

**"DECENT WORK" AT WORK IN THE WORLD:
PRINCIPLES, PRACTICALITIES AND PARADOXES**

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**Harry W. Arthurs
York University
Toronto, Canada**

1 Introduction

I owe the International Labour Organization and its International Institute for Labour Studies a triple debt of gratitude. First, they have selected me as one of two winners of its 2008 Decent Work Research Award along with Joseph Stiglitz, whom I deeply admire. Second, they have invited me to lecture today to this distinguished audience. And third, and most importantly, they have given a name – "decent work" – to the humane, modest and non-partisan conception of social justice that is shared by all of us who work on labour issues in whatever country or capacity.

The ILO's concept of "decent work" inspired my own report - "Fairness at Work" – which in 2006 recommended a series of new approaches to labour standards for workers under the jurisdiction of Canada's federal government. Indeed, it led me to propose as the first and dominant principle of my report what I called the "decency principle":

Labour standards should ensure that no matter how limited his or her bargaining power, no worker ... is offered, accepts or works under conditions that Canadians would not regard as "decent". No worker should therefore receive a wage that is insufficient to live on; be deprived of the payment of wages or benefits to which they are entitled; be subject to coercion, discrimination, indignity or unwarranted danger in the workplace; or be required to work so many hours that he or she is effectively denied a personal or civic life.

Of course the ILO has continued to elaborate the concept of "decent work" by adopting its *Declaration of Social Justice for a Global Economy* and by ongoing work to find technical means to measure and compare the achievement of "decent work" in national settings. However, in my remarks today, I will not directly address these important developments. Rather, I will reflect on my own experiences in putting the concept of "decent work" to work as a guide to practical action in designing a national system of labour standards. I hope that this view of "decent work" from the bottom up — from the specific to the general

— will contribute to better understanding of the interplay between international labour standards on the one side and domestic labour policy, legislation and administration on the other. Of course I must acknowledge that Canada's experience is not easily exported to other countries. We each have our own constitutions, laws and regulatory regimes, our own political economies and social systems, our own histories of labour conflict, regulation and reconciliation. Still I hope to move beyond the Canadian case by identifying three issues that must sooner or later be confronted by anyone who aspires to actually put the "decent work" principle to work in the world.

The first is this: the "decent work" principle is not the only principle shaping labour law and policy. It must somehow be reconciled with other significant and legitimate principles without becoming subordinate to them. The second: we have to take care, when the "decent work" principle is translated into different national, cultural and economic contexts, that it is not lost in translation. And the third: the broad principle of "decent work" is fraught with paradoxes, if not contradictions. We have identify and grapple with these paradoxes and learn from the experience of doing so.

Now the first of those three issues: the potential conflict between decent work and other principles.

2. Principles in Conflict

It might seem axiomatic to everyone here today that "decency" is the *grundnorm* — the foundational principle — of all labour market regulation. This, however, does not mean that "decency" is the *only* principle that shapes public policy or relations of work. In my report, I identify a number of others, which I describe as "strategic" and "operational" principles. *Strategic principles* include acknowledging the imperatives of a market economy, the desirability of balancing flexibility and security, that need to level the playing field for

competing employers, that necessity of honouring authentic workplace bargains, the integration of labour standards with human rights and other legislation that seeks to ensure social equality and the obligation to honour Canada's obligation to meet international labour standards. *Operational principles* included the need to make effective and efficient use of public resources in enforcing labour standards, to achieve high levels of compliance with those standards, to respect the reasonable desire of employers and workers for flexibility in their application within margins set by law, to ensure that labour standards are clearly articulated and to specify these standards with circumspection so that they are only as intrusive as is needed to achieve the ultimate goal of decent work,

Now my main point: if "decency" is truly the *grundnorm*, the hierarchy of principles ought to be clear. All of these other principles ought to give way before "decent work". But life is not so easy. In the forum of public policy debates as in the workplace itself, we can see that other principles sometimes temper, sometimes even trump, the decency principle.

