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(Dis)Assembling Rights of Women Workers Along the Global Assembly Line: Human Rights and the Garment Industry Symposium: Political Lawyering: Conversations on Progressive Social Change


Laura Ho

Catherine Powell

*Fordham University School of Law*, [cpowell@law.fordham.edu](mailto:cpowell@law.fordham.edu)

Leti Volpp

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# (DIS)ASSEMBLING RIGHTS OF WOMEN WORKERS ALONG THE GLOBAL ASSEMBLY LINE: HUMAN RIGHTS AND THE GARMENT INDUSTRY

Laura Ho\*  
Catherine Powell\*\*  
Leti Volpp\*\*\*

*"My sisters make my blouse . . . [A]re my hands clean?"*<sup>1</sup>

## Introduction

On August 2, 1995, a multi-agency raid found sixty-seven Thai women and five Thai men kept in slave-like conditions in an apartment complex in a Los Angeles community called El Monte. Under the constant surveillance of armed guards and confined behind a ring of razor wire, they had been held for several years and had been forced to work as garment workers up to eighteen hours per day for far less than the minimum wage. They were refused unmonitored contact with the outside world and threatened with rape or harm to themselves and their families if they tried to escape. On one occasion, a worker who tried to escape was brutally beaten, his photograph taken and shown to the other workers as an example of what might happen to them if they too tried to flee.<sup>2</sup>

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\* NAPIL Fellow, Asian Law Caucus. J.D., Yale Law School, 1994.

\*\* Skadden Fellow, NAACP Legal Defense and Educational Fund (Black Women's Employment Project). J.D., Yale Law School, 1992.

\*\*\* Skadden Fellow, American Civil Liberties Union Foundation Immigrants' Rights Project. J.D., Columbia Law School, 1993. The authors acknowledge the generous support of the Orville H. Schell, Jr. Center for International Human Rights at Yale Law School, the MacArthur Foundation Individual Research and Writing Program, and the Ford Foundation Fellowship in Public International Law. Furthermore, we thank the following individuals for their advice and encouragement: Frances Ansley, Abram Chayes, Lance Compa, Kimberlé W. Crenshaw, Lisa Crooms, Brent Edwards, Lora Jo Foo, Inderpal Grewal, Desma Holcomb, Harold Hongju Koh, Lisa Lowe, Alissa McBride, Phoebe McKinney, Nina Perales, Mark Quarterman, Damon Silvers, Julie Su, Dorothy Q. Thomas, Patricia Williams, Joyce Yu, Helen Zia, and the participants in the 1996 Western Law Teachers of Color Conference, especially George Bisharat, John O. Calmore, Ibrahim Gassama, Maria Ontiveros, and Harry G. Prince. We also thank our *CR-CL* editors, Aida Bekele, Andy Jackson, and Liza Velazquez, as well as Michelle Kim and Brian Wong.

<sup>1</sup> SWEET HONEY IN THE ROCK, ARE MY HANDS CLEAN? (Flying Fish Records 1988).

<sup>2</sup> First Amended Complaint, *Bureerong v. Uvawas*, No. 95-5958 (C.D. Cal., filed Oct. 25, 1995) (Collins, J.) [hereinafter *El Monte* Complaint]; see also Kenneth B. Noble, *Thai Workers Are Set Free in California*, N.Y. TIMES, Aug. 4, 1995, at A1. Echoing both Black slavery and the *bracero* program, these workers were imported from other countries to the United States. Their trafficking is also in some ways analogous to the international trafficking of women for sexual labor or domestic work. See SAUNDRA P. STURDEVANT & BRENDA STOLZFUS, *LET THE GOOD TIMES ROLL: PROSTITUTION AND THE U.S. MILITARY IN ASIA* (1992) (discussing sex workers); GEERTJE LYCKLAMA A NIJHOLT, *TRADE IN*

Such conditions constitute the essence of slavery.<sup>3</sup> An ideological remnant of Black slavery that has survived despite the enactment of the Reconstruction amendments is the misguided notion that certain categories of people can be mistreated through employment arrangements aimed at placing them beyond legal protections as well as through constructs of citizenship that deny them full enjoyment of human rights.<sup>4</sup> The fact that immigrant women, Black women,<sup>5</sup> and women of color generally continue to occupy disproportionately the most degraded positions on the economic

MAIDS: ASIAN DOMESTIC SERVANTS IN MIGRATION THEORY AND PRACTICE (Inst. of Social Studies Working Paper No. 10, 1989) (discussing domestic workers).

<sup>3</sup> See *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 72 (1872) (“[W]hile negro slavery alone was in the mind of the Congress which proposed the thirteenth article, it forbids any other kind of slavery . . . [for instance, slavery in the] Mexican peonage or the Chinese coolie labor system.”); *United States v. Booker*, 655 F.2d 562, 565 (4th Cir. 1981) (upholding conviction for migrant farm labor abuses under 18 U.S.C. § 1583 and describing “the broad and sweeping intention of Congress during the Reconstruction period to stamp out the vestiges of the old regime of slavery and to prevent the reappearance of forced labor in whatever new form it might take”); see also Neal Kumar Katyal, *Men Who Own Women: A Thirteenth Amendment Critique of Forced Prostitution*, 103 YALE L.J. 791, 806–09 (1993) (surveying Thirteenth Amendment jurisprudence).

<sup>4</sup> The manipulation of notions of “citizenship” to deprive certain individuals of rights and remedies under law can be traced back through Supreme Court jurisprudence to the *Dred Scott* case.

[T]he original Constitution presented the edifying picture of a government that bestowed rights on *people and persons* . . . not with some legal construct called citizen. This idyllic state of affairs was rudely disturbed by the crisis of the 1850s . . . [when] the Supreme Court seized on the concept of citizenship in the *Dred Scott* case, in a futile and misguided effort . . . to resolve the controversy over the spread of slavery.

ALEXANDER BICKEL, *THE MORALITY OF CONSENT* 36 (1975) (emphasis added) (citing *Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857), in which Justice Taney held that citizenship did not attach to Scott because he was “a negro of African descent, whose ancestors were of pure African blood, and who were brought into this country and sold as slaves”); see also Dorothy Roberts, Book Review, *Welfare and the Problem of Black Citizenship*, 105 YALE L.J. 1563, 1574 (1996) (“From the founding of the nation, the meaning of American citizenship has rested on the denial of citizenship to Blacks living within its borders.”).

<sup>5</sup> For the purpose of this Article, we use the term “Black” rather than “African American,” because the former is more inclusive of peoples from Africa and the Caribbean living in the United States who do not necessarily identify as “African American.” At the same time, our intention is not to elide significant cultural differences through this transnational gesture, nor to deemphasize the importance of personal agency in self-identification.

Additionally, we capitalize “Black.” Like Asian American and Latina, Black is a category embracing several groups who may also self-identify according to national origin (for example, Haitian American). Moreover, the term “Black” captures not merely phenotype or skin color, but a category of peoples who share a common history of racial discrimination in the United States. It is an accident of history that “Black” continues to be decapitalized (both in a literal and symbolic sense), while other racial groups are capitalized. As a matter of principle, we also capitalize “White.” Much of the same logic applies, except rather than sharing a common history of racial discrimination, Whites have enjoyed a common history of racial privilege.

ladder triggered the search for collaborative strategies that spawned this Article.

Some observers would like to explain away sweatshops as immigrants exploiting other immigrants, as “cultural,”<sup>6</sup> or as the importation of a form of exploitation that normally does not happen here but occurs elsewhere, in the “Third World.” While the public was shocked by the discovery at El Monte, garment workers<sup>7</sup> and garment worker advocates have for years been describing abuses in the garment industry and have ascribed responsibility for such abuses to manufacturers and retailers who control the industry.<sup>8</sup>

Sweatshops, like the one in El Monte, are a home-grown problem with peculiarly American roots.<sup>9</sup> Since the inception of the garment industry, U.S. retailers and manufacturers<sup>10</sup> have scoured the United States

<sup>6</sup> For an example of this view, see Jane H. Lii, *Week in Sweatshop Reveals Grim Conspiracy of the Poor*, N.Y. TIMES, Mar. 12, 1995, at A1, 40 (describing exploitation in a contract shop and noting, “Everyone quotes a Chinese saying: ‘The big fish prey on the little fish, the little fish in turn prey on the shrimp, and the shrimp can only eat dirt.’”). For criticism, see James Ledbetter, *The Times: Tryin’ To Find Chinatown*, VILLAGE VOICE, Apr. 18, 1995, at 9 (“[S]ome Asian activists told me they thought [Lii’s article] reinforced stereotypes by portraying worker exploitation as a Chinese cultural tradition.”). See also Laura Ho & Leti Volpp, *Look Also Who Profits from Sweatshops*, N.Y. TIMES, Mar. 19, 1995, at 14 (criticizing article for laying blame for violations solely on contractors and failing to explain the role of manufacturers and retailers in the industry); Leti Volpp, *(Mis)Identifying Culture: Asian Women and the “Cultural Defense,”* 17 HARV. WOMEN’S L.J. 57 (1994) (discussing the depoliticizing effect of using “culture” to explain behavior).

<sup>7</sup> We use the term “garment workers” in this Article to refer to workers engaged in the production of clothing. A synonymous term is “apparel workers.” We generally do not use the term “textile,” referring to the manufacture of cloth, because we are limiting the scope of this Article to workers who cut and assemble clothing.

<sup>8</sup> See Lora Jo Foo, Laura Ho, & Leti Volpp, *Manufacturers and Retailers Must Be Liable*, L.A. TIMES, Aug. 24, 1995, at B9 (describing El Monte factory as “more egregious than most” but stating that “sweatshops flourish throughout . . . the underground economy”); John Rofe, *Officials Close in on Sweatshops*, SAN DIEGO UNION-TRIB., Aug. 26, 1995, at A3 (quoting Asian Pacific American Legal Center attorney Julie Su, “There’s no question that some of the conditions [the El Monte workers] were kept in are rampant throughout the garment industry[,] . . . one of the most lawless industries in America.”).

<sup>9</sup> Disconnecting the United States from the exploitation of workers like those in El Monte—who were “liberated from slavery” only to be placed into Immigration & Naturalization Service (INS) detention—also raises many immigration-related contradictions. The prevalent hatred of immigrants that has swept the country has been a major factor in facilitating violations of workplace rights, as has the problematic collaboration between labor law enforcement agencies and the INS.

Characterizing the United States as a site, not of exploitation, but of liberation, raises complex questions for those engaged in political lawyering as well. Advocates for political asylum, for example, must argue that their clients will be free from persecution here, and in so doing, may make it more difficult to criticize repression within the United States and by its agents in other contexts. See Cathy Powell, “Life” at Guantánamo: *The Wrongful Detention of Haitian Refugees*, 2 RECONSTRUCTION 58 (1993); Victoria Clawson & Laura Ho, *Litigating as Law Students: An Inside Look at Haitian Centers Council*, 103 YALE L.J. 2337 (1994) (describing problems and contradictions raised by such advocacy).

<sup>10</sup> A “manufacturer” is typically a brand-name label such as Levi’s or Liz Claiborne that designs and owns garments but contracts out assembly to contract shops that are, more

and the rest of the globe for the cheapest and most malleable labor—predominantly female, low-skilled, and disempowered—in order to squeeze out as much profit as possible for themselves. Along with this globalization, the process of subcontracting, whereby manufacturers contract out cutting and sewing to contractors to avoid being considered the “employer” of the workers,<sup>11</sup> has made it extremely difficult for garment workers in the United States to assert their rights under domestic law.<sup>12</sup>

This Article examines the challenges garment workers in the United States face in asserting their rights in the global economy and investigates how transnational advocacy can be deployed to compensate for the inability of U.S. labor laws to respond to problems with international dimensions.<sup>13</sup> Using a purely domestic U.S. legal framework, advocates can attack the problem of transnational corporations’ (TNCs) subcontracting in the United States.<sup>14</sup> Such efforts, however, will have limited effect

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often than not, sweatshops. By contrast, a “retailer,” for example, Macy’s or Saks Fifth Avenue, typically buys garments from manufacturers and sells them to consumers. Often, the distinction is not so great. A “retailer” may act like a “manufacturer” by producing private labels; a “manufacturer” may sell its own clothes, for instance, at a Levi’s store. Then there is the true hybrid, such as the Gap, which sells only its own label and cuts out the middle “manufacturer” altogether.

