

Human Rights and Industrial Relations

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The term “human rights” is relatively new. Its embodiment in international law occurred in response to the atrocities perpetuated during World War II. The preamble to the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on 10 December 1948, recognises “the inherent dignity and ... equal and inalienable rights of all members of the human family”.² It also states:

the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.

Prior to World War II discussions concerning human rights were usually conducted under the rubric of (the) natural rights (of man) and were associated, if not equated, with classic notions of liberalism. Under natural rights/liberalism individuals are accorded freedom and protection from interference by (various organs of) the state. Individuals are free to pursue their interests/natural rights on the proviso of not infringing the natural rights of others. To the extent that individuals depart from this precept the state is enabled to stop such acts and/or apply “appropriate” sanctions to discipline wrongdoers.

Early, or foundation, writings in what might loosely be described as the discipline of industrial relations were also concerned with human rights issues, though they did not use that term. Such writings implied a different notion of human rights to that contained within natural rights/liberalism. In fact it would be more correct to say that they developed a fundamental critique of the natural rights/liberalism tradition.

Sidney and Beatrice Webb’s classic work *Industrial Democracy*³ provides the best illustration of this. In *Industrial Democracy* the Webbs were critical of individual bargaining (where an individual represents him or herself in negotiations with a

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2 Copies of the various human rights instruments referred to are contained in Mendelivich E *Children at Work*, (Geneva, 1997) International Labour Office Brownlie I, (ed) *Basic Documents on Human Rights* (second ed) (Clarendon, Oxford, 1981), Lawson E (ed) *Encyclopedia of Human Rights* (Taylor, New York, 1991) and Reoch R *Human Rights: The New Consensus* (Regency Press, London, 1994).

3 Webb S and Webb B *Industrial Democracy* (Longmans Green, London, 1911) (first ed, 1897).

representative of a collective known as the firm), what they referred to as “the higgling of the market”, had the potential for both individual and societal degeneration. Under neo-classical economics individuals are free to contract with each other on terms and conditions to their mutual advantage. Individuals, so it is claimed, would not enter into agreements/contracts if it wasn't in their best interests to do so. How can individuals be forced to agree to something they find disagreeable?

The Webbs answered this question by saying that individuals have no choice. The need to survive will force workers to agree to low or subsistence wage levels, long hours and substandard working conditions with limited regard for sanitation and workplace safety. They noted with respect to women, for example, that “with very few exceptions, the fixing of wages according to strategic position means, in practice, the barest possible subsistence” (*Ibid*, 582). They also maintained that employers were more skilled as bargainers than individual workers (*Ibid*, 658).

The Webbs were critical of what they described as “parasitic trades” — trades which substantially underpaid workers who worked “practically for pocket-money”. They believed such trades essentially received a subsidy or bounty from the rest of the community “to bribe the public to consume the article”. They maintained:

If the employers in a particular trade are able to take such advantage of the necessities of their workpeople as to hire them for wages actually insufficient to provide enough food, clothing, and shelter to maintain them in average health; if they are able to work them for hours so long as to deprive them of adequate rest and recreation; or if they can subject them to conditions so dangerous or insanitary as positively to shorten their lives, that trade is clearly obtaining a supply of labor-force which it does not pay for. (*Ibid*, 751)

The Webbs feared that “parasitic trades” would act like a cancer eating away at the fabric of society. They said:

One degraded or ill conducted worker will demoralise a family; one disorderly family inexplicably lowers the conduct of a whole street; the low-caste life of a single street spreads its evil influence over the entire quarter; and the slum quarter, connected with the others by a thousand unnoticed threads of human intercourse, subtly deteriorates the standard of health, morality and public spirit of the whole city ... The degenerate forms may ... flourish in their degradation, and depart further and further from the higher type. Evolution, in a word, if unchecked by man's selective power, may result in Degeneration as well as in what we choose to call Progress. (*Ibid*, 766 and 752-3)

To the Webbs the solution to the problems of individual bargaining, “the higgling of the market”, “parasitic trades” and degradation was the establishment of minimum

terms and conditions of employment, or what they referred to as the “Common Rule”. Common rules could be established by collective bargaining between unions and employers and/or legislative fiat. The Webbs saw a positive role for both trade unions and the state (or more correctly government legislation) to overcome equity and efficiency problems associated with individual bargaining. Various instruments established by the international community — such as the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights (ICESR); the International Covenant on Civil and Political Rights (ICCPR) and Conventions of the International Labour Organisation (ILO) — are an extension of the Webbs’ notion of the Common Rule to human rights. In 1948 the General Assembly of the United Nations proclaimed the “Universal Declaration of Human Rights as a *common standard* of achievement for all persons and all nations” (emphasis added).

The practice of industrial relations has been characterised by a clash between the precepts of individualism and collectivism. The collective known as the firm, and their ideological bedmates, have preached the virtues of individualism in trying to dissuade workers from joining trade unions. Common law judges have employed natural rights/liberalism and the need to defend property to make it difficult for trade unions to operate and/or employ industrial action in pursuit of the rights and interests of members. Strikes and similar actions have been regarded as torts subject to the awarding of substantial damages. In the late nineteenth and early twentieth centuries governments, in western style countries, introduced legislation to protect trade unions from the common law and/or afford them more “positive” rights. More recently, especially in the United Kingdom⁴, they have wound back certain of these protections, narrowing the scope of positive rights afforded to trade unions.

The clash between the individual and the collective, which lies at the heart of industrial relations, has a resonance with debates concerning human rights. Natural rights/liberalism notions of human rights have been increasingly criticised by “power”, “social democratic” and feminist writers.⁵ For example Fields and Narr,

4 Wedderburn L “Freedom of Association and Philosophies of Labour Law” (1989) 18(1) *The Industrial Law Journal*, 1-38.

5 For overviews of debates concerning human rights see Davidson S *Human Rights* (Open University Press, Buckingham, 1993), O’Neill N and Handley R C *Retreat From Injustice: Human Rights in Australian Law* (Federation Press, Annandale, 1994), Donnelly J *Universal Human Rights in Theory and Practice* (Cornell University Press Fields, Ithaca, 1989) and Fields A B and Narr W D “Human Rights as a Holistic Concept” (1992) 14(1) *Human Rights Quarterly*, 1-20, Stammers N “Human Rights and Power” (1993) XLI(1) *Political Studies*, 70-82, Stammers N “A Critique of Social Approaches to Human Rights” (1995) 17(3) *Human Rights Quarterly*,

use an industrial relations analogue, argue:

