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**Migrants and the unequal burdening of “toxic” risk:**

**Towards a new global governance regime**

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## **Migrants and the unequal burdening of “toxic” risk: Towards a new global governance regime**

### **Abstract**

The article addresses the changing discourse that frames the neo-liberal regulatory agenda, in the context of the current financial crisis and related, system-threatening ‘toxic’ risk. In this, the authors claim that a flexible mix of regulation/deregulation and self-regulation is reflected in an asymmetric architecture of multilevel governance that is based on an unequal *burden-sharing of risk*, involving *the commodification of risk* and an imposition of this burden on the socially weakest groups. Migrant workers are identified as being most vulnerable to the condition of precariousness due to ‘*double asymmetry of hyperprecarity*’. The article identifies class-biased practices of regulatory failure and the counter-movements that they have generated around the demand for “decent work”. It is claimed that the present systemic failure has created only a ‘window of opportunity’ for the working class and civil society actors to promote de-commodification of labour and equalization of risk-burdening in the inception of a new regulatory contest on both national and transnational level.

**Keywords:** Risk, regulation, migrants, *hyperprecarity*, labour standards

## **Introduction: Risk and moral hazard**

The space of a few weeks in the late autumn of 2008, witnessed a sudden and profound shift in the discourse of regulation. From being inimical to the realisation of capital's project, regulation has become the indispensable shield against the ultimate harm of systemic failure. Capitalist political economy has "risk" as its fuel. It is the volatile element that powers its motor of development. While some, such as Ulrich Beck in *Risk Society*, have argued that risk is the essential *leitmotif* of our time, others have fiercely contested the assumptions on which such analyses are based (for a critical review see Mythen *Ulrich Beck*). This article also challenges the ideas of a "risk society", but does so by an analysis of trajectories of regulation and re-regulation in response to crisis. It draws a contrast between the regulatory response of capital to "toxic" risk exposure resulting in systemic failure, and the rather differentiated regulatory response to risk exposures resulting in real harms to workers. It then asks whether the present critical conjuncture has opened a window of opportunity for new regulatory momentum to protect the most vulnerable sections of labour, international migrants, within a new global governance regime of effective social rights and labour standards.

## **Regulation, de-regulation and self-regulation**

We know now, if we did not already, that the concept of risk implies a calculus of success and failure. It is clear that when there is a failure of capital's profit-generating institutions to "risk-manage", the state and/or international institutions acting on behalf of "capital organized globally" intervene to mitigate harms caused by exposure to excessive or "toxic" risk. The response is massively proportionate and unconstrained by ideological or extraneous political considerations. Significantly, the

key neo-liberal argument against regulation of “moral hazard” and the necessity to incentivize market discipline by exemplary failure, has simply evaporated in the firestorm of collapsing “confidence” (Wolf).

Hitherto, regulation has been depicted as a “burden” on business, inhibiting the realisation of the creative wealth-generating capacities of the market and imposing unnecessary costs. Hence, the neo-liberal “mantra” of de-regulation of the last nearly three decades. But the process is more complex than that implied by a simple trajectory of de-regulation. The true thrust of the regulatory agenda in contemporary global capitalism has been a complex mixture of de-regulation and re-regulation, in which the ultimate aim has been to manage risk in order to preserve system integrity, but to do so in the least intrusive manner possible from the point of view of capital. This is the policy agenda of so-called “light touch” regulation, or “better regulation”, or, in its current US Republican incarnation, “smart regulation”. This agenda is also encapsulated in the allied discourses of “new modes of multi-level governance”, “soft” law, “responsive” and “reflexive regulation” (Aalders and Wilthagen). In other words, the objective has been to re-locate the centre of gravity in the *processes of regulatory oversight* from the state (seen crudely as “command-and-control”) to private interests. At the same time, the purpose has been to expand the arena of *self-regulation*, in which business is the lead actor, with the state, at best, a secondary onlooker. The real trajectory of regulation has been from the public to the private sphere, in other words, the ongoing privatization of governance that has accompanied the neo-liberal project.

