Marketing Equality" (2003), 67 Alta. L. Rev. 101.

34 See the UN Millennium Development Goals, *supra*, note 5; UN ECOSOCOR, *supra*, note 16. See also the description of the World Bank's mission, online: <http://web.worldbank.org>.

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abound for the alleviation of poverty. In contrast, the status of inequality remains contested. Despite growing evidence that inequality may be linked in both positive and negative ways to core concerns such as growth and poverty,[35] the link remains intensely disputed, as does the suggestion that inequality is in any way exacerbated by market-friendly reforms.[36] Even though there is no consensus that inequality rather than simply growth and poverty reduction *simpliciter* is a central conundrum of global market integration, emerging data about the face of global inequality make it increasingly difficult to ignore the issue.

It is hardly news that periods of market integration or rapid market expansion may co-exist with social inequality or even fuel it.[37] For example, they may increase the economic returns to those with access to assets relative to those without, or they may generate market failures that poor people and weaker nations are ill-positioned to manage.[38] Whether the increasing inequality that tends to result is a short-term, rather than enduring, consequence of economic growth is itself a disputed issue. However, more than episodic or transitory changes seem to be under way at the current moment.

The first thing to observe is that inequality appears to be growing. At the highest level, this inequality is visible in the economic position of states. After a period of convergence in the post-war era, the economic fortunes of states in the international order have been increasingly diverging since about 1978. A recent study tracking trends in global inequality over two periods in the post-war era describes the story since that time as one of "striking downward

35 N. Birdsall, "The World Is Not Flat: Inequality and Injustice in Our Global Economy," WIDER Annual Lecture 9 (Helsinki: UNU/WIDER, 2006), online: United Nations University, World Institute for Development Economics Research <http://www.wider.unu.edu/publications/annual-lectures/en_GB/AL9>. For a review of different aspects of the relationship, see G.A. Cornia, ed., *Inequality, Growth, and Poverty in an Era of Liberalization and Growth* (Oxford: Oxford University Press, 2004).

36 World Bank, *World Development Report 2000-2001: Attacking Poverty* (New York: Oxford University Press, 2000).

37 See J.A. Ocampo, "Globalization, Development and Democracy" (2005), 5 Social Science Research Council Items and Issues 3, online: SSRC <http://www.ssrc.org/publications/items/v5n3/globalization1.html>.

38 N. Birdsall, "The World is Not Flat," *supra*, note 35.

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mobility" for many states.[39] While between 1960 and 1978, many states managed to improve their position within global rankings, between 1978 and 2000 the tale became one of almost unremitting decline. During the latter period, almost no state managed to join the club of rich countries, and those that did are almost all in East Asia. At the same time, Africa became populated almost entirely with countries of the Fourth, most destitute, economic world. The situation in Latin America, similarly, is unpromising; whereas in 1960 a majority of Latin American countries were either rich or "contenders" — i.e. within realistic striking distance of becoming rich within the next generation — by 2000, only five Latin American or Caribbean countries fell into these categories. The result is not only a tale of fairly broad economic decline, but also one of the entrenched hegemony and growing dominance of the West in the global economic order.[40]

If the trends among states point to greater inequality, similar trends are emerging within states, including those that are "winners" in the global game. A number of studies have confirmed that in the past 20 years, inequality within states has risen across the board. The surge in inequality has been particularly noteworthy in the most recent period: it has been described as "universal in the transition economies, almost universal in Latin America and the OECD, and increasingly frequent, if less pronounced, in South, Southeast, and East Asia."[41] The trend appears to be even more dramatic when

39 B. Milanovic, *Worlds Apart: Measuring International and Global Inequality* (Princeton: Princeton University Press, 2005). Milanovic also sharply distinguishes between three different types of inequality, as follows: Category 1 – inequality among states; Category 2 – population-weighted inequality among states; and Category 3 – what he calls "true" global inequality, which tracks the equality of individuals, irrespective of their nationality.

40 For a detailed discussion, see Milanovic, *ibid.*, "Winners and Losers: Increasing Dominance of the West," at pp. 61-81. In his chapter on "Winners and Losers," Milanovic also identifies the disappearance of middle-income nations during the same period; this parallels the hollowing-out of the middle class and the concentration of people in the upper and lower income deciles that is visible within many states.