Owners of property and capital have treated workers as though they are mere objects of utility while pretending that the parties are equally free to contract and to enjoy life, liberty and happiness. But while all parties were seen to be free, all were given or deprived of rights according to their socially and historically constructed conditions. The social practice of human rights never assumed a universalistic position. Socially constructed differences such as wealth, gender, race and culture always meant different positions vis-a-vis right.⁶

Stammers maintains that:

the philosophical claims of rights-based liberalism involves an attempt to retain a fictional dichotomy between the public and private realm and try to ground theories in timelessness and abstract universals. This must be judged alongside the social and historical practices of liberal societies. The result has been a concept of human rights which, while continuing to recognise the threat of state power, has fulfilled an ideological role of buttressing prevailing relations of economic power. The relevance of natural rights as challenges to existing power relations has, crucially, been lost.⁷

Finally, Romany in discussing particular problems experienced by women, argues:

the state is in complicity with private actors who infringe upon the human rights of women. The state's complicity is established by demonstrating how the systematic failure to prevent and punish "private" acts of violence creates a parallel state with its own system of justice.⁸

488-508, Romany C "Women as Aliens: A Feminist Critique of the Public/Private Distinction in International Human Rights law" (1993) 6(1) *Harvard Human Rights Journal*, 87-102, Kim N "Towards a Feminist Theory of Human Rights: Straddling the Fence Between Western Imperialism and Uncritical Absolutism" (1993) 25(1) *Columbia Human Rights Law Review*, 49-105, Binion G "Human Rights: A Feminist Perspective" (1995) 17(3) *Human Rights Quarterly*, 509-526, Galenkamp M "Collective Rights" (1995) 16 *Netherlands Institute of Human Rights*, 53-102, Turner, B S "Outline of a Theory of Human Rights" (1993) 27(3) *Sociology*, 489-512 and Pritchard S "The Jurisprudence of Human Rights: Some Critical Thought and Developments in Practice" (1995) 2(1) *Australian Journal of Human Rights*, 3-38.

6 Fields and Narr *op cit*, at 4.

7 Stammers N *op cit*, at 75.

8 Romany C *op cit*, at 88.

Despite the pioneering work of the Webbs, and the existence of the ILO since 1919 (see below), industrial relations scholars, with a few notable exceptions,⁹ have not concerned themselves with human rights issues. Industrial relations scholars have traditionally conceived their discipline in narrow or limited terms, focusing on the workplace or employment relationship.¹⁰ It will be argued that many of the issues included in various human rights instruments should be of concern to industrial relations scholars — if industrial relations is defined broadly as being equated with the world of work.

This paper will explore various issues associated with industrial relations (or work) dimensions of human rights. Information will be presented concerning slavery and forced labour, prostitution, child labour, discrimination against women, independent trade unions and being killed at work. The principles enshrined in various human rights instruments are contrasted with that which happens in the real world, as of the early to mid-1990s.

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- 9 Such persons usually being legal scholars concerned with studying rights. The leading Australian scholar is Creighton (Creighton W B "Freedom of Association" in Blanpain R (ed) *Comparative Labour Law and Industrial Relations in Industrialised Market Economies* (fourth ed) (Kluwer, Deventer, 1990): 19-44, Creighton W B "Freedom of Association" in Blanpain R and Engels C (eds) *Comparative Labour Law and Industrial Relations in Industrialised Market Economies* (fifth ed) (Kluwer, Deventer, 1993) 95-127, Creighton W B "The ILO and Protection of Freedom of Association in the United Kingdom" in Ewing K D Gearty C A and Hepple B A (eds) *Human Rights and Labour Law: Essays for Paul O'Higgins* (Mansell, London, 1994) 1-28, Creighton W B "ILO Human Rights Standards in Australia" in Alston P (ed) *Promoting Human Rights Through Bills of Rights: Comparative Approaches*, (Oxford University Press, London, 1995), Creighton W B "ILO Convention No. 138 and Australian Law and Practice Relating to Child Labour" (1996) 2/2 *Australian Journal of Human Rights*, 293-312.
- 10 For example Duffy N F and Fells R E *Dynamics of Industrial Relations in Australia* (Prentice Hall, Sydney, 1989), xii claim "the key 'industrial relations' is that between the individual employer and the individual worker", and "that the focus of industrial relations should be at the point of production—the workplace". Hyman R "Theory in Industrial Relations: Towards a Materialist Analysis" in Boreham P and Dow G (eds) *Work and Inequality (Volume 2): Ideology and Control in the Capitalist Labour Process*, (Macmillan, South Melbourne, 1980) 38-59 at 38, has said industrial relations "forms an area of study with no coherent theoretical or disciplinary rationale, but deriving from a directly practical concern with a range of 'problems' confronting employers, governments and their academic advisers in the pursuit of labour stability". For a discussion of industrial relations the discipline see Dabscheck B *The Struggle for Australian Industrial Relation*, (Oxford University Press, Melbourne, 1995) 1-17.

Slavery and forced labour

The principle of freedom of choice in employment lies at the heart of the common law doctrine of restraint of trade and is regarded as a basic human right. Both “natural rights” and “power” advocates condemn practices such as slavery and forced labour as being antithetical to the attainment of human rights. Various instruments drawn up by the international community have sought to eradicate slavery and forced labour.

Article 4 of the Universal Declaration of Human Rights says “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms”. Article 23 states that “Everyone has the right to work, to free choice of employment ...”. The ICCPR also condemns slavery and forced labour; though, with respect to the latter with one important qualification. Article 8 of the Covenant states:

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
- 3a. No one shall be required to perform forced or compulsory labour.

The qualification is contained in paragraph 3b which states:

Paragraph 3a shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.

The ICESCR champions freedom of choice in employment. Article 6 affirms that:

The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts and will take appropriate steps to safeguard this right.

In 1926 the League of Nations adopted a Slavery Convention, which the United Nations amended by a Protocol in 1953. The United Nations in 1956 adopted a Supplementary Convention on the Abolition of Slavery, The Slave Trade, And Institutions and Practices Similar to Slavery. The 1926 Convention defined slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. The 1956 Supplementary convention

distinguished four “institutions and practices” which were equated with slavery. They were debt bondage, serfdom, trading in women, and trading in children.¹¹

The ILO has adopted two conventions concerning forced labour. The first is the Forced Labour Convention, 1930 (No. 29) and the second is the Abolition of Forced Labour Convention, 1957 (No. 105). Convention No. 105 states:

Each member ... which ratifies this convention undertakes to suppress and not to make use of any form of forced or compulsory labour:

- a. As a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
- b. As a method of mobilizing and using labour for purposes of economic development;
- c. As a means of labour discipline;
- d. As a punishment for having participated in strikes;
- e. As a means of racial, social, national or religious discrimination.