Increasing the scope for self-regulation implies that actors will behave responsibly, and in pursuing their own best interests, will internally sanction infractions of (self)regulatory codes, and will, if necessary, apply credible restraints against the authors of misdemeanours. In return, such actors are given wide discretion in how the overall goals of regulatory compliance are to be achieved, be it through industry-authored codes of conduct, internal audit and control procedures and/or voluntary guidelines. It is this concept of self-regulation that now lies in conceptual and empirical disarray. Faced with the historically rare, but stark and immediate prospect of regulatory breakdown and a fundamental crisis of system legitimacy, the capitalist state and allied systems of global governance have had no option other than to intervene in the market on a quite spectacular scale. When risk becomes “toxic”, even system-threatening, regulation is back on the agenda and re-enters political discourse, literally with a vengeance. Governance structures are quickly reassessed in the harsh glare of systemic failure.

To gain some perspective on how far the debate on risk and regulation has shifted, a reminder of the high-tide of the neo-liberal reconfiguration of governance is both salutary, and as it now reads, more than slightly sinister. The British Government’s “Better Regulation Commission”, previously its “Better Regulation Task Force”, and prior to that its “Better Regulation Unit”, has been the UK agency charged with simplifying and removing “unnecessary regulation” and “red tape” from business life. Modelled on US-style “sunset commissions”, the Better Regulation Commission in a report in 2006 under the bold title of *Risk, Responsibility, Regulation: Whose Risk Is It Anyway?* announced:

Our national attitude to risk is becoming defensive and disproportionate; the way we try to manage risk is leading to regulatory overkill. There is an over reliance on Government to manage all risks yet it is neither possible nor desirable to control every risk in life. Personal responsibility and trust must be encouraged. Britain must safeguard its sense of adventure, enterprise and competitive edge (Better Regulation Commission website).

The Chairman of the Commission signalled urgency in his introduction to the report with a “declaration” that:

“enough is enough” – it is time to turn the tide... We have all, in our view, been complicit in a drive to purge risk from our lives and we have drifted towards a disproportionate attitude to the risks we should expect to take. The costs of the accumulated burden (of regulation) have only become evident when it is too late (Better Regulation Commission 3).

What is interesting is perhaps not so much the queasy rhetoric, as the warning red “disclaimer” at the top of the webpage that alerts the reader: **“THIS INFORMATION ... IS BEING MAINTAINED FOR ARCHIVE/HISTORICAL PURPOSES ONLY. IT WILL NOT BE UPDATED”**. While some might consider it a fitting epitaph for a comprehensively failed political project, the Better Regulation Commission, in fact, has metamorphosed into a full-scale government department, the Department for Business Enterprise & Regulatory Reform.

The department is now headed Peter Mandelson, a twice-disgraced Cabinet Minister under Tony Blair’s New Labour premiership. Mandelson, whose appointment was announced in October 2008, was formerly the European Union’s Trade Commissioner. At the very height of the financial crisis, he was brought “in from the

cold” of Brussels to serve the British government in its darkest hour. During his period of exile from the UK political scene, he had served as a major conduit for and promoter of New Labour’s “better regulation” agenda within the EU. Paradoxically, he had also promoted the European Union’s engagement with the International Labour Organization’s world-wide campaign for “decent work” and social rights for workers in the globalised economy. “Decent work” became an integral part of the European Union’s external trading agreements, especially with the developing countries. This seeming incongruity can be explained, however, less by Mandelson’s conversion to engagement with the most exploited of the world’s poor, than by the desire to ensure that European producers would not be competitively disadvantaged by the lower production costs of trading partners in the developing world exploiting the comparative advantage of lower labour standards.

