

INTRODUCTION: DECENT WORK IN A POST-RECESSIONARY WORLD

BY
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The global economic crisis, which began as a recession in the United States in December 2007,¹ triggered a decline in worldwide economic activity more significant than any experienced since the Great Depression.² Labor markets sustained considerable damage, as evidenced by sizeable increases in global unemployment.³ Systems of labor market regulation and social protection were sorely tested. The substantial human costs of such a severe economic downturn make addressing the lingering effects of the crisis imperative.⁴

From the beginning of the crisis, the International Labour Organization (ILO) made “decent work” the centerpiece of its recommended recovery strategy.⁵ When first articulated in 1999 by ILO

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1. The National Bureau of Economic Research (NBER) designates December 2007 as the beginning of the recession in the U.S. See Sharon Cohany, Bureau of Labor Statistics, U.S. Dep't of Labor, *Ranks of Discouraged Workers and Others Marginally Attached to the Labor Force Rise During Recession*, Issues in Labor Statistics, Summary 09-04, Apr. 2009, at 1 n.2, available at <www.bls.gov/opub/ils/pdf/opbils74.pdf>. In September 2010, the NBER determined that the U.S. recession ended in June 2009. See Larry Swisher, *NBER Declares U.S. Recession Lasted Record 18 Months, Ended in June 2009*, Daily Lab. Rep. (BNA), A-1 (Sept. 20, 2010).

2. INT'L LABOUR ORG., GLOBAL EMPLOYMENT TRENDS 2011: THE CHALLENGE OF A JOBS RECOVERY 1 (2011), available at <http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_150440.pdf>.

3. An estimated 205 million workers were unemployed in 2010, a number 27.6 million higher than in the pre-crisis year of 2007. *Id.* at 12.

4. *Id.* at 2.

5. See, e.g., International Labour Organization [ILO] Director-General, *Recovery and Growth with Decent Work* (2010), available at <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_140738.pdf>; ILO Director-General, *Tackling the Global Jobs Crisis: Recovery through Decent Work Policies* (2009), available at <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_106162.pdf>; RAYMOND TORRES, ET AL., INT'L INST. FOR LABOUR STUDIES, THE FINANCIAL AND ECONOMIC CRISIS: A DECENT WORK RESPONSE (2009), available at <http://www.ilo.org/public/libdoc/ilo/2009/109B09_59_engl.pdf>; see also ILO, *Recovering From the Crisis: A Global Jobs Pact*, at 2 (June 19, 2009), available at <http://www.ilo.org/public/libdoc/ilo/2009/109B09_192_engl.pdf> (“Action must be guided by the Decent Work Agenda and commitments made by the ILO and its constituents in the 2008 Declaration on Social Justice for a Fair Globalization.”).

Director-General Juan Somavia, “decent work” was an intentionally vague construct.⁶ Over the course of the crisis, however, and especially following the ILO’s adoption in 2008 of the Declaration on Social Justice for a Fair Globalization, “decent work” has gained conceptual clarity. The ILO’s decent work agenda enumerates four pillars – employment promotion, social protection, social dialogue, and fundamental rights – objectives that are interrelated and inseparable, and which ILO member states must, by virtue of ILO membership, pursue simultaneously.⁷

In mid-2010, with recovery in a macroeconomic sense well underway but with improvement in employment stalled in many countries, I asked a group of leading labor and employment law scholars to address present regulatory challenges in light the ILO’s decent work precepts. Relevant to their inquiries are the lessons of the Great Recession. Their responses are produced in this symposium issue of the *Employee Rights and Employment Policy Journal*. The articles presented aim to convey an evolving understanding of “decent work,” and to demonstrate the useful analytical role the concept plays in assessing existing problems, programmatic outcomes, and policy innovations.

Janice R. Bellace, Samuel Blank Professor of Legal Studies at the University of Pennsylvania’s Wharton School, and former chair of the ILO’s Committee of Experts, is the author of the first article.⁸ Professor Bellace examines the connection between “decent work,” as expressed in the 2008 Declaration, and the ILO’s 1998 Declaration of Fundamental Principles and Rights at Work. To that end, she traces the ILO’s commitment to social justice back to its founding, demonstrating that the agency’s purposes and goals serve as a link between the human rights principles expressed in the 1998 Declaration and the pro-active stance of the ILO’s decent work program, which provides a foundation for sustainable economic recovery.

Roger Blanpain, Professor Emeritus at the University of Leuven (Belgium) and Professor at the University of Tilburg (the Netherlands), provides in the second article a perspective from Brussels, the capital of the European Union (EU).⁹ Professor Blanpain reviews EU efforts to promote

6. See Francis Maupain, *New Foundation or New Façade? The ILO and the 2008 Declaration on Social Justice for a Fair Globalization*, 20 EUR. J. INT’L L. 823, 838-39 (2009).