Each member ... which ratifies this Convention undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour as specified [above].

In 1992 Charles Humana¹² published the third edition of *World Human Rights Guide*, where he sought to measure the performance of 104 countries with populations of over one million, with respect to various aspects of human rights. Humana and his research team gathered information concerning 40 “questions” or dimensions of human rights derived from various articles contained in the Universal Declaration of Human Rights and the ICCPR and ICESCR. The survey is roughly based on judgements made concerning the respective countries for the years 1990 and 1991. The performance of the 104 countries for each of the 40 issues is assessed on a four

11 For the definition of these terms see Brownlie *op cit* 45. For discussions of debt bondage and serfdom see Sawyer R *Slavery in the Twentieth Century* (Routledge and Kegan Paul, London, 1986) 122-143.

12 Humana C *World Human Rights Guide* (Third edition), (Oxford University Press, New York, 1992).

point scale — from “rights respected” to “occasional breaches”, “frequent violation” and “constant pattern of violations”.

While *Humana's Guide* has been criticised by Barsh¹³ and Gupta, Jongman and Schmid¹⁴, it does provide a measure of the extent to which different nations have respected various aspects of human rights. In saying this it should be realised that various nations have not necessarily ratified various human rights instruments,¹⁵ and/or may claim that practices within their country are consistent with the “exceptions” contained in their “language”. Tables 1 and 2 provide information on the extent to which various nations have respected peoples’ rights concerning compulsory work/ conscription of labour and freedom from slavery, forced or child labour respectively.

Table 1

Distribution of Various Countries Concerning
Freedom from Compulsory Work Permits or Conscription of Labour

Rights Respected	Occasional Breaches	Frequent Violations	Constant Pattern of Violations
73	11	12	8

Source: Humana C, *World Human Rights Guide* (third ed), (Oxford University Press, New York, 1992).

Table 2

Distribution of Various Countries Concerning Freedom from Serfdom, Slavery, Forced or Child Labour

Rights Respected	Occasional Breaches	Frequent Violations	Constant Pattern of Violations
30 (30)	49 (48)	20 (15)	5 (2)

Source: Humana op cit, Figures in brackets for child labour only.

- 13 Barsh R L “Measuring Human Rights: Problems of Methodology and Purpose” (1993) 15(1) *Human Rights Quarterly*, 87-121.
- 14 Gupta D K Jongman A J and Schmid A P “Creating a Composite Index for Assessing Country Performance in the Field of Human Rights: Proposal for a New Methodology” (1994) 16(1) *Human Rights Quarterly*, 131-162.
- 15 Cf Humana’s 104 countries two are not members of the United Nations — Hong Kong and Switzerland — 67 had ratified the ICCPR, 71 the ICESR and 76 the Convention for Eliminating Discrimination Against Women.

Table 1 reveals that 73 countries respected rights concerning freedom from compulsory work/conscription of labour, eleven had occasional breaches, twelve frequent violations and eight a constant pattern of violations. Twenty countries either frequently or constantly violate these aspects of the freedom to work.

Unfortunately Table 2 mixes serfdom, slavery and forced labour with child labour. The figures in brackets refer to child labour only. A reading of the "comments" provided by Humana on each country's performance makes it possible to gauge the extent to which various countries respect freedom from serfdom, slavery and forced labour. Of the countries in which there were occasional breaches there was one example each of migrants working in conditions approaching serfdom, migrants on subsistence wages, women near serfdom, domestic servants with few legal rights, allegations of forced labour by prisoners and exchanging young girls. With respect to frequent violations there were six examples of forced labour, three of bonded labour, two each of work camps for young delinquents and drafting local labour, one each of labor camps, limited forced settlement, survivors of early slavery, refugees accepting slave conditions, trafficking in women and selling young girls. With respect to the constant violators there were two examples each of bonded labour and forced labour and one each of persons being forced to walk through minefields, serfdom/slavery, selling children and concubinage.

Prostitution¹⁶

The international community has developed a number of instruments in attempting to suppress or eliminate prostitution. In 1904 an International Agreement was entered into for the Suppression of the White Slave Trade. This was followed by an International Convention in 1910 for the Suppression of the White Slave Trade, in 1921 an International Convention for the Suppression of the Traffic in Women and Children, and in 1933 for the Suppression of the Traffic in Women of Full Age. In 1937 the League of Nations prepared a draft convention on prostitution, whose ratification was forestalled by World War II. Following an end to hostilities the United Nations, in consolidating the previous instrument, adopted the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others in 1949.

The 1949 convention states "prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth

16 Most of the material contained in this section is based on Reanda L "Prostitution as a Human Rights Question: Problems and Prospects of United Nations Action" (1991) 13(2) *Human Rights Quarterly*, 265-303, and Lawson (ed) *op cit* at 1443-1450.

of the human person and endanger the welfare of the individual, the family and the community". The Convention, in particular, seeks to punish persons, such as pimps and brothel owners, who entice or exploit "the prostitution of another person, even with the consent of that person". The 1993 Vienna Declaration stressed the importance of working towards "the elimination of all forms of sexual harassment, exploitation and trafficking in women". In abhorring violence against women the Declaration said "All violations ... including sexual slavery ... require a particularly effective response". The Vienna Declaration pointed to problems experienced by children. It states:

Exploitation and abuse of children should be actively combated, including by addressing their root causes. Effective measures are required against female infanticide, harmful child labour, sale of children and organs, child prostitution, child pornography and other forms of sexual abuse.