<sup>11</sup> See *infra* note 46 and accompanying text.

<sup>12</sup> See generally Dennis Hayashi, *Preventing Human Rights Abuses in the U.S. Garment Industry: A Proposed Amendment to the Fair Labor Standards Act*, 17 YALE J. INT’L L. 195 (1992); Leo L. Lam, *Designer Duty: Extending Liability to Manufacturers for Violations of Labor Standards in Garment Industry Sweatshops*, 141 U. PA. L. REV. 623 (1992).

<sup>13</sup> The Federal Department of Labor’s (DOL) enforcement powers and efforts have focused exclusively on domestic law. For instance, the “hot goods” injunction provided for in the Fair Labor Standards Act can be used to attack the problem of subcontracting by forcing manufacturers to pay for the wages of the workers who sewed their clothes. See 29 U.S.C. § 215(a)(1) (1994). Only the DOL, however, can obtain a “hot goods” injunction, and only those goods that have yet to leave the factory may be enjoined. See Lora Jo Foo et al., *Worker Protection Compromised: The Fair Labor Standards Act Meets the Bankruptcy Code*, 2 ASIAN PAC. AM. L.J. 38, 44 (1994) (describing problems associated with recovering wages once hot goods have entered the stream of commerce).

Additionally, the DOL has signed enforceable agreements with at least nine California manufacturers, such as Guess and Rampage, requiring the manufacturers to monitor conditions in their contract shops. See *Rampage to Monitor Contractors*, WOMEN’S WEAR DAILY, Feb. 9, 1995, at 27.

<sup>14</sup> The El Monte workers, for example, hope to hold six manufacturers legally liable for the extreme labor law violations the workers endured in the slave sweatshop. See *El Monte Complaint*, *supra* note 2. Their complaint relies on (1) state and federal “joint employer” theories, which look to economic reality rather than technical concepts of agency law, see *S.G. Borello & Sons, Inc. v. Department of Indus. Relations*, 48 Cal. 3d 341, 353 (1989) (applying California law); *Hale v. State of Arizona*, 993 F.2d 1387, 1395–98 (9th Cir. 1993) (en banc) (applying federal Fair Labor Standards Act); (2) state and federal industrial homework prohibitions, see CAL. LAB. CODE §§ 2650(g), 2665(a) (1989), 29 C.F.R. §§ 530.1–2 (1989); (3) California garment shop registration requirements, see CAL. LAB. CODE §§ 2675–2683; (4) California unfair business practice provisions, see CAL. BUS. & PROF. CODE §§ 17200–17209 (1991); (5) negligence per se, see CAL. EVID. CODE § 669 (1995); (6) negligent supervision, see *Holman v. State of California*, 53 Cal. App. 3d 317, 333 (1975); and (7) negligent hiring, see *id.*

because of the global nature of the garment industry. Most efforts to change the structure of the garment industry have occurred within the limitations of U.S. law, even while there has been a predominant failure of the U.S. legal system effectively to utilize a human rights framework.<sup>15</sup>

While the nation-state has traditionally been viewed as the locus for the development and enforcement of rights-creating norms, it cannot adequately respond to all of the dynamics that now arise from markets that cut across borders. Violation of workers' rights on the global assembly line calls for strategies that are transnational, and this Article highlights past successes and suggestions in this vein. Because of the difficulty of restraining TNCs in a global economy, no strategy used in isolation will be successful. We present here alternative strategies that can be used in multiple and flexible ways in the struggle for human rights.<sup>16</sup>

### I. History and Current Status of the Garment Industry in the United States

Women workers have formed the backbone of the U.S. garment industry throughout its history. The geographic location and racial composition of this workforce has varied as retailers and manufacturers have shifted location of production to lower their labor costs. During the 1800s and early 1900s, the industry was centered primarily in New York City with a large influx of White immigrants providing a vast supply of inexpensive labor.<sup>17</sup> Following the Triangle Shirtwaist Company fire in 1911 and the exposure of dehumanizing sweatshop conditions, the union move-

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Two of the authors, Laura Ho and Leti Volpp, are part of the legal team representing the workers. Other members of the legal team include Julie Su of the Asian Pacific American Legal Center; Lora Jo Foo of the Asian Law Caucus; Lucas Guttentag of the ACLU Foundation Immigrants' Rights Project; Mark Rosenbaum and Dan Tokaji of the ACLU Foundation of Southern California; Della Bahan of Rothner, Segall, Bahan, and Greenstone; and Dan Stormer of Hadsell and Stormer.

<sup>15</sup> See generally HUMAN RIGHTS WATCH & AMERICAN CIVIL LIBERTIES UNION, HUMAN RIGHTS VIOLATIONS IN THE UNITED STATES (1993) (joint report on U.S. compliance with the International Covenant on Civil and Political Rights); Dorothy Thomas, *Advancing Rights Protection in the United States: An Internationalized Advocacy Strategy*, 9 HARV. HUM. RTS. J. 15 (1996).

<sup>16</sup> In calling for enforcement of rights, we are mindful of the critique of rights-based strategies as well as the counter-critique that posits rights, and specifically civil rights laws, as important in creating formal equality. See Kimberlé W. Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988). While the defense of civil and political rights through judicial interpretation has failed to address adequately structural inequality and poverty, we believe that rights enforcement is an important endeavor. Moreover, our definition of "human rights" in this Article is not limited to civil and political rights, but includes social and economic rights that aim to eradicate material and cultural bases of marginalization and oppression.

<sup>17</sup> Evelyn Blumenberg & Paul Ong, *Labor Squeeze and Ethnic/Racial Recomposition in the U.S. Apparel Industry*, in GLOBAL PRODUCTION: THE APPAREL INDUSTRY IN THE

ment gained momentum, building on the "Uprising of the Twenty Thousand" in 1909 when women shirtwaist workers walked off the job to demand better working conditions.<sup>18</sup>

The success of unions in northern industrial centers and immigration restrictions imposed by the 1924 Immigration Act led to the relocation of the garment industry to southern states that offered large economic incentives to firms willing to relocate, as well as a workforce of rural White women who were an unorganized and inexpensive source of labor.<sup>19</sup> After the civil rights movement succeeded in opening up manufacturing jobs previously unavailable to Blacks, companies turned to Black women in the 1970s as the newest source of cheap labor in the U.S. South.<sup>20</sup> Meanwhile, New York and California developed as the twin centers of the U.S. garment industry, where a new influx of immigrants provided low-wage labor. California has capitalized on its large Asian<sup>21</sup> and Latina<sup>22</sup> immigrant populations to become, today, the largest site of garment production in the United States.<sup>23</sup>

PACIFIC RIM 309, 313 (Edna Bonacich et al. eds., 1994) [hereinafter GLOBAL PRODUCTION].

<sup>18</sup> *Id.* at 314.

<sup>19</sup> *Id.* at 316-18.

<sup>20</sup> Blumenberg & Ong, *supra* note 17, at 318. The workforce composition in south Florida is notably different from the rest of the U.S. South because the vast majority of workers in Florida is from the Caribbean and Latin America. See Monica Russo, *This World Called Miami*, 20 LAB. RES. REV. 37, 38 (1993).

<sup>21</sup> We use the term "Asian" here in a descriptive sense, to reflect how communities are perceived by mainstream society, which appears to reserve the appellation "American" for those who are assumed to have "assimilated" into mainstream culture. Of course, whether to use the terms "Asian" or "Asian American"—or whether to use the categories "Thai," "Chinese," and so on—is a political question entailing both risks and advantages. See Volpp, *(Mis)Identifying Culture*, *supra* note 6, at 61; Lisa Lowe, *Heterogeneity, Hybridity, Multiplicity: Marking Asian American Differences*, 1 DIASPORA 24, 30 (1991); see also Lisa Lowe, *Work, Immigration, Gender: Asian "American" Women and U.S. Women of Color*, in MAKING WAVES II (Asian Women United of California eds., forthcoming 1996) (placing "American" in quotes to signal the ambivalent and multidirectional sets of identifications that both multiple-generation Asian and Asian immigrant women have to the nationalist construction "American").

<sup>22</sup> The Latina Rights Initiative of the Puerto Rican Legal Defense Fund defines "Latinas" as "women of Latin American birth or descent living in the U.S." Telephone Interview with Nina Perales, former coordinator, Latina Rights Initiative (Feb. 2, 1996). "For me, the more exciting question than which term to use—Hispanic, Latina, Hispana—is whether you use the term to refer to a race, ethnicity, or national origin because *this* choice has implications for law, politics, and culture." *Id.*; see also Clara Rodriguez et al., *Latino Racial Identity: In the Eye of the Beholder*, 2 LATINO STUD. J. 33, 39 (1991) (reporting results of qualitative study of how Latinos view themselves racially, concluding that "it's important to stress the socially constructed nature of these identities and their fluidity over time").

<sup>23</sup> Blumenberg & Ong, *supra* note 17, at 321. It is beyond the scope of this Article to give a more detailed description of specific trends within the broad categories of Black, Latina, Asian, and White women (for example, the employment of Puerto Rican women in New York in the 1950s and 1960s; of Chinese women in California and New York following the 1965 Immigration Act; or of Haitian women in Miami in the 1990s).

In addition, garment facilities along the U.S.-Mexico border in Texas have incorporated immigrant labor, primarily from Mexico and other parts of Latin America. While garment employment in Texas has dropped,<sup>24</sup> the garment sector has expanded on the other side of the border in *maquiladora*<sup>25</sup> factories in Mexico, largely due to the Mexican government's establishment of the Border Industrialization Program in 1965.<sup>26</sup> Lower wages and less stringent labor law enforcement than in the United States make *maquiladoras* in Mexico and Central America attractive sites for offshore production: Drawing from a pool of women of Mexican descent as their primary source of labor, garment factories on both sides of the U.S.-Mexico border are paradigmatic examples of the increasingly transnational nature of corporations and of labor.

While the garment industry has provided women, particularly women of color and immigrants, access to the manufacturing work force, this result has been accompanied by a downward spiral of wages and consistent exploitation.<sup>27</sup> Wages are especially low in thriving "underground" economies in such cities as Los Angeles and New York, where garment workers usually make much less than \$4.25 an hour—the current federal minimum wage—and work ten to twelve hour days without the overtime compensation mandated by federal law.<sup>28</sup>

As predominantly working-class women of color, garment workers face severe structural barriers to exercising their rights.<sup>29</sup> Positioned at the intersection of oppressions based on race, gender, class, and frequently immigrant status, these women workers must also struggle against the

<sup>24</sup> *Id.* at 320.

<sup>25</sup> *Maquiladora* factories, sometimes referred to as *maquilas*, are defined as assembly plants that produce for export. See Jorge Carrillo V., *The Apparel Maquiladora Industry at the Mexican Border*, in GLOBAL PRODUCTION, *supra* note 17, at 217, 218.

<sup>26</sup> *Id.* at 217. The program allowed tax-free imports of component parts to Mexico and exports of finished products. It was intended both as a vehicle of industrial development and as a source of employment opportunities for unemployed men no longer able to work in the United States under the *bracero* (guest worker) program, which had been terminated. In fact, *maquiladoras* have absorbed a primarily female labor force, similar to other export-processing zones, because women workers are seen as more malleable. Pregnancy discrimination, sexual harassment, and other gendered forms of exploitation are not uncommon in these factories. See *Sex Discrimination in Maquiladoras* (Human Rights Watch, New York, N.Y.), forthcoming June 1996. For a discussion of *maquiladoras* and the Border Industrialization Program, see Susan Tiano, *Maquiladora Women: A New Category of Workers?*, in WOMEN WORKERS AND GLOBAL RESTRUCTURING 193, 221 (Kathryn Ward ed., 1990).

<sup>27</sup> Blumenberg & Ong, *supra* note 17, at 312.

<sup>28</sup> See Helen Zia, *Made in the U.S.A.*, Ms., Jan./Feb. 1996, at 67.