41 G.A. Cornia, "Inequality, Growth, and Poverty: An Overview of Changes over the Last Two Decades," in G.A. Cornia, ed., *Inequality, Growth, and Poverty in an Era of Liberalization and Growth* (Oxford: Oxford University Press, 2004) 8.

measured in terms of the distribution of global household wealth rather than simply national or household income.[42]

At least part of the inequality within states seems to be a function of the diverging prospects of workers in labour markets. Profound cleavages are emerging in the positions of workers in the new economy.[43] Gross earnings inequality, which had already grown in the previous decade, is increasing at an accelerated pace.[44] Relative poverty rates, too, have risen marginally since 1994,[45] and employment provides no necessary insurance against this fate; during the same period, there has also been an increase in the proportion of working poor.[46] Part of the story is the concentration of gains at the top of the income spectrum. Here, the situation in the United States is instructive. In the recent economic boom, wages stagnated or even fell for the vast majority of American workers. Those at the upper end had a very different experience: incomes increased handsomely, and at the very top — for example, among corporate executives[47] — they virtually exploded.[48]

However, rising inequality is not a universal phenomenon. What makes the issue of interest on the legal, political or governance front is the possibility that the increase in inequality is correlated not simply with greater market integration but instead tracks the rise of a policy consensus in favour of enhancing the role of market forces in social and economic ordering. For example, where labour market institutions have remained strong, inequality appears to have been

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42 J.B. Davies *et al.*, *The World Distribution of Household Wealth* (Helsinki: UNU-WIDER, 2006).

43 OECD, *OECD Employment Outlook 2006: Boosting Jobs and Incomes* (Paris: OECD, 2006).

44 *Ibid.*, at p. 38.

45 *Ibid.*, at p. 39.

46 *Ibid.*, at p. 40.

47 L.A. Bebchuk & J. Fried, *Pay without Performance: The Unfulfilled Promise of Executive Compensation* (Cambridge, MA: Harvard University Press, 2004).

48 T. Piketty & E. Saez, "Income Inequality in the United States: 1913-1998" (2003), 118 Quarterly Journal of Economics 1.

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contained.[49] To the extent that this is so, it would indicate what various commentators have suggested, which is that increased inequality is a function not simply of "globalization," but of the regulatory imperatives that have dominated the legal and policy consciousness in the past decades.

A number of factors have been implicated in the recent rise in inequality: macroeconomic stabilization, in particular the distributive impact of stabilization-induced recessions; trade liberalization policies that lead to declines in employment and wages in sectors whose effects are not offset by increased jobs in the export sector; changes in norms about remuneration as well as in policies governing social transfers; and financial reforms, especially capital account liberalization, which have contributed to a sharp increase in the rate of return on capital, the benefits of which largely accrue to the economically advantaged.[50] According to one commentator, rising inequality is best explained by "the combination of the adverse distributive effects of market reforms . . . and the simultaneous weakening of the institutions of social protection."[51] In short, the trajectory of inequality seems to bear at least some relation to familiar elements of the governing policy consensus.

These comments echo what has been observed before, which is that the traditional family of macroeconomic policies promoted by the international financial and economic institutions[52] tend to empower capital-holders at the expense of other social groups,

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49 I. Bakker, "Globalization and Human Development in the Rich Countries: Lessons from Labour Markets and Welfare States," Background Papers, UNDP Human Development Report, 1999, vol. 2, p. 29; G.A. Cornia, "Liberalization, Globalization and Income Distribution," *supra*, note 22; OECD, *OECD Employment Outlook 2006*, *supra*, note 43.

50 A series of papers reviewing the links between these policies and inequality is found in Cornia, ed., *supra*, note 35.

51 J.A. Ocampo, *supra*, note 37.

52 For a description of these policies, see J. Williamson, "Democracy and the Washington Consensus," *supra*, note 10; J. Williamson, "What Should the World Bank Think about the Washington Consensus?" (2000), 15 World Bank Research Observer 251.

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