First example: In any democracy, "the rule of law" principle is generally paramount. If a regulatory system designed to promote and protect "decent work" cannot do so in accordance with the rule of law, that regulatory system will have to give way, and "decent work" along with it. In Canada, as elsewhere, the rule of law is embedded in our constitutional architecture — the vertical and horizontal distribution of powers and deference to the will of the people democratically expressed. Unfortunately, that architecture requires that some things that sensibly should be done by labour tribunals and inspectors can only be done by courts, that things that should sensibly to be done by the national government can only be done by provincial governments and that things that should sensibly be done to advance social justice are not accepted by tax-averse voters. Bizarrely, to cite one example, Canada's national government can subscribe to ILO conventions, but it has no power to implement them. In this

sense, Canada's constitutional architecture may vastly complicate the project of labour market regulation and impede the implementation of the "decent work" principle.

Second example: many political leaders, academics, opinion makers and ordinary citizens believe that the operation of free markets is a sacrosanct, if not actually a constitutional, principle. For those who hold this view, the protection of "decency" in the workplace represents an anomaly, a deviation, to be allowed only in exceptional circumstances, if at all. One might assume that this view is not widely held, or frequently expressed, in a country as sensible as Canada. However, when my report appeared, an editorial in one of our national newspapers ridiculed my use of the "decency principle" to justify a recommendation that minimum wage legislation should ensure that no worker employed full-time should receive wages so low that they must live in poverty. "Prof. Arthurs" the editorial said dismissively "is guilty of the same kind of fuzzy thinking that leads some people to oppose child labour".

I am always surprised to encounter such boisterous expressions of what my co-winner, Dr. Stiglitz, has referred to as "market fundamentalism". However, I am grateful for the reminder that when the "decent work" principle goes to work in the world, it will have to make its peace with other principles such as the rule of law and the rule of markets. Ironically, harmonizing these conflicting principles is easier in practice than it is in theory precisely because, like all principles, they (like my thinking) are inherently "fuzzy". That is to say, all of these principles are framed in open-ended language which is capable of being made to appear consistent with other principles.

For example, one might fairly claim that "decent work" is a hallmark of both stable democracies and successful economies. That indeed is the premise of the ILO's *Declaration of Social Justice*. But in such fuzzy formulations, the reconciliation of competing principles may turn out to be more apparent than

real. Its lack of substance is revealed when general principles come to be translated into norms capable of practical application. These problems of translation bring me to the next issue on my agenda: how do we avoid the “decent work” and other social justice principles being fatally compromised as we strive to interpret and apply them in the context of different forms of political economy, different societies, different legal cultures and different sectors of the labour market?

Pragmatics: translating principles into practice; contextualizing labour standards

I am going to explore this second main issue by examining several practical problems of translation or contextualization that I encountered in my work.

The first was the minimum wage, that I have already mentioned. To me, that issue is the litmus test for decency. How high must minimum wages be before they are deemed to be “decent”? Are they “decent” if set just high enough to keep recipients above the poverty line? Or if they ensure that workers in particular communities, sectors or occupations enjoy something approaching equal pay for work of equal value? Or if they are adequate to support workers in their full realization of the good life? Are minimum wages “decent” if they are set at the same level for all workers regardless of experience, skill, function or sector of employment? And are they still “decent” if they are set so high that workers who are young, unskilled or made redundant in declining industries are left without jobs? Is a state failing in its duty to ensure “decent work” if it decides not to establish minimum wages at all but instead to subsidize low-wage or unemployed workers with cash payments, tax credits or preferred access to public goods such as training?

To broaden my point, the principle of “decent work” — like all juridical and moral norms — is not self-defining or self-executing. It does not automatically produce binary distinctions between labour standards that are acceptable and

those that are not. Nor can we do much to make the concept of “decent work” operational through the use of textual exegesis or legal analytics, though that may be a necessary first step. Ultimately, achieving “decent” labour standards depends on making informed and pragmatic judgments about actual existing conditions and likely outcomes.