<sup>29</sup> On the race, class, age, and gender effects of global coproduction and deindustrialization, see generally TERESA L. AMMOTT & JULIE MATTHAEI, RACE, GENDER AND WORK: A MULTICULTURAL ECONOMIC HISTORY OF WOMEN IN THE UNITED STATES (1991); UNEQUAL BURDEN: ECONOMIC CRISES, PERSISTENT POVERTY, AND WOMEN'S WORK (Lourdes Beneria & Shelley Feldman eds., 1992); WOMEN WORKERS AND GLOBAL RESTRUCTURING (Kathryn Ward ed., 1990).



power of international capital.<sup>30</sup> Their organizing attempts are often met by a shift to offshore production, where their counterparts—primarily low-wage women workers in developing countries—are paid even less for the same work.<sup>31</sup>

## II. The Creation of the Global Sweatshop and the Need for an Alternative Strategic Paradigm

The garment industry is one of the most global industries in the world.<sup>32</sup> The proliferation of industrial garment production follows broader patterns in trade globalization and economic restructuring.<sup>33</sup> Beginning in the late 1950s and accelerating in the 1980s, industrial production of garments and other goods shifted out of the West; first to Japan, then to Asian newly industrializing countries, particularly Hong Kong, Taiwan, South Korea, and Singapore, and finally to almost every country around the world. This trend has been accompanied by a paradigm shift in economic development. Many developing countries have switched from the model of “import substitution”—industrialization through substituting imports with goods produced domestically—to a model of “export promotion”—export-led industrialization.<sup>34</sup> Export promotion typically involves strategies that attract foreign investment through such incentives as tax holidays, the promise of cheap controllable labor for transnational corporations,<sup>35</sup> and the estab-

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<sup>30</sup>The concept of intersectionality, which refers to the interplay and interlocking nature of various forms of oppression, can provide a useful analytical tool. Living at the intersection of multiple burdens subjects garment workers to compounded experiences of marginalization and dehumanization. Cf. Kimberlé W. Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139; Elizabeth M. Iglesias, *Structures of Subordination: Women of Color at the Intersection of Title VII and the NLRA*, 28 HARV. C.R.-C.L. L. REV. 395 (1993); Mari Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 STAN. L. REV. 1183 (1991); Volpp, *(Mis)Identifying Culture*, *supra* note 6.

<sup>31</sup>See generally RACHEL KAMEL, AMERICAN FRIENDS SERVICE COMM., *THE GLOBAL FACTORY* (1990). See also Fran Ansley, *Standing Rusty and Rolling Empty: Law, Poverty and America's Eroding Industrial Base*, 81 GEO. L.J. 1757 (1993).

<sup>32</sup>Edna Bonacich & David V. Waller, *The Role of U.S. Apparel Manufacturers in the Globalization of the Industry in the Pacific Rim*, in GLOBAL PRODUCTION, *supra* note 17, at 21, 90–91.

<sup>33</sup>See Bonacich et al., *Introduction to GLOBAL PRODUCTION*, *supra* note 17, at 3, 3–18; COMMODITY CHAINS AND GLOBAL CAPITALISM (Gary Gereffi & Miguel Korzeniewicz eds., 1994); FOLKER FRÖBEL ET AL., *THE NEW INTERNATIONAL DIVISION OF LABOUR: STRUCTURAL UNEMPLOYMENT IN INDUSTRIALIZED COUNTRIES AND INDUSTRIALIZATION IN DEVELOPING COUNTRIES* (1980); SASKIA SASSEN, *THE GLOBAL CITY: NEW YORK, LONDON, TOKYO* (1991).

<sup>34</sup>Bonacich et al., *supra* note 33, at 3, 5.

<sup>35</sup>“U.S. companies seeking to open plants in Central America, for example, were allegedly assured that they would not have to deal with unions. Producers in Taiwan and Korea have stated that the absence of unions is their major criterion in selecting countries for investment.” Edna Bonacich et al., *The Garment Industry, National Development, and*

ishment of export-processing zones (EPZs) that ease importing/exporting restrictions.<sup>36</sup>

In addition to engaging in direct foreign investment (for example, through their own branch offices), TNCs also arrange arms' length relationships<sup>37</sup> through subcontracting and licensing agreements, which often allow them to limit their liability for labor violations. TNCs benefit from their ability to scour the globe for the cheapest sources of labor in developing countries,<sup>38</sup> as well as in advanced-industrialized countries, where extensive immigration from less-developed countries has created a "Third World within."<sup>39</sup> Part of this immigration is itself due to globalization, as the new economic order dislocates people, disrupting their livelihoods and causing them to emigrate for survival.<sup>40</sup> On arrival in advanced-industrialized countries, immigrants and refugees are faced with new forms of coercion, including immigration controls, racism, and sexism—practices that often relegate them to positions on the bottom rung of the economic ladder.

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*Labor Organizing, in GLOBAL PRODUCTION, supra note 17, at 365, 370; see also Karen Travis, Women in Global Production and Worker Rights Provisions in U.S. Trade Law, 17 YALE J. INT'L L. 173, 180 (1992) (noting that "differentially-lower labor standards" reduce production costs and may act as an effective subsidy). But see Tiano, supra note 26, at 221 (describing benefits to women of working in maquiladora export-processing zone in Mexico).*

<sup>36</sup> Following these strategies, Asian newly industrializing countries have moved from labor-intensive manufacturing to more capital-intensive, high-technology stages of production. Bonacich et al., *supra* note 33, at 3, 6-7.

<sup>37</sup> Bonacich & Waller, *supra* note 32, at 80.

<sup>38</sup> The ability of highly mobile capital to seek out workers in countries around the world heightens insecurity and anxiety among U.S. workers who see themselves in competition with other workers around the globe. Moreover, in developing countries, the production of goods for export to destinations such as the United States has created a perceived "crisis in imports"—a fear that the U.S. market is being flooded with imports that compete with "American-made" goods. *Id.* at 100.

In reality, "American-made" is an ambiguous term, given that U.S. garment manufacturers and retailers produce goods offshore for import back to the United States. *See id.* Also, the U.S. government plays an active role in encouraging offshore production to assist U.S. firms in becoming "more competitive" in global production through trade policies, financial assistance, and state-to-state aid. *Id.* at 88-89; *see also* Robert Reich, *Who Is US?*, HARV. BUS. REV., Jan./Feb. 1990, at 53; Robert Reich, *Who Is Them?*, HARV. BUS. REV., Mar./Apr. 1991, at 77 (problematizing complexities resulting from U.S. companies' hiring foreign workers overseas and foreign companies' hiring and training U.S. workers in the United States).

<sup>39</sup> Bonacich et al., *supra* note 33, at 7.

<sup>40</sup> *See* SASKIA SASSEN, *THE MOBILITY OF LABOR AND CAPITAL: A STUDY IN INTERNATIONAL INVESTMENT AND LABOR FLOW* (1988). Dislocations occur both because TNCs displace local industry—for instance, agribusiness displaces peasants—and because austerity measures widen the wage gap between advanced-industrialized countries and developing nations, making the former even more attractive. Political refugees are also among those emigrating, frequently from countries where the U.S. government has supported repressive political regimes. Bonacich et al., *supra* note 33, at 3, 7.

These trends in garment production and trade highlight ways in which the concept of the nation-state is becoming an increasingly ineffective model for designing market-controlling mechanisms. States are often unable to control the activities of TNCs,<sup>41</sup> although strong governments exercise considerable influence through trade policies and development assistance. While the nation-state traditionally has been viewed as the locus for the declaration of rights-based norms (through courts) and their enforcement (through police and army), the state cannot adequately respond to dynamics that arise from markets that cut across borders. This effacement of sovereignty at the national level is accompanied by the emergence of regional and world trade agreements and bureaucracies that seek to mediate the new global space where transnational economic transactions rule, and markets generally triumph over government action. The decline of geographic sovereignty and conceptual boundaries such as the traditional public/private, state/market, political/economic, and national/international dichotomies testifies to the fact that simplistic, nationalistic approaches for securing worker rights are no longer viable.

Thus, more sophisticated approaches that are transnational in scope and that explore the interplay of labor rights and free trade must be examined. Labor, environmental, and other types of human rights discourses have begun to penetrate free trade discussions, although purist free traders object to this infiltration. Indeed, more often than not, the free trade debate has a dichotomous quality—in its starkest form breaking down between free traders who value complete economic liberalization and protectionists who want to shield certain industries and their workers from unfettered competition. While the free trade debate addresses the current inexorability of globalization in a way that domestic economic policy conversations do not, the free trade/protectionist dichotomy does not adequately frame a space within which transnational strategies that protect workers can be developed.<sup>42</sup>

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<sup>41</sup> See Bonacich et al., *supra* note 33, at 5 (“The TNCs are supranational actors that make decisions on the basis of profit-making criteria without input from representative governments.”).

<sup>42</sup> Free traders, applying the Ricardian model of comparative advantages, believe that opening up trade enables each country to optimize its scarce resources by specializing production in an area in which it already has a “natural” advantage. See Adam Smith, *Of Restraints upon the Importation from Foreign Countries of such Goods as can be Produced at Home*, THE WEALTH OF NATIONS (bk. IV, ch. 11) (Edwin Cannan ed., Modern Library 1937) (1776). Under this theory, each country reaps the benefits of its own economic potential, maximizing global wealth in the process. Following World War II, “the GATT became the embodiment of free trade theory,” with the United States, United Kingdom, and Netherlands particularly eager to embrace it as the paradigm for formulating state trade policy. Winfried Ruigrok, *Paradigm Crisis in International Trade Theory*, 25 J. WORLD TRADE 77, 77–78 (1991). For critiques of free trade, see *id.* (describing strategic trade theory that questions whether comparative advantages are inherent or created); FRÖBEL ET AL., *supra* note 33; Bonacich et al., *supra* note 33, at 8–12.

An alternative paradigm to the free trade/protectionist paradigm is a post-free trade approach, which posits transnational mechanisms through which to harmonize labor, environmental, and human rights standards. Such mechanisms allow for trade liberalization while offering protections to workers both at home and abroad. They include, among other things, social clauses in trade laws that may be enforced through adjudicatory bodies. While in theory these mechanisms are attractive, in practice they have often failed to live up to their mission because of inadequate resources, investigatory capability, and enforcement powers. Addressing these limitations is essential.

Putting a transnational, post-free trade approach into practice requires thinking *and* acting globally *and* locally, in contrast to the popular aphorism, "Think Globally, Act Locally." But even when restated, the "global-local" distinction does not reflect the way parameters of the "local" and "global" are often indefinable, indistinct, or intermingled, due to the transnational flows of culture and corporations.<sup>43</sup> Any attempts to change working conditions in the "local" will be largely fruitless without improved conditions in other sites. We therefore need to engage in transnational solidarity. In doing so, we must take care to acknowledge differences in women's lives—specifically with regard to the geographic distribution of power and privilege, as well as the ways in which other structures of dominance and subordination, for example, class or race, cross-cut gender. The various experiences of women should inform the category "women" in order to avoid implying that the category is monolithic and homogeneous, as well as to avoid rendering women of color invisible.<sup>44</sup> Special care must be

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In contrast to free traders, protectionists contend that certain industries and their workers should be sheltered from unfettered competition. Protectionists advocate shielding both "sunset" industries whose existence is threatened by the import of goods produced more cheaply abroad, and also emerging industries that need to be nurtured and protected in their infancy. Such an approach, it is argued, is needed to soften the economic stress created by massive shifts in capital resulting from the globalization of trade. Critics of this approach warn that picking industrial winners and losers depends too heavily on the judgments of bureaucrats who, in micromanaging economic policy, may make short-sighted decisions or be vulnerable to political patronage. Moreover, while protectionism is geared toward protecting jobs "at home," such an approach is based on false assumptions about what are, for example, "American-made" goods. See generally Reich, *Who Is US?*, *supra* note 38 (questioning the concept of "American-made"). More generally, this approach fails to acknowledge the interconnectedness of what is global and what is local.

The conventional dichotomy between free trade and protectionism is becoming obsolete. So long as sovereign states promote different types of laws, policies, practices, and products—differences that could each be seen as trade barriers—the notion that complete free trade can *ever* exist is absurd. See Ruijgrok, *supra*, at 82. Once understood as stylized oppositions, rather than as substantive ones, the free trade/protectionist dichotomy fails to provide a framework that protects worker rights in a globalizing economy.

<sup>43</sup> See Inderpal Grewal & Caren Kaplan, *Introduction to SCATTERED HEGEMONIES: POSTMODERNITY AND TRANSNATIONAL FEMINIST PRACTICES* 10–11 (Inderpal Grewal & Caren Kaplan eds., 1994).