In discussions concerning prostitution a distinction is made between prostitution as a matter of personal choice and that which is enforced and trafficking in persons which is akin to slavery. Some maintain that in the former case prostitution involves the expression of an individual's right to sexual self-determination and equality. Reanda,¹⁷ quotes a submission from the Netherlands government to the United Nations which said "It follows from the right of self-determination ... that he or she is at liberty to act as a prostitute and allow another person to profit from his or her earnings".¹⁸

In 1982 a Special Rapporteur was appointed to the United Nation's Economic and Social Council to enquire into prostitution. He concluded that "the alienation of the person is here more far-reaching than in slavery in its usual sense, where what is alienated is working strength, not intimacy". He also quoted three collectives of women prostitutes who, at a congress held in Nice in 1981, said:

As prostitutes, we are well aware that all prostitution is forced prostitution. Whether we are forced to become prostitutes by lack of money or by housing or unemployment problems, or to escape from a family situation of rape or violence (which is often the case

17 Reanda *op cit*, at 203.

18 See Pateman C *The Sexual Contract* (Polity Press, Cambridge, 1988) 189-218, for a critique of prostitution from a contractarian point of view. Fraser N "Beyond the Master/Subject Model: Reflections on Carole Pateman's *Sexual Contract*" (1993) 37 *Social Text*, 173-181, provides a general evaluation of Pateman's work.

with very young prostitutes), or by a procurer, we would not lead the "life" if we were in a position to leave it.¹⁹

Young girls are often tricked into prostitution by the offer of jobs or training opportunities. Money is "loaned" to pay for travel, accommodation, clothes and food. Once they arrive in the promised land girls are forced into prostitution to pay off such loans in a form of debt bondage/slavery in a climate of intimidation, threats and use of violence.²⁰ In addition, families sell their children into a life of prostitution. *The Far Eastern Economic Review* (13 January 1994) quotes examples of a fourteen year old girl sold by her mother to a pimp, and an eight year old by her grandmother to an agent. Prostitution is also associated with pornography, including child pornography.²¹ Nomad, or "street kids" are also subject to sexual exploitation as they confront the daily grind of survival. Young women from "developing" nations, or nations in crisis will make themselves available for marriage to males from "developed" nations, as will young African males to older European women.

Given the labour associated with and the clandestine nature of prostitution it is difficult to estimate its extent. Reanda has said:

information, although anecdotal, points nevertheless to a problem of staggering dimensions. It is estimated, for example, that in the United States child prostitution earns up to two billion dollars a year. In Brazil, female prostitutes are said to number five million, many of them children. Sex tourism, or the organization of tours from industrialized countries for the specific purpose of buying the sexual services of women and children in the third world, is reported to have become a multimillion dollar industry which figures prominently in the economies of countries like Thailand, South Korea and the Philippines. Estimates of the total number of prostitutes in these countries runs into the hundreds of thousands. It is widely believed that, because of the global economic crisis, prostitution follows only domestic work as women's major employment in many areas of the third world.²²

Ennew quotes Thai sources who estimated there are over a million prostitutes in Thailand. She adds "The overwhelming majority of these are young women ... about

19 Lawson (ed) *op cit*, at 1444 and 1445.

20 For examples relating to Asian girls/women see *Far Eastern Economic Review*, 9 September 1993 and 14 October 1993.

21 For an examination of many of these issues see Ennew J *The Sexual Exploitation of Children* (Polity Press, Cambridge, 1986).

22 Reanda *op cit*, at 205-206.

10 per cent are 13-14 years of age, although some are even younger.”²³ She also repeats a 1980 quote from the then Deputy Prime Minister of Thailand who said:

I ask all governors to consider the natural scenery in your provinces, together with some forms of entertainment that some of you might consider disgusting and shameful because they are forms of sexual entertainment that attract tourists ... We do this because we have to consider the jobs that will be created for the people.²⁴

Reanda in her examination of the human rights dimensions of prostitution reached a pessimistic conclusion concerning governmental and inter-governmental action to tackle the problem. According to her slow progress is :

not merely the result of inadequate international standards or of the difficulty of developing coordinated, concrete and focused action by a complex bureaucracy on a complex issue. Rather, the problem lies in the stark fact that, in most societies and for most national administrations, prostitution and the accompanying sexual abuse of women is by and large considered an accepted fact of life — perhaps to be regulated and restricted, but not a grave enough problem to be treated as a priority issue requiring large-scale effort and expenditure. While action may be forthcoming in particularly offensive situations, such as when children are involved, the reluctance to deal with the large picture diminishes the effectiveness of such action.²⁵

Child labour

Various human rights instruments have advocated the need to provide a safe, secure and nurturing environment for children. They have sought to protect children from social and economic exploitation; including, if not especially, bans on their employment below an appropriate age. The Universal Declaration of Human Rights says “Motherhood and childhood are entitled to special care and assistance”. Article 10 of the ICESCR states:

Children and young persons shall be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits which the paid employment of child labour should be prohibited and punishable by law.²⁶

23 Ennew *op cit*, at 91.

24 *Ibid*, at 99.

25 Reanda, *op cit*, at 227-228.

26 Also see Article 24 of the ICCPR, Declaration of the Rights of the Child, 1959 and the 1993 Vienna Declaration.

In 1973 the ILO adopted the Minimum Age Convention (No. 138). While the Convention aims "to ensure the effective abolition of child labour" below age fifteen, it nonetheless sanctions employment, in certain circumstances, below that age. Exceptions include nations "whose economy and educational facilities are insufficiently developed" being able to specify a 14 year minimum age; employment at 14 as part of "general, vocational or technical education"; "light work" for persons aged 13 to 15 as long as it is not "harmful to health or development" and will not "prejudice their attendance at school"; "participation in artistic performances"; and "limited categories of employment or work in respect of which special and substantial problems of application arise". In addition, a country "whose economy and administrative facilities are insufficiently developed" may limit the scope of the Convention. However:

the Convention shall be applicable as a minimum to the following: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.

Finally, the Convention states that the minimum age for work which is "likely to jeopardise the health, safety or morals of young persons should not be less than 18 years". The effective age concerning this provision, however, can be lowered to 16 years "on condition that the health, safety and morals of the young persons concerned are fully protected and ... have received adequate specific instruction or vocational training in the relevant branch or activity".

Notwithstanding the existence of Convention No. 138 and other human rights instruments the employment, or working, of children is widespread. Table 2 above showed that more than 60 per cent of the countries surveyed by Charles Humana in the early 1990s breached the rights of children to be free from work — 48 recorded occasional breaches, fifteen frequent violations and two a constant pattern of violations.