But how are we to make such judgments? When I began work on my commission on federal labour standards, we knew relatively little about actual conditions — and therefore of how changes would affect them. To return to my earlier example, both proponents and opponents of a minimum wage imagined that it would affect large numbers of workers and workplaces. Those who favoured a higher minimum wage imagined that it would have transformative effects on the lives of workers; those who opposed it thought it would be disastrous for business. A statistical study utterly changed the terms of debate. Of 840,000 workers under federal jurisdiction, only about 18,000 — just over 2% — would actually benefit from the significant increase in the minimum wage that I proposed; 98% would not.

On the other hand, as further research also revealed, the majority of low wage workers were employed in the truck transport sector, mostly in very small enterprises, and often under contractual arrangements that left their status as “employees” ambiguous. Clearly, imposing a minimum wage in this sector would have far more sweeping consequences than it would in, say, the banking or telecommunications sector. I had therefore to ask myself whether “decent work” might mean one thing for truckers, another for everyone else. In the end, I decided that this would not be an acceptable outcome. If the premise of the minimum wage is that no one should be forced to work for wages so low that they live in poverty, the moral implications of that premise do not change from one sector of the economy to the other. On the other hand, precisely what level of income defines poverty depends very much on living costs, which may vary considerably from one community to another. Wages that would barely allow

one to survive in a large metropolis might allow one to live reasonably comfortably in a smaller community. In short, the translation of principles into policies and laws may make not very much difference overall; but the translation of policies and laws into different social and economic contexts may produce strikingly different results.

The regulation of working time presented an equally difficult challenge. A trucking firm needs its drivers to work long hours in order to ensure that perishable goods reach their destination on time; a television station needs reporters and technicians on hand 'round the clock to deal with breaking news; a financial institution needs staff on duty at unsociable hours to respond to clients half a world away; even a retail shop or manufacturing enterprise may have to depart occasionally from "decent" work schedules in order to cope with predictable seasonal fluctuations in demand or unpredictable equipment failures. How, then, can we translate the decent work principle into working time arrangements that respond to these practical realities without dishonouring the principle?

One approach is to simply prohibit all unsociable hours, all overtime and all irregular regular work schedules. This would ensure that everyone's working time arrangements were "decent". However, in my judgment, such an unnuanced approach would be bitterly opposed not only by employers fearing operational constraints and enhanced labour costs, but also by workers anxious to ensure the success of the enterprise, the preservation of their jobs, and the opportunity to work extra hours for extra pay. If rigid working time rules were to be opposed by both workers and employers, they would have little chance of being accepted by government or, if adopted, of being obeyed. I therefore accepted, with some reluctance, that "context matters", that it ought to be possible to protect workers from having to work unsociable hours without ignoring the employers' genuine operational requirements.

I suggested that, as a default position, all employers should be bound by standard working time regulations that meet the “decency” test. However, I also recommended that they should be allowed to seek exemption from such regulations. In order to make their case, they would have to show that an exemption was justified by genuine operational necessity; that workers were being properly compensated for any such exemption; that advance notice of changes in work schedules would normally be given; and that workers should be excused from overtime for good reason, such as family responsibilities. Except in carefully defined emergencies, departures from the statutory default position should be permitted only with the prior consent of the workers within a particular enterprise; or under the authority of a ministerial order made after a transparent and expert investigation of operational requirements within a particular sector.

None of what I proposed was original. Similar approaches to the regulation of wages and working time are relatively commonplace in advanced economies, and becoming more so, albeit often following considerable controversy. Does this mean that the decency principle is being ignored to serve the interests of a global economic order dominated by economic values and characterized by pressures for flexibilization? Has it been lost in translation?

Not in my view. In my view, the decent work principle remains intact and pre-eminent, despite the need to translate it into specific contexts where it must make operational and economic sense. If I may extend the metaphor, we should remember that in the translation of poetry or novels from one language and culture to another, it is sometimes necessary to depart somewhat from the literal text in order to capture their spirit or essence.