<sup>44</sup> *Id.* at 27. The creation of transnational solidarity along gender lines poses the

taken when working transnationally to negotiate around discourses of cultural relativism and universalism that do not reflect the needs of women workers of color.<sup>45</sup>

### III. Praxis: Labor Protection via Formal Legal Regimes

TNCs have adopted two effective strategies that allow them to maintain sweatshops on the global assembly line. First, TNCs use the contracting system, whether domestically or abroad, to avoid legal liability for the workers' wages or working conditions.<sup>46</sup> Second, TNCs use their ability to relocate production to virtually any country as a threat to all their current workers: if workers demand higher wages, TNCs can move their production to lower wage sites.<sup>47</sup> Combating these two tactics necessitates coupling U.S. legal strategies with transnational ones, such as deploying the extraterritorial application of U.S. laws, public international law, U.S. trade laws, and multilateral trade agreements. This Section surveys the possibilities for applying various permutations of these legal strategies to the situations presented on the global assembly line.

#### A. Extraterritorial Application of U.S. Laws

In seeking to assert their rights across national boundaries, garment workers and advocates should be aware of the implications and possibilities of the extraterritorial application of U.S. laws. One of the drawbacks involved in the extraterritorial application of U.S. laws is the secondary

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question regarding how to deploy identity-based affiliations that are useful bases for organizing without eliding difference. For a criticism of how U.S. feminist legal analysis has used the identity "women" as a transnational suspect class, see Vasuki Nesiah, *Toward a Feminist Internationality: A Critique of U.S. Feminist Legal Scholarship*, 16 HARV. WOMEN'S L.J. 189 (1993).

<sup>45</sup> Grewal & Kaplan, *supra* note 43, at 27. While the universality of human rights has been questioned because of the dominant role the global North plays in defining universal human rights norms, it is possible to imagine processes through which the global South would have more equal input in defining these norms.

<sup>46</sup> See, e.g., *R.M. Perlman, Inc. v. New York Coat, Suit, Dresses, Rainwear & Allied Workers' Union Loc. 89-22-1*, 33 F.3d 145, 152 (2d Cir. 1994) (describing a system created by manufacturers of contracting work to outside contractors to avoid unionization and evade direct responsibility for workers); *Jou-Jou Designs, Inc. v. International Ladies Garment Workers Union*, 643 F.2d 905, 906 (2d Cir. 1977) (describing similar history); see also Lora Jo Foo, *The Vulnerable and Exploitable Immigrant Workforce and the Need for Strengthening Worker Protective Legislation*, 103 YALE L.J. 2179, 2185-88 (1994) (describing how subcontracting helps manufacturers reduce labor costs and feign ignorance of deplorable conditions in contract shops, while forcing contractors to accept extremely low contract prices, such that they cannot afford to pay minimum wage).

<sup>47</sup> See, e.g., Bob Herbert, *Nike's Pyramid Scheme*, N.Y. TIMES, June 10, 1996, at A17 (commenting on Nike's move from Indonesia, where minimum wage was just raised to \$2.20 per day, to Vietnam, where workers earn \$30 per month: "What's next? Employees who'll work for a bowl of gruel?").

boycott prohibition of the National Labor Relations Act (NLRA).<sup>48</sup> While most groups outside of unions arguably fall beyond the NLRA's reach, the more a group looks and acts like a union, the more a court may interpret its activities as proscribed by the NLRA's secondary boycott prohibitions.<sup>49</sup> On the other hand, the extraterritorial application of protective provisions of the NLRA, such as collective bargaining protections, could greatly enhance protections for garment workers laboring for U.S. corporations abroad.<sup>50</sup>

More promising is the extraterritorial application of Title VII, which clearly provides antidiscrimination protection for garment workers in U.S. plants overseas. In 1991, in response to the Supreme Court's refusal to extend Title VII of the Civil Rights Act extraterritorially,<sup>51</sup> Congress specifically amended Title VII to have such reach.<sup>52</sup> For workers employed by U.S. companies in factories outside U.S. borders, the law provides a

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<sup>48</sup> The NLRA's secondary boycott prohibition makes it an unfair labor practice for a labor organization or its agents:

(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, or (ii) to threaten, coerce, or restrain any person engaged in commerce or an industry affecting commerce, where in either case an object thereof is . . . (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person.

29 U.S.C. § 158(b)(4)(B) (1994). The federal circuits are split on how and whether to apply the secondary boycott provisions extraterritorially. *Compare* Dowd v. International Longshoremen's Ass'n, AFL-CIO, 975 F.2d 779 (11th Cir. 1992) (applying secondary boycott provisions extraterritorially) *with* International Longshoremen's Ass'n v. NLRB, 56 F.3d 205 (D.C. Cir. 1995) (finding no extraterritorial jurisdiction).

<sup>49</sup> Most community and labor support organizations may evade the NLRA restrictions. Support for a cause, no matter how active it may become, does not rise to the level of representation unless it can be demonstrated that the organization in question is expressly or implicitly seeking to deal with the employer over matters affecting the employees. *Center for United Labor Action*, 219 N.L.R.B. 873 (1975).

<sup>50</sup> In *Labor Union of Pico Korea, Ltd. v. Pico Prod., Inc.*, 968 F.2d 191 (2d Cir. 1992), however, the court rejected the claim by workers employed by a Korean subsidiary of an American corporation that they should be protected by § 301 of the Labor Management Relations Act because the actions complained of fell outside the territorial reach of the statute.

<sup>51</sup> *EEOC v. Arabian Amer. Oil Co.*, 499 U.S. 244 (1991).

<sup>52</sup> *See* 42 U.S.C. § 2000e(f) (1994) (defining a covered "employee" to include U.S. citizens working abroad); ROY L. BROOKS ET AL., *CIVIL RIGHTS LITIGATION CASES AND PERSPECTIVE* 358 (1995). Title VII of the Civil Rights Act now applies extraterritorially in the absence of contrary foreign law. 42 U.S.C. § 2000e-1(b) (1994) (making it not unlawful for an employer "to take any action otherwise prohibited . . . with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer . . . to violate the law of the foreign country in which such workplace is located").

way to combat the sexual harassment, as well as other forms of discrimination, common in many factories both domestically and abroad.<sup>53</sup>

Garment workers, however, are not always well served by the extra-territorial application of U.S. laws. To the extent U.S. labor law is an amalgamation of corporate and labor interests, specific provisions may be the product of political deal making rather than concern for the protection of workers' rights. Moreover, the extension of U.S. laws to the activities of U.S. companies in other national jurisdictions could be viewed as a form of neocolonialism. As such, more cooperative approaches to developing and enforcing transnational labor standards should be explored.

### *B. The Uses of Public International Law*

Internationally recognized worker rights have long been part of the regime of international human rights law. The International Bill of Human Rights,<sup>54</sup> composed of the Universal Declaration of Human Rights,<sup>55</sup> the International Covenant on Civil and Political Rights,<sup>56</sup> and the International Covenant on Economic, Social and Cultural Rights,<sup>57</sup> declares core labor rights, which include freedom from slavery,<sup>58</sup> freedom of association including organizing trade unions,<sup>59</sup> and fair wages and equal pay to be universal human rights.<sup>60</sup> Similarly, according to the International Labor Organization (ILO), "fundamental" or "basic" labor/human rights are: (1) freedom of association (including freedom to organize and bargain collectively), (2) freedom from forced labor, and (3) equality of opportunity and treatment (including equal remuneration and freedom from discrimination).<sup>61</sup>

The ILO, now a part of the United Nations, sets international labor standards through the passage of Conventions and Recommendations,

<sup>53</sup> See *Sex Discrimination in Maquiladoras*, *supra* note 26 (discussing sexual harassment and pregnancy discrimination in *maquilas*).

<sup>54</sup> For the full text of the documents composing the International Bill of Human Rights, see U.N. DIV. OF HUMAN RIGHTS, HUMAN RIGHTS: A COMPILATION OF INTERNATIONAL INSTRUMENTS at 1-15, U.N. Doc. ST/HR/1/Rev.1, U.N. Sales No. E.78.XIV.2 (1978).

<sup>55</sup> G.A. Res. 217A, U.N. Doc. A/810, at 71 (1948) [hereinafter Universal Declaration].

<sup>56</sup> G.A. Res. 2200A, U.N. GAOR, 21st Sess., Supp. No. 16, at 52-53, U.N. Doc. A/6316 (1968) [hereinafter ICCPR].

<sup>57</sup> G.A. Res. 2200A, U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1968) [hereinafter ICESCR].

<sup>58</sup> Universal Declaration, *supra* note 55, art. 4; ICCPR, *supra* note 56, art. 8.

<sup>59</sup> Universal Declaration, *supra* note 55, arts. 19, 20, 23; ICCPR, *supra* note 56, art. 22; ICESCR, *supra* note 57, art. 8.

<sup>60</sup> Universal Declaration, *supra* note 55, art. 23; ICESCR, *supra* note 57, art. 7.

<sup>61</sup> See Karen Travis, *Women in Global Production and Worker Rights Provisions in U.S. Trade Laws*, 17 YALE J. INT'L L. 173, 173 n.2 (1992) (citing INT'L LABOUR ORG., INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS: 1919-1981, at 1, 7, 42, 49 (1982)).

supervision of implementation of those standards, provision of technical assistance, information and aid, and enforcement by means of reporting requirements and moral suasion.<sup>62</sup> Unlike typical international human rights instruments, ILO conventions and recommendations are unique in that they are arrived at by a tripartite structure made up of employer, employee, and government representatives from 152 countries.<sup>63</sup> While the lack of effective enforcement mechanisms is a general weakness of international law, the incorporation and acceptance of these internationally recognized rights into labor-protective regimes in the United States have allowed such rights to be accessed and enforced more effectively by garment workers and their advocates.

### C. U.S. Trade Laws<sup>64</sup>

Of all U.S. trade laws available to assert labor rights, worker advocates have used the Generalized System of Preferences (GSP) petition process most frequently.<sup>65</sup> The GSP provides duty-free tariff treatment on certain products for designated "beneficiary developing countries" (BDC) in order to promote economic development in those countries. When the GSP program was renewed in 1984, section 502(b) of the Renewal Act added mandatory worker rights criteria to the statute. Furthermore, section 502(b)(7) of the Renewal Act mandated that "the President shall not designate any country a beneficiary developing country under this section . . . if such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country)."<sup>66</sup> Those internationally recognized worker rights are: (1) freedom of association; (2) the right to organize and bargain collectively; (3) a prohibition on the use of forced or compulsory labor; (4) a minimum wage for the employment of children; and (5) ac-

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<sup>62</sup> For an in-depth discussion of the ILO process, see Daniel S. Ehrenberg, *The Labor Link: Applying the International Trading System to Enforce Violations of Forced and Child Labor*, 20 YALE J. INT'L L. 361 (1995).

<sup>63</sup> See Lance Compa, *International Labor Standards and Instruments of Recourse for Working Women*, 17 YALE J. INT'L L. 151, 154 n.12 (1992).

<sup>64</sup> International labor law standards are reflected in a number of U.S. trade laws that include workers rights provisions, including the Caribbean Basin Economic Recovery Act, 19 U.S.C. §§ 2701, 2702(c)(8) (1994), the Generalized System of Preferences, 19 U.S.C. §§ 2461, 2462(b)(7) (1994), the Overseas Private Investment Corporation, 22 U.S.C. §§ 2191, 2191a(a) (1994), and Section 301 of the Trade Act, 19 U.S.C. §§ 2411-2420, 2411(d)(3)(B)(iii) (1994). For discussion of these trade laws, see Travis, *supra* note 61.

<sup>65</sup> For discussion of the criticisms of the GSP process, see Lance Compa, *Going Multilateral: The Evolution of U.S. Hemispheric Labor Rights Policy Under GSP and NAFTA*, 10 CONN. J. INT'L L. 337 (1995).