In 1996 the ILO estimated that there were some 250 million children working in developing countries²⁷. In the mid-1980s it was estimated that there were 17.36 million child workers in India, comprising 5.9 per cent of the total labour force.²⁸ A

27 The Textile, Clothing and Footwear Union of Australia has found examples of children working as outworkers.

28 Fyfe *A Child Labour*, (Polity Press, Cambridge, 1989) 11.

survey prepared for the Australian Agency for International Development quoted unofficial, non-government, estimates which claimed that, for 1993, there were between 50 and 100 million child labourers in India.²⁹ A 1996 ILO document concluded that the vast majority of child workers are unpaid family workers employed in small workplaces in the urban informal and rural traditional sectors.³⁰ A press release of the ILO in November 1995 claims “tens of millions of children are virtual slaves, working as unpaid domestic servants or as bonded labour”. It is claimed that in Pakistan alone there are 12 million children working in debt bondage in textile and brick factories, tanneries and steelworks. The plight of Pakistani child labour was brought to world attention in 1995 by the murder of thirteen year old anti-child labour activist Iqbal Masih, who spent half his life as a bonded labourer in Pakistan’s carpet industry.³¹

Nomadic street children work in a variety of tasks in eking out an existence. Children work as scavengers in rubbish dumps, as soldiers and, as already mentioned, are sold into or attracted into prostitution and pornography. Children, particularly but not especially those who are bonded labourers, work long hours and are, in many cases, subject to hazardous and unsafe working conditions which may result in their death or retard their health and physical growth. Work also precludes the ability of children to attend schools and acquire skills; though in a problem of the chicken and the egg, the lack, or poor provision, of educational facilities,³² coupled with poverty and the need to supplement family income, forces children into work.³³

29 Falkus M Blackburn S Brasted H Kaur A and Wright D “Child Labour in Asia: Some Perspectives on Selected Countries” (1997) 49 *Australian Agency for International Development, International Development Issues Canberra*, 3.

30 Quoted in Lansky M “Child Labour: How the Challenge is Being Met”, (1997) 136(2) *International Labour Review*, at 233-257, 243.

31 *Australian*, 4 November 1995.

32 Article 26 of the Universal Declaration of Human Rights says “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.”

33 For further discussion of these issues see Fyfe *op cit*, Myers W E “Urban Working children: A Comparison of Four Surveys” (1989) 128(3) *International Labour Review*, 321-335, Burra N “Out of Sight, Out of Mind: Working Girls in India” (1989) 128(5) *International Labour Review*, 651-660, Gunn S E and Otis Z “Dilemmas in Tackling Child Labour: The Case of Scavenger Children in the Philippines” (1992) 131(6) *International Labour Review*, 629-646, Bonnet M “Child Labour in Africa”(1993) 132(3) *International Labour Review*, 371-389, Grootaert C V and

Discrimination against women

In the quest to promote equality, freedom and dignity for *all* persons various human rights instruments have made declarations concerning the need to eliminate discrimination against women. The preamble to the Universal Declaration of Human Rights refers to “the equal rights of men and women”. Article 2 states:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 7 of the Universal Declaration also says “All are equal before the law and are entitled to equal protection of the law”. Article 23 asserts that “Everyone, without any discrimination, has the right to equal pay for equal work.” These sentiments are repeated in both the ICCPR and the ICESCR.³⁴

In 1951 the ILO adopted Equal Remuneration Convention (No. 100), and in 1958 the Discrimination (Employment and Occupation) Convention (No. 111). The former seeks to “ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value” The latter aims “to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination thereof”. The Convention defines discrimination to include:

- 1a. Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
- b. Such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation ...

Kanbur R “Child Labour: An Economic Perspective” (1995) 135(2) *International Labour Review*, 187-203, Bequelle A and Myers W E *First Things First in Child Labour: Eliminating Work Detrimental to Children*, (International Labour Organization, Geneva, 1995) and Bessell S “The Smallest Workers in an Integrating World: Child Labour in the Global Environment”, (1996) Paper presented at Labour, Rights and Globalisation Conference, Deakin University, 6-8 December, Faulkus et al *op cit*, Hilowitz J “Social Labelling to Combat Child Labour: Some Considerations”, (1997) 136(2) *International Labour Review*, 215-232 and Lansky *op cit*.

34 For the text of these see Reoch *op cit* 266 and 284 respectively.

2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

The General Assembly of the United Nations adopted a Declaration on the Elimination of Discrimination Against Women in 1967. This was subsequently followed in 1979 by a Convention on the Elimination of All Forms of Discrimination Against Women.³⁵ The 1979 Convention states:

discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity.

The Convention points to the need to undertake “all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.” On the specific issue of employment the Convention identifies the need to eliminate discrimination concerning selection criteria, choice of profession, promotion, job security and all benefits, apprenticeships, vocational training and retraining, equal pay for work of equal value, rights to employment-related social security benefits and safe and healthy working conditions. In addition, marital status including pregnancy and maternity should not be a basis for discrimination. Child-care facilities should be provided to help parents combine work and family obligations.³⁶

Feminists have criticised human rights instruments as being incapable of addressing systemic discrimination experienced by women. Such critiques are based on a distinction between the “public” and “private”. Broadly speaking the “public” sphere refers to exchanges and interactions that occur between individuals in the normal course of life away from the home. The “private” sphere refers to family or home life.

35 The Vienna Declaration has also made statements concerning the equal status and human rights of women.

36 For pessimistic accounts concerning the pursuance of women’s rights within the United Nations see Reanda L “The Commission on the Status of Women” in Alston P (ed) *The United Nations and Human Rights: A Critical Appraisal*, (Clarendon, Oxford, 1995) 265-303, and Jacobson R “The Committee on the Elimination of Discrimination against Women” in Alston P (ed) *The United Nations and Human Rights: A Critical Appraisal*, (Clarendon, Oxford, 1995) 473-508.

Kim, for example, argues:

Human rights laws generally come into play only when the state is involved. "Private" acts ... are designated "cultural" and are exempt from most human rights laws. "Public" acts, however, are designated "political" and, thus suitable for international discussion or intervention. As a result of these designations, the public/private distinction has entered into the dialogue on human rights as a justification for state non-intervention into cultural practices that harm women. Because practices that affect women generally fall into the "private" category, they are protected as part of a society's "culture."³⁷

Binion in a similar view maintains:

A separate sphere approach has regulated women to the home, away from political institutions that make policy and away from a substantial role as well in other "public" institutions that determine the nature and quality of life in a community ... Physical and sexual abuse of wives and children, ubiquitous throughout the world, has, consequently, faced little formal challenge within a two-spheres understanding of the social order.³⁸

She has also said:

Battery, rape, imprisonment, intimidation from voting, and murder³⁹ are not different from the crimes that they appear to be just because they are perpetuated by a family member ... the state's choice to overlook such criminal acts is as abusive of human rights as a refusal to interfere with [the] slave trade.⁴⁰

In industrial relations terms "private" actions restrict the ability of women to obtain education and skills that are necessary to be able to successfully compete in the job market. Women are channelled into short term, short hour, low paid and low "skilled"⁴¹ jobs which reduce their ability to earn income and advance up occupational and career ladders.