Now another difficult problem of translation: assuring “decent work” for all workers in a multicultural context. Canada has historically celebrated Sunday as a day of rest; but Muslims and Jews observe a different Sabbath. Christmas

and Easter are public holidays in Canada; but they have no significance to Buddhists or Hindus who, however, must celebrate their own important religious festivals on days that are not public holidays. Rites to mark the death of a family member vary considerably from one ethno-cultural community to another and, in a nation of immigrants, may have to be celebrated half a world away. Unfamiliar religious or cultural symbols — forms of dress or address — may seem to transgress the prevailing norms in particular employment contexts.

Human rights legislation in Canada rightly requires the reasonable accommodation of such differences. In my report, I therefore recommended a number of measures that would complement and reinforce the duty to accommodate. Here is another instance where decency demands a departure from uniformity of treatment. It is a departure, however, that may not be easily understood or accepted by all workers, employers or administrators of labour legislation.

The possibility of resistance to enhanced labour standards reminds us that we must pay careful attention to the problem of securing compliance. In my examination of Canada's federal labour standards, I discovered that the law on the books was much better than the law in practice. In a 2005 survey of employers, about 25% reported themselves to be in violation of *most* provisions of the statute and 75% in violation of at least *one* provision. And remember: this is how employers reported themselves; if anything, rates of non-compliance were probably understated. What good are fine principles — I now ask — and what good is legislation embodying those principles if those principles and laws are routinely violated?

Of course, our legislation provides sanctions designed to ensure that workers' rights are *not* violated. The ultimate sanction is criminal prosecution by lawyers from the Ministry of Justice. Unfortunately, that Ministry has not been assiduous in protecting workers' rights. No: I understate. When I submitted my

report in 2006, not a single employer had been prosecuted for violating labour standards for twenty years. Nor, frankly, was there much point in prosecution: the fines provided for many violations of labour standards were derisory. Enforcement of the law had therefore been left to labour inspectors who did have power to order payment of wages or benefits wrongly withheld, though not the means to enforce such orders or to penalize offending employers. In the result, when employers were occasionally caught violating the law, they had only to pay what they were legally obliged to pay in the first place, and would suffer no additional consequences. This was true even of employers guilty of dozens and scores of violations.

That non-compliance should be so widespread, and that so little should be done to correct the situation, suggests a radical failure not only of political responsibility but of legal professionalism. However, to be truthful, it also suggests that a compliance strategy based primarily on criminal sanctions will never in itself secure general adherence to the “decent work” principle. The best way to ensure such adherence is to persuade employers to internalize the decency principle.

To this end, I suggested two general approaches. The first was that significant resources should be committed to providing employers with education, information, guidance and rewards — in other words to persuading them to modify their attitudes and behaviour. Resources should likewise be committed to empowering workers so that they could either confront their employer directly or seek legal redress. These are all pretty conventional compliance strategies, but they had not been systematically or intensively adopted by Canada’s federal labour authorities. The second approach I recommended was to equip labour inspectors with an array of civil and administrative remedies of increasing severity, so that they could both make victimized workers whole and prevent employers from repeating their violations in the future. This approach was pioneered by the labour inspectorates of Victorian England with some

considerable success; but we tend to forget our history. Of course, criminal sanctions would be retained to deal with frequent and egregious offenders, and indeed would be increased considerably.

It seems to me, then, that not only must the ILO elaborate the meaning of “decent work”, and not only must national legislatures translate “decent work” into positive law, but also administrative authorities must work hard to secure compliance with the law whether by persuasion or coercion.

Now a word about the links between coercion and persuasion. Socio-legal theorists have long suggested that there is a symbiotic relationship between the two. Positive law often emerges from growing social consensus, it is hypothesized, and in turn the enactment and enforcement of law reinforces and “normalizes” that consensus. My experience with federal labour standards afforded me an opportunity to test that hypothesis. Here is what I found.