<sup>66</sup> 19 U.S.C. § 2462(b)(7) (1994).



ceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.<sup>67</sup>

Following a review of BDCs in 1985-1986, the United States Trade Representative issued regulations that allow "any person," on an annual basis, to "file a request to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria . . . ."<sup>68</sup> Pursuant to these regulations, at least thirty-four petitions were filed challenging BDCs on worker rights grounds as of the beginning of the 1991-1992 review cycle.<sup>69</sup> Eight countries have been suspended or terminated.<sup>70</sup> Because the United States imports garments from many BDCs, the GSP can and has been a useful tool for garment workers.<sup>71</sup>

#### D. Multilateral Trade Agreements

##### 1. GATT/WTO

The successor to the General Agreement on Tariffs and Trade (GATT), the World Trade Organization (WTO) is the primary multinational regulator of trade. While neither the provisions of the GATT nor the mandate of the WTO protects workers' rights explicitly, some commentators have suggested utilizing the unfair trade practices provisions under GATT/WTO to vindicate certain labor rights. For instance, the use of forced and child labor, which artificially lowers production costs, arguably violates the antidumping provisions of GATT/WTO and may also be considered a prohibited subsidy, which could lead to countervailing duties.<sup>72</sup> Similarly, the practice of denying labor rights that are otherwise generally applicable in a country in export-processing zones arguably confers an unfair trade advantage by effectively subsidizing exports to other countries.<sup>73</sup>

Such assertions of unfair trade practices, if successful, would thus subject the offending countries to economic sanctions, providing a powerful disincentive to exploit workers in their own countries. For U.S. garment workers, however, the GATT has posed a threat to their job security with its plan to phase out the Multi-Fiber Agreement (MFA) over

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<sup>67</sup> *Id.* § 2642(a)(4).

<sup>68</sup> 15 C.F.R. § 2007, 2007.0(b) (1996).

<sup>69</sup> Travis, *supra* note 61, at 183.

<sup>70</sup> *Id.*

<sup>71</sup> Some BDCs include Bangladesh, the Dominican Republic, Guatemala, El Salvador, and Haiti. *Id.*

<sup>72</sup> Ehrenberg, *supra* note 62, at 393-96.

<sup>73</sup> See Travis, *supra* note 61, at 174.

a ten-year period.<sup>74</sup> When the MFA expires in 2005,<sup>75</sup> the U.S. textile and apparel industry could suffer job losses anywhere from 72,000 to 168,000.<sup>76</sup> Moreover, because many trade agreements do not protect worker rights or improve working conditions directly, the solutions they offer usually can do no more than protect U.S. industries generally against lower-priced imports and thus only indirectly protect workers' jobs.

## 2. NAFTA

Unlike GATT/WTO, the North American Free Trade Agreement (NAFTA)<sup>77</sup> contains labor and environmental side agreements and thus affords worker rights greater protection. Article I of the labor side agreement identifies one of its objectives as the promotion, "to the maximum extent possible, the labor principles set out in Annex 1."<sup>78</sup> Annex 1 states that each country should promote the following: (1) protection of the rights to organize, bargain, and strike; (2) prohibition of forced labor, child labor, subminimal wages, and employment discrimination; and (3) promotion of equal pay for equal work, occupational safety and health, and equal treatment for migrant workers.<sup>79</sup>

These standards, however, are merely hortatory. The side agreement provides for enforcement of each country's existing labor laws in only three areas: (1) occupational health and safety, (2) child labor, and (3) minimum wages.<sup>80</sup> Significantly, the right to organize and bargain collectively is listed only in the aspirational Annex I rather than as an enforceable obligation governed by the procedures in the side agreement.

The side agreement's enforcement procedures provide for a quasi-judicial system to hear complaints brought by any of the three signatory

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<sup>74</sup>The MFA has allowed countries to negotiate bilateral agreements or impose unilateral restraints on textile and apparel imports that disrupt domestic markets, and its phase-out is now deemed necessary to bring the two industries in line with GATT's free trade principles. 2 GENERAL ACCOUNTING OFFICE, REPORT TO THE CONGRESS, URUGUAY ROUND FINAL ACT SHOULD PRODUCE OVERALL U.S. ECONOMIC GAINS 146-47 (1994).

<sup>75</sup>The signatories to the MFA have agreed that the arrangement will be phased out over a ten-year period ending in 2005. See James A. Morrissey, *What Does the WTO Portend for Textiles and Apparel?*, TEXTILE WORLD, Aug. 1, 1995, at 45.

<sup>76</sup>G.A.O., *supra* note 74, at 151. Because the phase-out will be limited to member countries of the WTO, bilateral agreements with non-WTO countries such as China, which supplies up to 40% of US imports, would continue. See *Uruguay Round GATT Agreement: Hearings on S.2467 Before the Senate Finance Comm.*, 104th Cong., 2d Sess. 3 (1994) (statement of Jack Sheinkman, President, ACTWU, AFL-CIO).

<sup>77</sup>North American Agreement on Labor Cooperation, Sept. 14, 1993, U.S.-Can.-Mex., art. 1(b), H.R. Doc. No. 160, 103d Cong., 1st Sess. 48, 50, 32 I.L.M. 1502, 1503 (1993).

<sup>78</sup>*Id.*

<sup>79</sup>*Id.* at annex 1, H.R. Doc. at 80-82, 32 I.L.M. at 1515-16.

<sup>80</sup>North American Agreement on Labor Cooperation, *supra* note 77, arts. 4-5, 49, H.R. Doc. at 52, 76-78, 32 I.L.M. at 1503-04, 1513-14.

countries, the United States, Mexico, and Canada, against another signatory that it believes is failing to enforce its labor laws in the three enumerated areas. Within each country, a National Administrative Office (NAO) must be set up to provide information to the Commission for Labor Cooperation, which attempts to resolve the dispute through consultation and cooperation.<sup>81</sup> Each country's NAO reviews the quality of labor law enforcement in one or both of the other countries, but not its own. In the United States, the NAO also determines whether to bring complaints under the side agreement. The NAO's procedures set a fairly low threshold for initiating review by the Office but requires submitters to show that "appropriate relief" has been sought, though not necessarily exhausted, under the domestic laws of the violating country. The guidelines also make the NAO review process the exclusive avenue of recourse among international labor rights regimes, barring review if the matter has been brought to the ILO or another international body.<sup>82</sup> Ultimately, fines or suspension of NAFTA trade benefits are available for persistent violations of certain defined labor rights and labor standards.

Worker advocates have put the NAFTA labor rights regime into immediate use and have begun testing its parameters, including pushing it to promote worker organizing. U.S. unions have brought three submissions against Mexico for anti-union discrimination in violation of Mexican law, at Honeywell, General Electric, and Sony factories.<sup>83</sup> Conversely, the Telephone Workers' Union of Mexico brought a submission to its government, asking it to challenge the closing of La Conexión Familiar, a San Francisco-based subsidiary of Sprint, which shut down eight days before a scheduled union vote, leaving 200 women jobless.<sup>84</sup> The NLRB considered a complaint from the Communication Workers of America (CWA), and found that while Sprint had violated labor law in its handling of the union, it had closed La Conexión Familiar primarily for financial reasons. CWA has appealed and is hoping that a hearing stemming from Mexico's complaint will lead to a proposed code of conduct for employers

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<sup>81</sup> The Commission consists of a Secretariat and the labor minister of each state. See generally Katherine Van Wetzel Stone, *Labor and the Global Economy: Four Approaches to Transnational Labor Regulation*, 16 MICH. J. INT'L L. 987 (1995).

<sup>82</sup> Lance Compa, *The First NAFTA Labor Cases: A New International Labor Rights Regime Takes Shape*, 3 U.S.-MEX. L.J. 149, 152 (1995).

<sup>83</sup> *Id.* In the first two submissions, the U.S. NAO has already concluded that it was "not in a position to make a finding that the Government of Mexico failed to enforce the relevant labor laws." Richard Alm, *Union Leaders Upset after Labor Complaints on Mexico Shunned*, DALLAS MORNING NEWS, Oct. 14, 1994, at 1D. However, the value of the NAO procedures can be measured beyond the Office's formal findings, because the process forced the companies and the government to review their own actions. See Asra Q. Nomani, *Sony Is Target in Rights Action Based on NAFTA*, WALL ST. J., Aug. 18, 1994, at A2.

<sup>84</sup> Carey Goldberg, *U.S. Labor Making Use of Trade Accord It Fiercely Opposed*, N.Y. TIMES, Feb. 28, 1996, at A11.

in NAFTA countries as a way to prevent future factory closings in response to union activities.<sup>85</sup>

#### IV. Less Formal Terrain: Using Nonlegal Strategies to Fight the Might of Garment Transnationals

Notwithstanding the few successes of the application of U.S. laws or the use of international law in protecting workers rights, the persistent shortcomings of such formal legal mechanisms demand an alternative approach to advocacy on behalf of garment workers. Such advocacy should employ tactics that do not rely solely on the state or formal legal mechanisms, but rather combine them with worker organizing, consumer pressure, and other "nonlegal" strategies.

##### A. *Voluntary Codes of Conduct*

Voluntary codes of conduct provide one such layer of nonlegal worker protection. Three types of voluntary codes of conduct have developed in the garment industry: (1) corporate codes of conduct, (2) union codes of conduct, and (3) community/labor partnership codes. Advocates should pressure TNCs to adopt and comply with these codes.

##### 1. *Corporate Codes of Conduct*

Manufacturers and retailers such as Levi Strauss & Co. ("Levi's"), Phillips-Van Heusen, Wal-Mart, J.C. Penney, and Reebok have adopted corporate codes that set out "terms of engagement" or "guidelines" for their business partners. Most of the codes require business partners to comply with applicable local laws regarding wages, hours, and benefits,<sup>86</sup> and state categorically that the manufacturer/retailer will not do business with contractors who use child, prison, or forced labor, who use mental or physical coercion, and who do not share a commitment to the environment.<sup>87</sup>

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<sup>85</sup>The general secretary of the Telephone Workers' Union of Mexico noted: "This is the first time that a Mexican trade union initiates a legal action in support of the struggle of American workers . . . . It redefines the traditional patterns of international labor interaction." *Id.*

<sup>86</sup>The Levi's code, for instance, states, "[W]e will not use contractors who, on a regularly scheduled basis, require in excess of a sixty-hour week. Employees should be allowed one day off in seven days." Levi Strauss & Co., Business Partner Terms of Engagement and Guidelines for Country Selection (1992) (on file with authors).

<sup>87</sup>On corporate codes of conduct, see generally Lance Compa & Tashia Hinchliffe-Darricarrere, *Enforcing International Labor Rights Through Corporate Codes of Conduct*, 33 COLUM. J. TRANSNAT'L L. 663 (1995), which examines several private-sector initiatives embracing codes of conduct for labor and employment practices in international commerce.

While some observers call these standards strict, the codes contain significant limitations. First, they usually do not contain mechanisms for enforcement.<sup>88</sup> Further, they generally do not contain any provisions regarding monitoring of business partners.<sup>89</sup> Even when a code requires or recommends such monitoring, the monitoring is almost never conducted by an independent agency.<sup>90</sup> As a result, they are standards without teeth and function primarily as a public relations gesture.<sup>91</sup>

Recently, a campaign run by the National Labor Committee (NLC) compelled the Gap to become the first garment manufacturer/retailer to agree to independent monitoring of all its plants in Central America.<sup>92</sup> The

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<sup>88</sup> For example, the Levi's and Phillips-Van Heusen codes contain no specific enforcement provisions. See Levi Strauss & Co., *supra* note 86; Phillips-Van Heusen Corp., Statement of Corporate Responsibility (1992); see also SIMON BILLENNESS & KATE SIMPSON, THINKING GLOBALLY: FRANKLIN'S INSIGHT STUDY OF INTERNATIONAL CORPORATE RESPONSIBILITY (1992). J.C. Penney's "Foreign Sourcing Requirements" asks its associates and buying agents to "be watchful for the apparent use of prison or forced labor, or illegal child labor, or indications of inaccurate country-of-origin labeling." See Charles Kernaghan, *A Call to Action/We Have More Power than We Realize*, in THE U.S. IN HAITI: HOW TO GET RICH ON 11¢ AN HOUR 51, 60 (Nat'l Labor Comm. Educ. Fund 1996) [hereinafter THE U.S. IN HAITI] (citing J.C. Penney, Foreign Sourcing Requirements) (on file with authors). However, one contractor in Guatemala claims that J.C. Penney inspectors pass through almost daily but never ask about workers. See Bob Ortega, *Conduct Codes Garner Goodwill for Retailers, But Violations Go On*, WALL ST. J., July 3, 1995, at 1.