37 Kim, *op cit*, at 67.

38 Binion, *op cit*, at 516.

39 Examples of this are Moroccan law which excuses the murder or physical injury of a woman found committing adultery; without such "rights" being afforded to women. In Brazil men may mount a "defense of honour" for killing wives or lovers they suspect of having affairs. In India wives are burnt to death by husbands and their families where in-laws do not provide the promised dowry. See Kim, *op cit*, 114-118.

40 Binion *op cit*, at 519.

41 Feminists argue that when women work in skilled occupations (not worked in by men) their skills are undervalued compared to men's.

Tables 3 and 4, based on Humana's survey (see above), at worst seem to confirm criticisms of feminists, or, at best, suggest more needs to be done if discrimination against women is to be eliminated. Table 3 presents data on the distribution of various countries concerning freedom for or rights to political and legal equality for women. In only two countries are rights respected (Finland and Sweden), 65 experience occasional breaches, 33 frequent violations and four (Kuwait, Saudi Arabia, Pakistan and Yemen) a constant pattern of violations.

Table 3

Distribution of Various Countries Concerning
Freedom for or Rights to Political and Legal Equality for Women

Rights Respected	Occasional Breaches	Frequent Violations	Constant Pattern of Violations
2	65	33	4

Source: Humana op cit.

Table 4

Distribution of Various Countries Concerning
Freedom for or Right to Social and Economic Equality for Women

Rights Respected	Occasional Breaches	Frequent Violations	Constant Pattern of Violations
0	44	58	2

Source: Humana op cit.

Table 4 presents an even more depressing picture. It depicts the situation concerning freedom for or rights to social and economic equality for women. Humana was unable to find any country which respected such rights. Forty four countries experienced occasional breaches, 58 frequent violations and two a constant pattern of violations (Pakistan and Saudi Arabia). As of the early 1990s a majority of nations (58 per cent) surveyed by Humana frequently or constantly violated the social and economic rights of women.

Independent trade unions

A trade union is a collective organisation of workers whose major function is to protect and advance the rights and interests of members. Trade unions hold out the

prospect of delivering benefits to members which they could not achieve via individual bargaining. The right of individuals freely to associate and join independent trade unions has been enshrined by the international community in various human rights instruments. Article 20 of the Universal Declaration of Human Rights, for example, says "Everyone has the right to freedom of peaceful assembly and association", and that "No one may be compelled to belong to an association". Article 23 affirms that "Everyone has the right to form and join trade unions for the protection of his interests."

Article 8 of the ICESCR states:

1. The States Parties to the present Covenant undertake to ensure:
 - a. The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion of and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - b. The right of trade unions to establish national federations or confederations and the rights of the latter to form or join international trade union organizations;
 - c. The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - d. The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

Article 22 of the ICCPR supports freedom of association and the right to form and join trade unions in language similar to that of Article 8 of the ICESCR.

The ILO has been the major body or human rights instrument concerning the freedom to form and join trade unions. It was established in 1919 as part of the

Treaty of Versailles. The work of the ILO was reaffirmed by the Philadelphia Declaration of 1944.⁴²

In the preamble to its (1919) Constitution the ILO is committed to improving wages and working conditions of workers to end “hardship and privation” which are regarded as imperilling world peace and harmony. The preamble advocates:

regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organisation of vocational and technical education and other measures.

The Constitution, however, specifies “considerations” which need to be taken into account in the determination of conventions and recommendations. In turn these “considerations” may enable member states to gain an exemption (or provide an “escape clause”) from such conventions and recommendations. Clause 3 of Article 19 states:

In framing any Convention or Recommendation of general application the Conference⁴³ shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organisation, or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.

The Philadelphia Declaration affirmed, the original principles of the Organisation. In particular it emphasised that:

- 1 a. Labour is not a commodity;
- b. Freedom of expression and of association are essential to sustained progress;
- c. Poverty anywhere constitutes a danger to prosperity everywhere;

42 For a recent examination of the Declaration see Lee E “The Declaration of Philadelphia: Retrospect and Prospect” (1994) 133(4) *International Labour Review*, 467-484.

43 The formal decision making body within the ILO.

d. The war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

The Philadelphia Declaration empowered the ILO to initiate programs concerning "the effective recognition of the right of collective bargaining, the co-operation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures".

Several ILO conventions address issues associated with the independence of trade unions. Most important are the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Convention No. 87 states "Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorization". Such bodies once established are enabled to affiliate/join both local and international federations/confederations. Public authorities are precluded from interfering with "the right [to organise] or impede the lawful exercise thereof", and dissolving or suspending such organisations by administrative decree. The Convention, however, does not extend to police and armed forces whose ability to organise "shall be determined by national laws or regulations".

Convention No. 98 protects individuals against discrimination because of union membership and the independence of trade unions in negotiations with employers. The Convention states:

Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. Such protection shall apply more particularly in respect of acts calculated to:

- a. Make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
- b. Cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours. Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each

other or each others' agents or members in their establishment, functioning or administration. In particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference ...

Like Convention No. 87 this Collective Bargaining Convention does not extend to police and armed forces. Moreover, it "does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way".

Since 1950 the International Labour Office's Committee on Freedom of Association has dealt with more than 1800 complaints. According to analysis undertaken by Creighton half of these complaints relate to human rights violations including deaths, torture, ill-treatment, detention, intimidation, and harassment of union leaders and members. Other major sources of complaint include unfair labour practices where unionists are dismissed, transferred or demoted; governments supporting particular unions over others, public authorities denying certain groups of workers, such as public servants,⁴⁴ the right to organise and/or refusing to register unions, seizing their assets and deregistration; interference with collective bargaining; and legal and other restrictions on the right to strike.⁴⁵

Information collated by Humana in his *World Human Rights Guide* and data compiled by the International Confederation of Free Trade Unions⁴⁶ provide an indication of the state of play concerning the independence of trade unions. Political rights and freedoms are seen as being integral to the independence of trade unions — or, in the words of the Vienna Declaration "All human rights are universal, indivisible and interdependent and interrelated."