7. See Susan Bisom-Rapp et al., *Decent Work, Older Workers and Vulnerability in the Economic Recession: A Comparative Study of Australia, the United Kingdom and the United States*, 15 EMP. RTS. & EMP. POL’Y J. 43, 45 (2011).

8. Janice R. Bellace, *Achieving Social Justice: The Nexus Between the ILO’s Fundamental Rights and Decent Work*, 15 EMP. RTS. & EMP. POL’Y J. 5 (2011).

9. Roger Blanpain, *Decent Work in the European Union: Hard Goals, Soft Results*, 15 EMP. RTS. & EMP. POL’Y J. 29 (2011).

the goals and principles of decent work in a Europe reeling from the effects of the global economic crisis. Noting that for over a decade the ILO's decent work agenda has coincided with EU social policy aims, he nonetheless questions whether the EU has the means to achieve the lofty goals of its New European Strategy for Jobs and Growth, the so-called Europe Strategy 2020.

In the symposium's third offering, I join as author with my Australian colleague Professor Andrew Frazer, of the University of Wollongong in New South Wales, and my British colleague Professor Malcolm Sargeant, from Middlesex University Business School in London.¹⁰ We employ decent work as a yardstick to examine how older workers fared during the global financial crisis and are faring during the recovery. Focusing on conditions in Australia, the United Kingdom, and the United States, we use several decent work principles to assess the role workplace law plays in each country in ameliorating or exacerbating older worker vulnerability. By using decent work as a touchstone and looking broadly at the intersecting factors that contribute to older worker insecurity, the outlines of possible policy responses become clear.

Michael J. Zimmer, Professor of Law at Loyola University Chicago, contributes the fourth article.¹¹ Professor Zimmer tackles the long-standing, global decline of the trade union movement and its connection to global increases in income inequality, the latter a central concern of the decent work agenda. While the ILO aims to strengthen collective bargaining, the dearth of concrete ILO proposals on how to do so is not encouraging. Equally problematic for national unions is continued public policy emphasis on neoliberalism, which, despite statutory language to the contrary, leads to the commodification of labor, placing workers at a serious disadvantage vis-à-vis their employers. As a corrective, Professor Zimmer asks whether the labor movement can use the financial crisis to reinvent itself by pursuing strategies that are transnational in scope. While acknowledging significant obstacles, he argues that such an approach might put unions on more equal footing with transnational corporations, bolster recovering economies, and reduce income inequality.

The fifth article, by Peggie R. Smith, Professor of Law at Washington University in St. Louis, examines the regulatory challenges associated with securing decent work for an economically marginalized group, those

10. Bisom-Rapp et al., *supra* note 7.

11. Michael J. Zimmer, *Unions & the Great Recession: Is Transnationalism the Answer?*, 15 EMP. RTS. & EMP. POL'Y J. 123 (2011).

laboring in domestic service.¹² Providing both a global and local focus, Professor Smith examines the utility of existing and proposed ILO standards relating to domestic work. Recognizing that international standards are only effective to the extent ILO member states embrace them, she then turns to workplace law in the United States (U.S.). Finding significant gaps in protective law, Professor Smith provides guidance on the legal changes required if the U.S. is to ensure decent work for domestic service workers.

Timothy P. Glynn, Miriam T. Rooney Professor of Law at Seton Hall University in New Jersey, authored the final article in the symposium issue.¹³ Professor Glynn writes about decent work and workplace law enforcement at a time in which many U.S. corporations have imported a central characteristic of globalization – shifting production or services to independent third party suppliers. Such enterprise disaggregation, likely to increase in a post-recessionary world, complicates enforcement of, for example, wage and hour law, and rewards outsourcing firms by allowing them to benefit from the underpaid workers of those to whom they outsource. In the face of dwindling public enforcement resources and a lack of unionization among low wage workers, Professor Glynn proposes adoption of a strict liability regime and a form of enterprise liability that would extend the duty to abide by wage and hour law beyond a technical “employer” to commercial actors more generally. Those actors would be accountable for violations occurring “in the production of any goods and services they purchase, sell or distribute.”¹⁴ Such a legal change, while admittedly controversial, would acknowledge the realities of corporate disaggregation in a post-recessionary world.

These six diverse yet interrelated essays take seriously the need to address and find solutions for the decent work deficits associated with our present, perilous economic times. It is my hope that this symposium issue represents a collective contribution to that end.

12. Peggie R. Smith, *Work Like Any Other, Work Like No Other: Establishing Decent Work For Domestic Service Workers*, 15 EMP. RTS. & EMP. POL'Y J. 159 (2011).

13. Timothy P. Glynn, *Taking the Employer Out of Employment Law? Accountability for Wage and Hour Violations in an Age of Enterprise Disaggregation*, 15 EMP. RTS. & EMP. POL'Y J. 201 (2011).

14. *Id.* at 205.