<sup>89</sup> See Ortega, *supra* note 88, at 1 (describing lax or no enforcement). Some codes explicitly call for self-monitoring, and Levi's claims to have severed ties with five percent of its contractors as a result of such self-auditing. Of course, self-auditing and independent monitoring are very different species. See *Which Side Are You On?*, NATION, Aug. 8/15, 1994, at 146.

<sup>90</sup> See Eric Verhoogen, *The U.S. in Haiti: How to Get Rich on 11¢ an Hour*, in THE U.S. IN HAITI, *supra* note 88, at 1, 10 (citing Wal-Mart Stores, Inc., Standards of Vendor Partners) (on file with authors).

To further assure proper implementation of and compliance with the standards set forth in this Memorandum of Understanding, Wal-Mart or a third party designated by Wal-Mart will undertake affirmative measures [to ensure standards such as adequate health and safety through] on-site inspection of production facilities, to implement and monitor said standards.

*Id.* Nonetheless, independent investigation has discovered plants that sew for Wal-Mart to be hot, poorly lit, crowded, and cluttered, and to pay less than the minimum wage. See *id.*

<sup>91</sup> See Laurie Udesky, *Sweatshops Behind the Labels*, NATION, May 16, 1994, at 665 (criticizing so-called socially responsible companies for their hypocritical use of public relations tools such as community projects or conduct codes). The recent exposure of Kathie Lee Gifford's line of Wal-Mart clothing as having been sewn by child labor in Honduras has shown how successful advocates can be in exerting public pressure using these codes precisely because the companies use them to burnish their public images. See *Cause Celeb: Two High-Profile Endorsers Are Props in a World Wide Debate over Sweatshops and the Use of Child Labor*, TIME, June 17, 1996, at 28.

<sup>92</sup> See Bob Herbert, *Sweatshop Victory*, N.Y. TIMES, Dec. 22, 1995, at A39. The Gap's acquiescence occurred after a nationwide campaign involving a U.S. tour of two teenage workers, one from El Salvador and the other from Honduras, where each had sewn clothes for U.S. retailers and manufacturers. One of the teenagers, along with her 350 coworkers,

Gap had conducted its own investigation of its plant in El Salvador and found no violations but continued to receive mounting reports of abuses from Salvadoran human rights groups. In November 1995, the company announced that it would no longer source work to the plant, effectively punishing the workers by stripping them of their jobs.<sup>93</sup> Increasing pressure from consumers and shareholders persuaded the Gap to return to the plant, reinstate the fired workers,<sup>94</sup> improve working conditions, and agree to independent monitoring throughout Gap factories in Central America.<sup>95</sup>

Garment worker advocates must continue to educate retailers and manufacturers that it is in their economic self-interest to create and actively enforce more comprehensive corporate codes of conduct. The success of the NLC campaign against the Gap indicates that transnational manufacturers and retailers are vulnerable to charges of hypocrisy and are concerned about their images as perceived by the consuming public.

## 2. Union Codes of Conduct

In the United States, the International Ladies Garment Workers' Union (ILGWU) and the Amalgamated Clothing, Textile Workers Union (ACTWU), and the union formed by their merger, the Union of Needletrades, Industrial and Textile Employees (UNITE)<sup>96</sup> have won union contracts with manufacturers and retailers that contain codes of conduct to be applied to any overseas vendors with which the manufacturers or retailers do business. The ILGWU "Code of Conduct for Overseas Vendors"<sup>97</sup> requires vendors—business partners or contractors—to comply

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was fired after attempting to unionize in the face of 12-hour and sometimes 21-hour weekend shifts, and pay of 18 cents for every \$20 Gap shirt she sewed. See Bob Herbert, *Sweatshop Beneficiaries: How to Get Rich on 56 Cents an Hour*, N.Y. TIMES, July 24, 1995, at A13.

<sup>93</sup>The Clean Clothes Campaign, which has been seeking to pressure large Dutch retailers to sign a code of conduct, notes that if a company that signed its code is found to subcontract to a factory that violates basic worker rights, the Dutch company cannot withdraw from the factory, but must use its influence with factory management to improve working conditions. See Information Leaflet for Asian Labour Groups (Clean Clothes Campaign, Amsterdam, Neth.), 1995 (on file with authors).

<sup>94</sup>If the Salvadoran plant run by Mandarin refuses to reinstate the fired workers, the Gap will sever its relations with Mandarin and establish a job training fund for the fired workers. The NLC will launch a full scale investigation of Mandarin's worldwide operations, and an effort will be made to prohibit temporarily entry to the United States of any goods produced by Mandarin until an investigation is conducted. See Charles Kernaghan, *supra* note 88, at 62.

<sup>95</sup>The Mandarin plant will be monitored by human rights observers from the Salvadoran Human Rights Ombudsman's Office. The Gap code of conduct will be posted in every plant producing under contract for the Gap. *Id.*

<sup>96</sup>In 1995, ILGWU and ACTWU merged to form UNITE, a 355,000-member organization. See Arthur Friedman, *Apparel Unions "UNITE" to Survive*, WOMEN'S WEAR DAILY, Feb. 21, 1995, at 10.

<sup>97</sup>Code of Conduct for Overseas Vendors (Int'l Ladies Garment Workers Union, New York, N.Y.), 1995, at 4–5 (on file with authors).

with applicable local laws regarding wages, hours and benefits, child labor, free association, discrimination, and safety in the workplace. Vendors are prohibited from using forced labor, and monitoring is facilitated by the employer's obtaining from each vendor a signed statement indicating its understanding of the code.<sup>98</sup>

The ACTWU 1993 "National Agreement" with the Clothing Manufacturers Association is far stronger, both in the restrictions it places on vendors and in its enforcement mechanisms. Vendors cannot require more than a forty-eight hour work week, engage in discrimination, use child labor, or use forced or compulsory labor.<sup>99</sup> Manufacturers and/or retailers and ACTWU periodically monitor compliance with these standards and report to each other. If the union chooses, it may take any violations to binding, expedited arbitration; if the union proves its case, the manufacturers and/or retailers shall cease to contract with the vendor in violation, or with all manufacturers in a particular country if the problem is sufficiently widespread.

UNITE recently announced a new program that features transnationally focused tactics. Its sweeping, industrywide "Partnership for Responsibility" encourages retailers, manufacturers, contractors, the government, and consumers to adopt a five point program of reform that includes "global responsibility." UNITE defines "global responsibility" to mean that TNCs must enact global codes of conduct that are vigorously enforced, publicized to workers in languages they understand, and monitored by independent worker and human rights organizations, and that trade agreements must include enforceable labor standards and workers' rights, including the right to organize.<sup>100</sup>

### 3. Codes Created by Community-Labor Partnerships

Community organizations, religious groups, and labor organizations have joined forces to draft codes of conduct designed to pressure retailers and manufacturers. If companies refuse to sign, publicity about their reluctance can be used as a tool to try to shame them into signing the code. For example, in response to the environmental and labor problems created by *maquiladoras* on the U.S.-Mexico border, the Coalition for

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<sup>98</sup> *Id.* at 5 ("An employer shall make every reasonable effort to insure that its vendors comply with this code, which may include termination of the employer's relationship with the vendor.").

<sup>99</sup> National Agreement between Clothing Manufacturers Association of the United States of America and Amalgamated Clothing & Textile Workers Union, Oct. 1993, at 18-20 (on file with authors). Companies are also required to use business partners that abide by ILO standards on freedom of association and provide a safe and healthy work environment.

<sup>100</sup> *Unite Calls for Drastic Reform of Apparel Industry Through National Partnership for Responsibility*, BUSINESS WIRE, Sept. 11, 1995.

Justice in the Maquiladoras, along with the AFL/CIO Border Project, formed and created the Maquiladoras Standards of Conduct. This code addresses pollution, workplace safety, employment, and community impact. In 1991, some of the companies that run *maquilas* faced stockholder initiatives sponsored by the Coalition, which required that each company operate within the bounds set by the Standards of Conduct. However, efforts to implement the code met entrenched corporate resistance: some companies allowed the shareholder initiative to die by shareholder vote, while others published only very brief and vague reports detailing their operations.<sup>101</sup>

Thus far there has been only limited success in persuading retailers and manufacturers to sign onto codes of conduct. Presumably, they fear that their cooperation with these codes could lead to potential liability or consumer boycott if violations were identified.<sup>102</sup> The community-labor codes have functioned more as a long-range public awareness technique than as an effective mechanism for controlling the behavior of transnationals.<sup>103</sup>

### B. Worker Organizing

Unions and other worker advocacy groups have begun to respond to global economic restructuring through transnational organizing.<sup>104</sup> For in-

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<sup>101</sup> BILLENNESS & SIMPSON, *supra* note 88, at 9–10.

<sup>102</sup> See *id.* (“Companies are reluctant to act on [the Coalition for Justice in the Maquiladoras Standards of Conduct] because they fear such action would be an admission of culpability, and therefore liability.”).

<sup>103</sup> Other community-labor codes include the Dutch Fair Trade Charter for garments, based on ILO principles and developed by the Clean Clothes Campaign, and the Retailer Code of Conduct, developed in response to El Monte by the California-based Sweatshop Watch. Information Leaflet for Asian Labour Groups, *supra* note 93, at 1; Proposal on Retailer Responsibility (Sweatshop Watch, S.F., Cal.), Dec. 1995.

<sup>104</sup> Global economic restructuring has also affected methods of organizing *within* the United States. For example, both UNITE and independent workers’ centers, through the creation of workers’ centers based in communities where workers live and work, have attempted to position themselves to challenge broader social structures that affect workers. The independent workers’ centers organize across trades and industries and are run by their membership. They focus attention on the economic, social, and political concerns of their members, which are addressed through workplace literacy classes, cross-trade picketing support, child care, and legal assistance.

The legal assistance that workers receive at many of these centers is structured to avoid the traditional hierarchy between attorney and client and to combat the way receipt of legal services tends to provide individualized solutions for community problems rather than support organizing efforts. Many workers centers require workers who desire legal services to participate actively in their cases, organize other workers at their workplace, attend a workers course, join a workers committee, or participate in a campaign or event sponsored by the organization. See Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407, 437–45 (1995) (describing problems with traditional legal assistance and Workplace Project legal clinic model). Independent workers centers that organize



stance, unions are strengthening ties among workers of different countries so that when a plant announces that it is closing in the United States, workers at the relocation site can put concerted and simultaneous pressure on the manufacturer.<sup>105</sup> Likewise, UNITE and other U.S.-based trade unions have begun to create joint movements with independent Mexican unionists to support organizing in *maquiladoras*.<sup>106</sup> For example, when Leslie Fay threatened to shut its remaining production plant in the United States to move to Central America, UNITE engaged in cross-border organizing, bringing before Congress a twenty-year Honduran worker to testify that she found a forty dollar skirt in a New York store, for which she was paid forty-three cents to sew.<sup>107</sup>

Both unions and nonunionized workers' associations have begun worker exchanges, which encourage workers to see their commonalities and the potential of their combined strength, rather than allowing protectionist impulses, racism, or xenophobia to convince them that they will be well served by competing with the workers of other countries. Along these lines, in July 1991, the Tennessee Industrial Renewal Network (TIRN) sponsored a group of women from East Tennessee to visit women employed in Mexican *maquiladoras*.<sup>108</sup> Similarly, the Clean Clothes Campaign organized a tour of Europe in April 1996 for several representatives

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garment workers include Asian Immigrant Women Advocates and Korean Immigrant Worker Advocates in California, Chinese Staff and Workers' Association and the Latino Workers' Center in New York, Fuerza Unida and La Mujer Obrera in Texas, as well as a planned center in Mexico. See Zia, *supra* note 28, at 73.