44 For an examination of problems experienced by teacher unions see Pepin L "The Defence of Teachers' Trade Union Rights" (1990) 129(1) *International Labour Review*, 59-71.

45 Creighton "Freedom of Association" *op cit*, 110. Creighton "ILO Convention No 138 and Australian Law and Practice Relating to Child Labour" *op cit* provides a somewhat pessimistic view concerning the work of the ILO. For a contrary, more optimistic, view see Leary V A "Lessons from the Experience of the International Labour Office" in Alston P (ed) *The United Nations and Human Rights: A Critical Appraisal* (Clarendon, Oxford, 1995) 580-619.

46 International Confederation of Free Trade Unions *Annual Survey of Violation of Trade Union Rights 1995* (Brussels, 1995).

Table 5

Distribution of Various Countries Concerning Freedom to Peacefully Associate and Assemble

Rights Respected	Occasional Breaches	Frequent Violations	Constant Pattern of Violations
42	20	23	19

Source: Humana *op cit*.**Table 6**

Distribution of Various Countries Concerning Freedom for or Rights to Independent Trade Unions

Rights Respected	Occasional Breaches	Frequent Violations	Constant Pattern of Violations
35	41	12	16

Source: Humana *op cit*.

Tables 5 and 6, which are based on Humana's *Guide*, present information on the distribution of various countries concerning freedom to peacefully associate and assemble and freedom for or right to independent trade unions. Table 5 shows that 42 countries respect the freedom to peacefully associate and assemble, twenty with occasional breaches, 23 frequent violations and nineteen a constant pattern of violations. Forty per cent of countries frequently or constantly breach this right. Table 6 reveals that 35 countries respect freedom for or the right to independent trade unions, 41 occasional breaches, twelve frequent violations and 16 a constant pattern of violations. More than a quarter of the countries surveyed either frequently or constantly violate the right to independent trade unions.

The International Confederation of Free Trade Unions publishes data on murders, injuries, arrests and detentions, and dismissals of trade unionists. This information is reproduced in Tables 7 to 10, with sub-categories for Africa, Asia, the Americas and Europe. No data is provided for Australasia. Table 7 shows that 399 unionists were killed in 1992, 217 in 1993 and 528 in 1994 — with most murders occurring in Africa and the Americas.

Table 8 reveals that the number of injuries to unionists has increased from 551 in 1992 to 1633 in 1994 — with Asia being the major source of this "growth". The number of arrests and detentions of unionists was 5067 in 1992, falling to 3890 in 1993 and rising to 4353 in 1994. As indicated by Table 9 falls in arrests and detentions in Africa and

Table 7

Murder of Trade Unionists 1992 to 1994

	1992	1993	1994
Africa	213	9	333
Asia	28	21	2
Americas	158	184	192
Europe	0	3	1
TOTAL	399	217	528

Source: International Confederation of Free Trade Unions Annual Survey of Violations of Trade Unions Rights (Brussels, 1995).

Asia were offset by increases in the Americas and Europe — the latter being mainly associated with responses to the emergence of independent trade unions in former Soviet nations. Dismissals of trade unionists, as revealed in Table 10, were in excess of 71,000 in 1992, rose to 76,000 in 1993 and fell back to 66,000 in 1994. Falls in dismissals in Asia and Africa have been offset by increases in the Americas and Europe.

Table 8

Injuries to Trade Unionists 1992 to 1994

	1992	1993	1994
Africa	110	188	199
Asia	134	721	935
Americas	307	198	469
Europe	0	93	30
TOTAL	551	1195	1633

Source: International Confederation of Free Trade Unions *op cit*.

Table 9

Arrest and Detentions of Trade Unionists 1992 to 1995

	1992	1993	1994
Africa	2347	1063	989
Asia	2287	1753	1348
Americas	357	1042	1675
Europe	76	32	341
TOTAL	5067	3890	4353

Source: International Confederation of Free Trade Unions *op cit*.

Table 10

Dismissals of Trade Unionists 1992 to 1994

	1992	1993	1994
Africa	21873	14835	9699
Asia	16460	28291	10310
Americas	31218	32823	4012
Europe	1738	130	5900
TOTAL	71289	76079	66029

Source: International Confederation of Free Trade Unions *op cit*.

Being killed at work

On 10 May 1993 a Bangkok toy factory burned to the ground killing 189 female workers.⁴⁷ According to Bohle and Quinlan⁴⁸ this constitutes a world record for the most women killed in a single factory fire. Various human rights instruments, either explicitly or implicitly, make statements concerning the need to protect workers from being killed at work, or having inflicted upon them occupational and work related injuries.

Article 3 of the Universal Declaration of Human Rights states "Everyone has the right to life, liberty and the security of person". Article 5 asserts "No one shall be subjected torture or to cruel, inhuman or degrading treatment or punishment." The ICCPR, in Article 6, says "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life".

The ICESCR and the ILO focus more directly on the workforce per se than the above two instruments. Article 7 of the ICESCR "recognises the right of everyone to ... safe and healthy working condition". Both the Constitution of the ILO and the 1944 Philadelphia Declaration promote the establishment and safe and healthy working conditions.

The most important instrument in this area is the Occupational Safety and Health Convention, 1981 (No. 155). It states:

47 *Far Eastern Economic Review*, 24 June 1993.

48 Bohle P and Quinlan M "Overview of Occupational Health and Safety Management Problems", Topic 1, (1995) Occupational Health and Safety Management for Worksafe Australia, University of Queensland, at 3.

Each member, shall in the light of national conditions and practice, and in consultation with the most representative organisations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.

In seeking to bring about a safe(r) working environment the Convention refers to the need for "an adequate and appropriate system of inspection" and "adequate penalties for violations". The Convention allows exemptions from its application "in part or in whole, particular branches of economic activity, such as maritime shipping and fishing, in respect of which special problems of a substantial nature arise" and "limited categories of workers in respect of which there are particular difficulties".

Table 11 presents information on the number of deaths per million workers for 57 countries. It is derived from (useable data in) the ILO's 1994 *Year Book of Labour Statistics*.⁴⁹ Deaths per million workers range from a low of 12 in the United Kingdom to 2,680 in Malaysia: Sawark. Twenty seven countries had death rates of up to 100 per million workers, 19 from 100 to less than 200, and 11 had 200 plus.