Thirty years ago, to its great credit, the Government of Canada enacted legislation enabling wrongly-dismissed workers with no access to union grievance procedures to challenge their dismissal before a government-appointed adjudicator. The adjudicator would have power not only to order them compensated for any loss, but to reinstate them in their former job. In the North American context, this can be seen as an exemplary initiative because non-union workers dismissed from their jobs must otherwise sue in the regular courts — a process too lengthy, costly and unpredictable to do them much good. In fact, I would go so far as to describe this Canadian innovation as an excellent example of the “decent work” principle in action: without protection against unjust dismissal, workers are highly vulnerable to denial of all their contractual or statutory rights.

Thirty years on, however, employers seem not to have become reconciled to this legislation. They claimed that the costs of the adjudication process were

insupportable and that its harmful effects on workplace discipline were incalculable. Most especially they objected to the power of adjudicators to order reinstatement because, they said, to return a vengeful employee to his or her job in, say, a bank was to run the risk of sabotage not only to the bank, but to the banking system and the whole Canadian economy. However, when one tests these objections against actual experience with the statute, they turn out to be extravagantly overstated. In fact, only about 300 of the 840,000 workers eligible for protection under this unique adjudication procedure filed claims each year; of those only about 120 or so pursued their claim through to final judgment; and less than 30 workers per year were actually ordered to be reinstated. Moreover, not a single instance of actual misbehaviour by those 30 reinstated workers was brought to my attention.

What struck me, however, is not so much that after thirty years so many employers remain un-reconciled to this experiment in “decent work” but rather that so few workers were taking advantage of it. The explanation is, of course, that dismissed workers lack the knowledge to argue their own case; they cannot afford to hire lawyers; and they have no access to union representation. Here, then, is a textbook example of the point I have been making: grand principles and fine laws are no guarantee that the employer attitudes will be transformed or that the quality of life in the workplace will be altered.

PARADOXES

I come finally, as promised, to the paradoxes of “decent work” — or at least to several paradoxes I encountered during my commission on labour standards.

“Decent work”, it turns out, is not only good for workers; it is good for employers as well. That, at least, is the gist of important new research findings — including some undertaken by scholars associated with the ILO. This research suggests that employers who treat their employees decently — who pay them

well, train them thoroughly, provide them with reasonable benefits and a measure of job security, give them autonomy and responsibility in their work, and respect their need to lead full and active lives beyond the workplace — such employers are likely to find themselves with loyal and highly productive employees. One might almost say “the more decent the work, the more productive the workers”.

This is, perhaps, an odd conclusion to emerge from a study inspired by the concept of “decent work”, which from its inception in 1996 was said to “sum up the aspirations of people in their working lives” — not the aspirations of employers. And it is especially odd that such a conclusion should emerge in the context of a study on labour standards, which (in Canada at least) are usually thought to be concerned with the plight of the most vulnerable workers, not those who enjoy more favourable conditions of employment. Nonetheless, it is an attractive conclusion precisely because it has the potential to persuade employers to provide decent work and governments to enact high labour standards. However, if it is to persuade, the notion of “decent work” norms as optimal rather than as minimal will have to be tested under actual field conditions and verified by careful research that can withstand sceptical scrutiny. If this happens, the ILO will have achieved something approaching a transformation of consciousness — the most profound and lasting sort of revolution.

And now a second paradox. Some of you may be familiar with the famous Whitehall studies that linked the indicators used to identify the social backgrounds of British civil servants with their career trajectories and health outcomes. Those of you who are not will likely be able to predict the findings: recruits from relatively privileged circumstances — from wealthier families, from the best universities — fared better in terms of both indicators. They began their careers with better entry-level jobs, they rose higher in the ranks, they enjoyed their work more, they had fewer illnesses (including stress-related illnesses) and they lived longer. The hypotheses advanced to explain these results and the

empirical evidence mustered in support of them are all equally predictable. Better nutrition, early childhood education, more parental stimulus, preferential access to high-quality academic experience, greater job satisfaction: all seem to have played a part in determining how well they would succeed both prior to and during their civil service careers; and all of these factors of course relate closely to class status and economic privilege.