The UNITE workers centers are specifically intended to organize immigrant garment workers and to offer classes, legal assistance, and a form of associate membership. See Kenneth C. Crowe, *Union's Influence Has Waned but ILGWU Still Committed to Helping Immigrant Workers*, NEWSDAY, Feb. 21, 1995, at A32. Another strategy of UNITE, in response to the offshore movement of garment jobs, is to find a niche in the global market, either through specializing in the production of higher quality clothes or through organizing sectors of the industry that are less likely to move overseas. Interview with Katie Quan, Manager, Pacific Northwest District Council of UNITE, in S.F., Cal. (June 5, 1996). An additional strategy, rapid production, has been pursued by organizing groups to maintain worker agency in the workplace. For example, in California, Garment 2000, an alliance between manufacturers, contractors, and organized labor, has implemented a modular system where workers operate in teams, controlling their own schedules and production decisions. Each worker is trained to operate all machines, and the team produces one garment from start to finish, allowing for much faster production. See Steven Chin, *New Pattern for Apparel Makers*, S.F. EXAMINER, June 25, 1995, at B1.

<sup>105</sup> For a description of this tactic, see Ruth Milkman, *Organizing Women in New York's Chinatown: An Interview with Katie Quan*, in WOMEN AND UNIONS: FORGING A PARTNERSHIP 297 (Dorothy Sue Cobble ed., 1993).

<sup>106</sup> See Letter from Robin Alexander, Director of International Labor Affairs, United Electrical, Radio and Machine Workers of America (Jan. 1995) (on file with authors) (describing new Strategic Organizing Alliance initiated by the United Electrical, Radio and Machine Workers of America and the Frente Autentico del Trabajo of Mexico).

<sup>107</sup> See *Massive Rally, March in Garment Center Support Striking Leslie Fay Workers*, BUSINESS WIRE, June 9, 1994.

<sup>108</sup> See Fran Ansley, *U.S.-Mexico Free Trade from the Bottom: A Postcard from the Border*, 1 TEX. J. WOMEN & L. 193 (1992).

of garment workers from Asia. California-based Asian Immigrant Women Advocates (AIWA) has engaged in worker exchanges within the United States, with workers from La Mujer Obrera in Texas, the Common Ground Economic Development Corporation of African American Women in Dallas, and the Ramah Weavers Association of Navajo Women in New Mexico.<sup>109</sup>

Another kind of transnational worker organizing is accomplished through support committees that, based in the global North, pressure U.S.-based transnationals to a degree impossible for workers to achieve in the global South. The National Labor Committee's campaign on behalf of *maquiladora* workers in Central America is an example.<sup>110</sup> Another is the Support Committee for Maquiladora Workers, based in San Diego, which helps facilitate community-based organizing in *colonias* in Tijuana through the *Comite de Apoyo Fronterizo Obrero Regional* (CAFOR). Because of the dangers of organizing in the workplace, CAFOR organizes *maquila* workers where they live, primarily around health and safety issues.<sup>111</sup>

Garment worker advocates concerned with working transnationally should be aware that homeworking plays an important role in the global restructuring of capital<sup>112</sup> and is an increasingly popular way of organizing the labor process, due to the flexibility provided by homeworkers, as well as the fact that they tend to accept lower wages.<sup>113</sup> Because the U.S. Department of Labor banned homework in the production of ladies' off-the-rack clothing in 1943, homework in the United States is more invisible<sup>114</sup> and underground than in other countries. It is nonetheless preva-

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<sup>109</sup> Upon returning from their workers' exchange, AIWA Workers' Board members wrote:

The women workers in El Paso, Dallas and New Mexico have the same problems we do. We did not know the history of people could be so full of suffering. You can hear the facts, but it is difficult to understand the emotions, to translate the suffering. We all need human rights as minority people.

*AIWA Attends Congress of Working Women in El Paso, Texas*, AIWA NEWSL. (Asian Immigrant Women Advocates, Cal.), Nov. 1989, at 1-2.

<sup>110</sup> See *supra* notes 92-95 and accompanying text.

<sup>111</sup> Support Committee for Maquiladora Workers volunteers assist with monthly tours, document health and safety problems, connect U.S. trade unionists with their counterparts in Mexico, develop education materials, and arrange meetings between workers on both sides of the border. See David Bacon, *Neighborhood Watch: U.S.-Mexican Labor Alliance Helps Workers Fight Environmental Hazards*, L.A. VILLAGE VIEW, May 26-June 1, 1995, at 31.

<sup>112</sup> See SWASTI MITTER, *COMMON FATE, COMMON BOND: WOMEN IN THE GLOBAL ECONOMY* 125 (1986).

<sup>113</sup> See SHEILA ROWBOTHAM, *HOMEWORKERS WORLDWIDE* 50-55 (1993).

<sup>114</sup> It is our observation that the prevalence of homework tends to be difficult to measure because it is customary to see the home as a "private" sphere, separate from the public nature of paid employment. With global restructuring, however, these boundaries become blurred.

lent.<sup>115</sup> Efforts to organize internationally among homeworkers have led to the creation of the International Network for Home-Based Workers, but to date few U.S.-based advocates are addressing the issue.<sup>116</sup>

### C. Consumer Strategies—Watching the Clothes We Buy

TNCs are susceptible to pressures from consumers in the global North who inform retailers and manufacturers that their purchasing decisions will be affected by workplace conditions.<sup>117</sup> A survey released in

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<sup>115</sup> See Miriam Ching Louie, *Immigrant Asian Women in Bay Area Garment Sweatshops: "After Sewing, Laundry, Cleaning and Cooking, I Have No Breath to Sing,"* 18 AMERASIA J. 1, 8 (1992) (reporting that U.S. Department of Labor estimates up to 30% of sewing in Bay Area is homework); Dick J. Reavis, *Sewing Discontent: Cut-rate Wages in the Dallas Apparel Underground*, TEXAS OBSERVER, May 7, 1993, at 14 (estimating that there were up to 25,000 home sewers in the Dallas-Fort Worth area); see also El Monte Complaint, *supra* note 2 (alleging 72 Thais were enslaved and forced to work as homeworkers in Los Angeles).

<sup>116</sup> See HOME NET (Int'l Network for Home-Based Workers, Toronto, Can.), Summer 1995. As the contingent workforce—through part-time and temporary work, employee leasing arrangements, and independent contracting relationships—grows, one can only anticipate that homeworking will increase in the United States. On the contingent workforce, see generally Jennifer Middleton, *Contingent Workers in a Changing Economy: Endure, Adapt, or Organize*, 22 N.Y.U. REV. L. & SOC. CHANGE (forthcoming 1996). There has been impressive organizing of homeworkers in the garment industry in Canada, Australia, and the United Kingdom. See Jan Borowy et al., *Are These Clothes Clean? The Campaign for Fair Wages and Working Conditions for Homeworkers*, in AND STILL WE RISE: FEMINIST POLITICAL MOBILIZATION IN CONTEMPORARY CANADA 299 (Linda Carty ed., 1993); Jane Tate, *Homework in West Yorkshire*, in DIGNITY AND DAILY BREAD: NEW FORMS OF ECONOMIC ORGANIZING AMONG POOR WOMEN IN THE THIRD WORLD AND THE FIRST 193 (Sheila Rowbotham & Swasti Mitter eds., 1994) [hereinafter DIGNITY AND DAILY BREAD]; Annie Delaney, *Homework in the Global Economy*, Address at Strategic Plenary: Globalization and the Economy, NGO Forum on Women, Beijing, China (Aug. 1995). Many organizations look to the Self-Employed Women's Association in India as a model. Cf. Renana Jhabvala, *Self-Employed Women's Association: Organising Women by Struggle and Development*, in DIGNITY AND DAILY BREAD, *supra*, at 114.

<sup>117</sup> In addition to international boycotts, boycotts of retailers/manufacturers in the United States have been used successfully to deal with domestic subcontracting and plant closings. For example, two workers advocacy groups, Fuerza Unida and Asian Immigrant Women Advocates, have been successful in galvanizing the media and turning public attention to problems associated with the subcontracting system and plant closings, and in developing the organizing and leadership skills of their members. AIWA waged a boycott of Jessica McClintock for three years, after a contractor who sewed for the retailer went bankrupt, leaving workers owed \$15,000 in back wages. See Sarah Henry, *Labor and Lace: Can an Upstart Women's Group Press a New Wrinkle into the Rag Trade Wars?*, L.A. TIMES, Aug. 1, 1993, Magazine, at 20–21. In March 1996, U.S. Secretary of Labor Robert Reich announced that Jessica McClintock and AIWA had signed an agreement. In return for the cessation of AIWA's campaign, the parties agreed to work together to establish a garment worker education fund and a fund for the workers who began the campaign, provide scholarships, provide toll-free numbers for complaints, and explore alternative methods for wage protections and the viability of independent monitoring in the industry. See *Secretary Reich Announces Signed Agreement between Jessica McClintock, Inc. and Asian Immigrant Women Advocates*, U.S. DEP'T OF LABOR NEWS RELEASE, Mar. 18, 1996.

November 1995 found that seventy-eight percent of U.S. consumers would avoid retailers if they knew they were dealing in sweatshop goods.<sup>118</sup>

Building on consumer concern, groups are raising consumer awareness of the exploitation that pervades the garment industry through the use of informational cards and newsletters. For example, Sweatshop Watch issues a periodic newsletter designed to educate consumers about violations in the United States and overseas.<sup>119</sup> The Clean Clothes Campaign also issues a newsletter with information about the struggles of the campaign in the Netherlands and efforts worldwide to eradicate sweatshops.<sup>120</sup> In addition, UNITE has issued a "Consumer's Guide to Decent Clothes," a wallet-sized card suggesting that consumers ask retailers various questions if they do not find a union label.<sup>121</sup> Consumer campaigns have also focused on particular manufacturers and retailers, as in the NLC campaign against the Gap.<sup>122</sup>

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Likewise, since 1990, Fuerza Unida has waged a campaign against Levi's after a factory in San Antonio moved to Costa Rica, putting 1115 U.S. workers—92.4% Latina—out of work. Jeannie Kever, *What Price Layoffs? Levi Strauss & Co. Closed Its San Antonio Plant Last January to Save Money, But the Decision Still Haunts the Workers, the City and the Company*, S.F. EXAMINER, Nov. 18, 1990, at D1. Fuerza Unida, with a membership of 480, established a presence outside the Levi's headquarters in San Francisco, seeking a company-financed feasibility study of the future of the garment industry in Texas, access to the company pension plan, and severance, vacation, and holiday pay. See Suzanne Espinosa Solís, *Rare Shadow on Company's Image: Ex-Workers Take on Levi Strauss*, S.F. CHRON., July 18, 1994, at A1.

<sup>118</sup> Charles Kernaghan, *supra* note 88, at 55.

<sup>119</sup> See generally SWEATSHOP WATCH (Sweatshop Watch, S.F., Cal.), Fall 1995, at 1.

<sup>120</sup> CLEAN CLOTHES NEWSLETTER (Clean Clothes Campaign, Amsterdam, Neth.), Nov. 1993 (on file with authors).

<sup>121</sup> See generally *Consumer Guide to Decent Clothes* (Union of Needletrades, Indus. and Textile Employees, New York, N.Y.), 1995 (on file with authors). Advocates are drawing consumer attention to violations through increasingly creative measures. For example, in Los Angeles, an organization called Common Threads has begun a campaign using art on billboards, buses, and sidewalks to inform primarily women consumers of the conditions under which their clothes are made.

The Canadian ILGWU campaign and the West Yorkshire campaign to organize homeworkers both used mail cards, which consumers could send to retailers expressing their concern about the garment industry, as well as informational cards with questions consumers could ask when they purchase clothes. See Jay Fudge, *Community Unionism: Coalition Fights to Clean Up the Garment Industry*, CANADIAN DIMENSION, Mar. 1994, at 27.

<sup>122</sup> Another example is the U.S./Guatemala Labor Education Project (US/GLEP), which, beginning in 1991, conducted a campaign in support of women who earned \$2–3 a day sewing shirts for Phillips-Van Heusen. When the women tried to unionize and asked for a reversal of pay cuts, better conditions, and an end to physical abuse, they received numerous death threats. The US/GLEP campaign was ultimately successful in increasing wages at the plant by more than 50%. The Guatemalan government also granted union recognition to the workers, the first *maquiladora* union recognized in six years. See A Campaign for Justice for Coffee Workers (U.S./Guat. Labor Educ. Project, Chicago, Ill.), Nov. 1994.