The ILO has said care should be taken in interpreting international data on occupational injuries. Different nations employ different definitions and make use of variable procedures, with variable exclusions, in collecting data. Bohle and Quinlan, for example, point out that the death rate amongst miners in China is so high that only incidents killing more than 50 workers are investigated.⁵⁰

Table 11 does not include data for Australia. Worksafe Australia reported for the period 1987-1988 to 1989-1990 Australia experienced 84 deaths per million workers. An Inquiry into Occupational Health and Safety conducted by the Industry Commission in Australia⁵¹ concluded that each year over 500 workers are killed at work, with a further 2200 dying later away from work as a result of work related cancers. On the basis of Australian experience it may be appropriate to multiply the data in Table 11 four or fivefold to obtain a more "accurate" representation of the extent of work related deaths. It should also be noted that no data has been presented here concerning levels of non-death occupational health and safety injuries.

49 *International Labour Office 1994 Year Book of Labour Statistics*, (Geneva, 1995).

50 Bohle and Quinlan, *op cit*, at 3.

51 *Industry Commission Work, Health and Safety: Inquiry into Occupational Health and Safety* (Volume I, Draft Report, Melbourne, 1995) at 3.

Table 11

International Comparisons of Deaths at Work per Million Workers

Country		Deaths per Million Workers	Most Recent Year of Data
(Africa)			
Burkina Faso	(b)*	133	1991
Burindi	(b)	301	1987
Egypt	(a)	140	1992
Reunion	(b)	104	1988
South Africa	(b)*	400	1989
Tanzania	(a)*	138	1989
Togo	(b)	103	1989
Zimbabwe	(b)*	238	1990
(America)			
Barbados	(a)	40	1992
Belize	(b)	80	1987
Brazil	(b)*	120	1993
Canada	(a)	78	1992
Colombia	(b)*	132	1990
Cost Rica	(b)*	220	1990
Cuba	(a)	102	1988
Chile	(b)*	100	1988
Guatemala	(b)*	250	1990
Jamaica	(b)	38	1990
Mexico	(b)*	90	1993
Nicaragua	(b)*	170	1992
Peru	(b)*	50	1990
Trinidad & Tobago	(a)	27	1993
(Asia)			
Azerbaijan	(a)	79	1993
Bahrain	(b)*	197	1993
Cyprus	(b)*	47	1992
Hong Kong	(a)	100	1992
India	(a)	200	1990
Indonesia	(a)	427	1992
Kazakhstan	(a)	156	1993
Korea, Republic of	(b)*	320	1993
Malaysia: Sawark	(a)	2680	1987
Singapore	(b)	140	1993
Thailand	(b)	29	1993

Table 11

International Comparisons of Deaths at Work per Million Workers

Country		Deaths per Million Workers	Most Recent Year of Data
(Europe)			
Austria	(a)	66	1992
Belarus	(a)	95	1993
Belgium	(b)*	60	1989
Czechoslovakia	(a)	59	1992
Czech Republic	(b)*	767	1993
Denmark	(a)	23	1993
Spain	(b)*	114	1993
Estonia	(a)	108	1993
Finland	(a)	41	1991
France	(a)	74	1991
Germany	(a)	70	1992
Greece	(b)*	52	1992
Hungary	(b)*	146	1993
Netherlands	(b)*	17	1989
Norway	(a)	30	1993
Poland	(a)	65	1991
Romania	(a)	70	1993
Russian Federation	(a)	131	1992
Slovenia	(a)	53	1993
Switzerland	(b)	39	1992
Turkey	(b)*	381	1993
Ukraine	(a)	121	1991
United Kingdom	(a)	12	1992
(Oceania)			
New Zealand	(a)	45	1992

Source: International Labour Office 1994 Year Book of Labour Statistics, (Geneva, 1995).

(a) persons employed (b) workers exposed to risk * insured persons

Conclusion

Since the advent of World War II the international community has brought into being a number of instruments, or what Binion⁵² has referred to as "beautifully crafted ... documents" to promote human rights. This paper has examined industrial relations dimensions of human rights — slavery and forced labour,

52 Binion, *op cit*, at 525.

prostitution, child labour, discrimination against women, independent trade unions and being killed at work. Other than slavery/forced labour and except from the standpoint of those who find prostitution a means of self-expression, these issues fall outside the natural rights/liberalism dimension of human rights. They can be more usefully understood from a perspective which focuses on the exercise of, or more correctly imbalances in, power. Bonded labour, prostitution, child labour — particularly, if not especially, where families sell their children into prostitution or as bonded labourers — and individuals working in conditions so dangerous that their lives are at risk are examples of the market at work; of where in the battle to survive individuals or their families 'agree' to alienate their human rights. Workers forming trade unions and attempts to end discrimination against women derive from the limited bargaining power of workers vis-a-vis employers, in individual bargaining, and of opportunities traditionally afforded to women.

With increased globalisation and associated genuflection at the altar of the market it is likely that industrial relations dimensions of human rights will worsen rather than improve. Fields and Narr maintain:

the modern state is being eclipsed by the overpowering reality of the capitalist world market — an institution without sufficiently developed institutional procedures. Its automatism, the laws inherent in competition itself, and the personification of the market as a thinking and feeling entity preclude such institutional procedures. Its only "law" seems to be deregulation and privatization. The capitalistic market seems both to war with the state and to use it for advantage.⁵³

In advanced economies deregulation and associated cut-backs in the welfare state, reduce the ability of nations to pursue or continue initiatives associated with (industrial relations dimensions of) human rights. Prostitution and child labour will be regarded as issues too difficult and expensive to tackle. Ending discrimination against women and the provision of a safe working environment will be goals that states may pay lip service to, but not pursue with any vigour, for fear of driving up the cost of labour and turning away investment by multi-national corporations. Trade unions will be dismissed as relics from the past, a luxury and impediment to the operation of market forces.

Romany⁵⁴ has described "international human rights law ... as a 'site of struggle'."

53 Fields and Narr, *op cit*, at 16..

54 Romany, *op cit*, at 92.

Fields and Narr⁵⁵ view “the world as a field of struggle over rights without any guarantee of success”. The Universal Declaration of Human Rights stresses the importance of “teaching and education to promote” human rights. The choice is to continue the struggle for human rights or to Progress along the path of Degradation and Degeneration predicted by Sidney and Beatrice Webb almost a century ago. ●

55 Fields and Narr, *op cit*, at 6.