The results of the Whitehall study are often expressed as a gradient. As the gradient descends from wealthier to poorer people, virtually all social indicators grow worse — from housing to education to health to labour market outcomes. And to this list I myself would add — admittedly on the basis of impressionistic evidence — so too do the extent and quality of encounters with the state bureaucracy and the civil and criminal justice systems, of participation in political, civic and cultural affairs, and of access to public goods. The lower you are on the gradient, the worse your experience.

Now the paradox: workers with the least access to “decent work”, those who need it most, are also the least likely to have the means of obtaining it. They usually lack the skills and education to find good jobs; when they have jobs, they are at risk of losing them because of health, family or legal difficulties; they usually lack “voice” and are unlikely to belong to unions, political parties or social movements that can advocate their interests; and they seldom know their legal rights or have the means to hire a lawyer to defend them.

None of this is counter-intuitive. Indeed, my analysis is pretty consistent with the ILO’s own analysis of why “decent work” and its *Declaration of Social Justice* are so important. Ironically, then, thinking about practical ways to enhance access to “decent work” — and to all of the compounding advantages enjoyed by those who have such work — may take us into unfamiliar territory. The road to decent work may well lie largely outside labour markets, outside the employment relationship, outside the ILO’s core mandate and outside its familiar discursive community.

The ILO seems to acknowledge this. Its “decent work” declaration speaks in the broadest terms of “global, national and local strategies for economic and social progress” and of the need to work not only with its tripartite constituency, but “in partnership with others within and beyond the UN family”. Its *Declaration of Social Justice* expands and elaborates this point. Moreover, in drawing our attention to the centrality of “decent work” as a “means of achieving equitable, inclusive and sustainable development”, the ILO implicitly acknowledges that “labour”, “work” and “employment” are inadequate categories of analysis, that they may have to be replaced by even broader categories such as “citizenship”. It also suggests that the achievement of “decent work” may ultimately depend not so much on workers and employers but rather more on broadly-based social justice movements and on political parties committed to social market or social democratic principles.

This notion may disturb those of us whose entire intellectual capital is invested in attempting to understand “labour” problems and a search for the means to resolve them. So let me frame my proposition in more optimistic terms: to talk of “decent work” is necessarily to talk of decent societies. How a society treats working people is at once a cause, an effect and a measure of its moral character.

Now a final paradox. “Decent work” is rightly proposed by the ILO as an abstraction of universal application. But though “decent work” is an abstraction, it also describes a material reality; and though “decent work” is a universal value, it can manifest itself only in specific contexts. The content, the quality, the meaning of work are intensely and necessarily local and particular, always shaping or being shaped by the prevailing relations of production; always reproducing or resisting the uniqueness of particular economies, ecologies and cultures; always being controlled by or resisting the regulatory regimes of particular legal and political systems; always being

understood as the very instantiation or utter repudiation of particular histories and myths.

The ILO has been grappling with this paradox for 90 years; I can say very little on the subject that it does not already know. I mention it, however, in order to acknowledge that the tension between the universal and the particular, between the abstract and the material, can be a source of both frustration and inspiration.

CONCLUSION

And on that note, I will end my remarks. My aim has been to reflect upon my own encounter with the concept of “decent work” as I tried to put it to work in the real world of Canadian public policy — the experience which brings me to this lectern. I wish I could simply have praised “decent work” and emphasized the importance of advancing it through the legislation of all member states, of embedding it in the normative regimes of all workplaces, of inscribing it in the hearts and minds of all workers and employers. Instead, I have tended to focus on some of its limitations, ambiguities and paradoxes. I have done so — I want to say in conclusion — in order to pay the ILO’s conception of “decent work” the highest compliment any intellectual can offer: it made me think.