On a related note, advocates have explored the idea of positive buying campaigns, which encourage consumers to selectively purchase goods based on their knowledge of the conditions of production. It is extremely difficult, however, to find or create a "clean label," given the endemic violations that exist and the reluctance of garment retailers and manufacturers to admit any liability for workplace conditions.<sup>123</sup>

#### D. Organizing Activists

Cross-border solidarity organizations and networks exist to create alliances and facilitate links between communities across national borders. The organizations described below engage in transnational feminist and cross-racial or ethnic solidarity, explicitly drawing links among women. *Mujer a Mujer*, one such organization, began as a solidarity network for the Nineteenth of September Union, which was organized by garment workers in the aftermath of the 1985 Mexico City earthquake, which killed hundreds of women workers. While it started as a Mexico-based group, *Mujer a Mujer* subsequently spawned a Canadian counterpart, and then expanded to the United States and Central America.<sup>124</sup>

Another example is STITCH, the Support Team International for Textileras. STITCH seeks to unite the struggles and interests of women *maquila* workers in Guatemala with those of women workers, activists, union organizers, and feminists in the United States.<sup>125</sup> The goal of the organization is to support workers in Guatemala and the United States

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<sup>123</sup>The Clean Clothes Campaign of the Netherlands has been struggling to develop a clean label for retailers. Along these lines, a foundation called Rugmark has been established, which inspects hand-knotted rug companies in India for child labor and certifies their rugs with the "Rugmark" label if no child labor has been involved. See *Why Should You Support the RUGMARK?* (Nat'l Consumers League, Washington, D.C.), 1995 (on file with authors). Of course, this strategy should not be used to advance narrowly nationalistic approaches, because they are misdirected. For example, the ILGWU engaged in an ill-fated "Buy American" campaign in the mid-1970s, which was in effect a positive buying campaign based on protectionism. See "*Buy American*" *May Not Be the Solution* (NPR radio broadcast, Feb. 3, 1992); see also *Made in the U.S.A.*, U.S. NEWS & WORLD REP., Nov. 22, 1993, at 18 (documenting brand-name clothing made in United States with sweatshop labor). Buying "American-made" goods is fraught with complexities given that "American-made" is an ambiguous term. See *supra* note 38.

<sup>124</sup>*Mujer a Mujer* issues a publication, *Correspondencia*, which examines the impact of global restructuring on women's lives and struggles, conducts popular education in Mexico, and researches how to connect the strategies and organizing efforts of women in the garment industry. See generally CORRESPONDENCIA, May 1994 (on file with authors); CORRESPONDENCIA, May 1995 (on file with authors).

<sup>125</sup>STITCH was formed in response to the plight of women like the organizer in Guatemala's *maquiladora* industry who was abducted, drugged, raped, and beaten in Guatemala City. She had been representing 27 young women workers employed at garment factories that produce dresses for Leslie Fay and had made charges of sexual harassment against a factory owner. Urgent Action Alert (Support Team Int'l for Textileras, Nashville, Tenn.), June 26, 1995, at 1 (on file with authors).

while informing workers and activists how to contribute to advancing *maquila* workers' struggles and when to lobby on relevant U.S. legislation.<sup>126</sup>

A third example, the Maquila Solidarity Network, was formed in the wake of NAFTA to promote solidarity between Canadian labor and social movement groups and their Mexican and Central American counterparts that are organizing to raise standards and improve conditions in *maquiladora* zones. The network seeks to advance innovative organizing strategies that link community and workplace issues by addressing health and environmental problems and the specific problems of *maquiladoras*.<sup>127</sup>

A fourth example is the Committee for Asian Women, a regional women workers' organization that assists in raising consciousness among women workers in the formal and informal employment sectors of Asia about the commonalities of their situations and problems. The committee supports the further organizing efforts of organized women workers, and facilitates networking and linkages among women workers and related groups within Asia and outside for solidarity and support.<sup>128</sup>

#### *E. U.N. Fourth World Conference on Women: Beijing as a Site for Mobilizing Women Workers*

International women's conferences have also served as a site for the creation of transnational solidarity. The growth of the women's human rights movement as a global phenomenon is apparent in the ability of women to engage the U.N. and other multilateral organizations, thereby compelling these institutions to hold themselves accountable to the world's

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<sup>126</sup> STITCH intends to bring the stories of the Association of Women in the Textile Industry in Guatemala (AMITEG) to the United States through a newsletter and worker tours. The organization also plans to create a rapid response network because of the danger that sometimes accompanies worker organizing in Guatemala. See Mary Shull, *Us Against Them? Introducing STITCH (Support Team Int'l for Textileras, Nashville, Tenn.)*.

<sup>127</sup> Bob Jeffcott, *New Solidarity Network in Canada*, CORRESPONDENCIA, May 1995, at 15 (on file with authors).

<sup>128</sup> The philosophy of the Committee for Asian Women is explained by its chair, Elizabeth Tang Yin-ngor:

[A] new approach to organising women workers means organising on an entirely new basis . . . . Crucial to this is the need for a strong women workers movement in Asia. Solidarity among women workers in this region is the starting point for building international solidarity . . . . When transnational companies and employers take a global approach, we have to deal with them at the international level . . . . Solidarity of workers regardless of their national boundaries and status needs to be thoroughly understood and implemented in our actions.

Elizabeth Tang Yin-ngor, *Preface to COMMITTEE FOR ASIAN WOMEN, SILK AND STEEL: ASIAN WOMEN WORKERS CONFRONT CHALLENGES OF INDUSTRIAL RESTRUCTURING 13* (1995).

working women. Few practical gains in economic justice, however, have been achieved as a result of such conferences, in part because economic and social rights have not received the same degree of attention as civil and political rights in those fora. When reformulated as civil or political rights, economic justice concerns, such as worker rights, have been conceived as the "right" to government enforcement of national labor laws (as is required, for instance, under the NAFTA labor side agreement). Such an approach is imperfect because it requires the complainant to prove not only the original violation of labor rights, but also to prove—by demonstrating, for instance, exhaustion of administrative remedies—that the government failed adequately to respond.

Although the Platform for Action adopted at the 1995 U.N. Fourth World Conference on Women in Beijing, China provided major breakthroughs in terms of the articulation of standards of economic justice, it is still painfully inadequate.<sup>129</sup> The Platform for Action is not a treaty nor does it have the status of any other legally binding instrument. Moreover, the U.N. has not designated a lead agency with adequate resources to implement the Beijing Platform.

Despite these shortcomings, many women's human rights advocates view the document as a *politically* binding contract between governments and the world's women.<sup>130</sup> It represents an interpretative text that informs human rights norms in legally binding instruments. Finally, the Platform and other outcomes of Beijing present an enormous potential for grass-roots organizing.

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<sup>129</sup>The Platform includes recognition of the value of women's unwaged and undervalued work, as well as acknowledgment of globalization and its impact on women's employment. Further, under a section on Freedom of Association and the Right to Organize, the document encourages women's self-help groups, cooperatives, and workers' organizations. The Platform also states that governments should provide social security to homeworkers, extend additional labor protections to part-time workers and homeworkers, and implement and enforce laws and encourage codes of conduct to facilitate both the equal pay principle embodied in ILO Convention 100 and the equal application of workers rights to women and men. The document also endorses parental leave for both mothers and fathers to promote equal sharing of family responsibilities, as well as the review and reformulation of wage structures in female-dominated professions. The majority of governments, however, refused to agree to any form of protection for workers in free trade zones, most of whom are women workers. Moreover, sections of the document addressing poverty, women's economic empowerment, and women as economic decision makers do not provide long-term solutions to poverty and economic inequality. In short, while claiming to support women's economic employment, signatory governments refused to address the structural causes of women's poverty and marginalization. See *Focus: Working Women*, ASIAN LAB. UPDATE (Asia Monitoring Resource Ctr., Kowloon, H.K.), Aug.-Oct. 1995, at 1, 3 (on file with authors).

<sup>130</sup>See, e.g., Bella Abzug, Statement on "Contract with Women of the USA" Campaign, Women's Environment and Development Organization (Mar. 6, 1996) (on file with authors); Susan Davis, Remarks at the Beyond Beijing Conference: Global Issues and Local Actions Forum (Jan. 30, 1996) (on file with authors).

Coinciding with the U.N. conference was the 1995 Non-Governmental Organization (NGO) Forum—the largest gathering of women in history—held in Huairou, China. The authors, along with other garment worker advocates from the United States,<sup>131</sup> organized the only workshop specifically addressing the garment industry among the 5000 events and activities organized at the NGO Forum. At the workshop, entitled “The Struggle of Garment Workers on the Global Assemblyline,” garment workers and worker advocates from countries including the Philippines, Thailand, Bangladesh, and the United States spoke of conditions they found in their regions and different strategies they had pursued.<sup>132</sup> After the workshop, several informal discussions took place in which advocates learned more about country conditions and discussed ways to collaborate transnationally in assisting workers to assert their rights. A joint statement, titled “The Global Assemblyline,” was prepared and distributed to NGO Forum participants to build their awareness as consumers and to increase worker solidarity.

### Conclusion

We, as consumers, too often fail to engage in conscious reflection about the hands that sewed our clothes. We thus live with and normalize everyday violations of workplace rights of garment workers. This is facilitated by society’s historical and persistent dehumanization of and lack of concern for poor women of color workers.

If we, as advocates, neglect to develop and implement new strategies that reveal and contest the adverse consequences of economic globalization, more sweatshops will undoubtedly proliferate along the global assembly line. Unless we radically redefine the terms of the debate, violations will continue. The widespread abuse of garment workers across the globe will not automatically be eliminated by removing unnecessary fetters on free trade or immigration; for instance, violations of workplace rights would not end by opening national borders. It is not simply the relative immobility of workers and unions in contrast to the increasing mobility of capital that puts workers at a severe disadvantage,<sup>133</sup> nor is

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<sup>131</sup>The other organizers were Lora Jo Foo, Asian Law Caucus; Carmen Dominguez, La Mujer Obrera; Karen Sachs, Common Threads; and Young Shin, Asian Immigrant Women Advocates.

<sup>132</sup>Among many others, advocates included: Nenita Miranda, Kilusan ng Manggaga Wang Kababai Han (Manila, Philippines); Wilaiwan Sae Thea, Tex Thai Union (Bangkok, Thailand); Shirin Akhter, Karmojibi Nari (Dhaka, Bangladesh); Carmen Dominguez, La Mujer Obrera (El Paso, Tex.); and Lora Jo Foo, Asian Law Caucus (San Francisco, Cal.).

<sup>133</sup>See Ansley, *supra* note 31, at 1775–76; see also Brian Adler & Beth Jarrett, Comment, *Capital vs. Labor: Who Wins and Who Loses Under the Immigration Act of 1990?*, 23 U. MIAMI INTER-AM. L. REV. 789, 820–21 (1992) (positing “an overall trend in the U.S., wherein the free movement of goods, technology, and capital is valued over



the ultimate source of the problem insufficient state-sponsored protectionism in the United States, contrary to xenophobic claims that have permeated political discourse of late.

The endemic and systematic violations of workplace rights of garment workers in the United States and overseas result primarily from the overriding lawlessness of transnational corporations, whose pursuit of profit runs roughshod over the human rights of those whose labor allows them to thrive. Garment worker advocates must attempt transnational strategies to fight such corporations through both formal legal mechanisms and strategies that use the pressure of consumers, workers, and the community. Political lawyers must envision creative strategies that move beyond traditional legal frameworks that dichotomize civil and political from economic and social rights, and U.S. domestic law from international law.<sup>134</sup>

Garment worker advocacy must recognize the outdated nature of separately constructing a "global" and a "local" and look to the way specific strategies will impact transnational flows of capital and culture across borders. This praxis may, admittedly, appear a difficult task, but neither working within the confines of national borders or focusing only on the global "North" will result in the ultimate restraint of transnational corporations.

We must embrace an international perspective that recognizes and values the humanity and the human rights of workers in the United States and overseas. Our hope is that this Article spurs creative thinking on multiple levels in the search for new ways to build transnational solidarity among workers, among women, and among communities. Only by realizing our common interests and uniting in the struggle against abusive practices of garment industry manufacturers and retailers will we achieve lasting change.

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the free movement of people" and arguing that "protectionist policies ensure a captive, stagnant labor pool for capitalists").

<sup>134</sup>MALLIKA DUTT, *WITH LIBERTY AND JUSTICE FOR ALL: WOMEN'S HUMAN RIGHTS IN THE UNITED STATES* 5-15 (Center for Women's Global Leadership 1994).