### **“Toxic” harm and unequal burden-sharing**

The current crisis of capital has devolved around the seemingly limitless liabilities to financial institutions resulting from the accumulation of “toxic” debt and the incalculable economic harms attendant on an impending global recession. However, when it comes to mitigating “toxic” harms to labour, it is a rather different story. Here, we have instead, a profound asymmetrical relationship, a phenomenon that could be described as the “unequal burden-sharing” of risk. It is labour which carries the burden of risks that are *imposed* upon it, while the authors of those risks remain shielded from the negative consequences of detrimental allocative decisions. It is this differentiated distributional process, the result of choices and not the unseen outcomes of the guiding hand of the market, that creates the circumstances where workers and their families are exposed to “toxic” risks, and consequently, suffer harms when that

risk is inadequately managed. The chemical disaster in Bhopal, India, in 1984, which claimed upwards of 3,000 lives according to official estimates, provides perhaps the most vivid illustration of this process. Here risk was *dis*-placed and re-located as a materialized export of harm in the global political economy with devastating consequences (Pearce and Tombs). Seen from this standpoint, there is little to be found of Ulrich Beck's "boomerang effect", equally exposing all in a new distributional "logic of risk", including the very authors of these risks (Mythen "Employment" 134). The US-owned Union Carbide executives, having taken due advantage of the regulatory regime in India, remained shielded from the consequences of their decisions by virtue of regulatory and geographic distance. While all may be vulnerable in the great game of risk management, the "managers" are much less vulnerable than the "managed", or we could say, than the *mis*-managed.

The notion of a hierarchy or inequality of risk-burdening implies that, unlike the classical model of the market, which posits a system of preferences based on shared information, very often workers do not have information upon which to make informed choices. Even if workers do have information, they are constrained by other material factors. Information which would allow rational choice, in this case, to enable the maximisation of personal or even collective well-being, is skewed, or those choices are limited by external "objective" conditions which themselves can only be interrogated within the deep asymmetries of socially structured inequalities.

There is one further conceptual starting point in any analysis of unequal risk-burdening which may be described as the *commodification of risk*. Underlying most forms of risk assessment are calculations of the "costs" and "benefits" of regulation.

These imply certain assumptions which are highly questionable and go beyond simple critique of the accuracy of the quantitative risk assessment criteria which form the basis of cost-benefit analysis. Kelman has suggested that the act of “pricing” a condition or risk, changes it fundamentally. By pricing an accident or catastrophic event, we lose our capacity to experience such feelings as horror, or the desire for retribution, or similar attitudinal responses that can change our behaviour. Moreover, the act of pricing changes the way individuals view themselves and society. Unpriced values provoke solidarity since they are deeply rooted in feelings and values we share as social beings. By introducing prices, we reduce these values to the level of commodities towards which people are socialized to respond individualistically or competitively. The pricing of benefits and costs of accidents systematically excludes moral and social claims. It ultimately represents an anti-humanist denial of the social nature of human beings and the immanent location of their fundamental rights within that sociality. In other words, in the very conceptualisation of risk and the unequal burden-sharing which is imposed on those least able to resist, there is an active denial of their very humanity, ultimately in favour of the cost calculation of replacement “human resources”, should risk probabilities result in actual harm (Woolfson, Foster and Beck). From this, real consequences flow.

### **Precarious labour and the double asymmetry of *hyperprecarity***

Where do migrant workers stand in this continuum of risk-burdening? This question is important in giving substance to the notion of *precariousness*, or *precarity* as we will term it, and to any thesis of *hyperprecarity*. There is a sense in which *all* work in a capitalist society is “precarious”, something that we can easily agree with Beck regarding (“*Brave New World*”). As Marx himself pointed out, the very wage bargain

and the surrender of labour power to the employer is made on fundamentally unequal terms. Frade and Darmon offer a definition of precarious employment:

as a variety of forms of employment below the socially established normative standards, which results from an unbalanced distribution towards and amongst workers of the insecurity and risks typically attached to the labour market (107).

The theoretical notion of precarious employment is further discussed by Michael Quinlan and his colleagues who elaborate the global unbalanced structuration of risk within contingent employment relationships along three overlapping dimensions: the economic, the work organisational and the regulatory (“The global expansion”). These perspectives inform the current discussion.

The migrant worker, like any worker in capitalism, *must* also sell her/his labour to survive. Indeed, that is the fundamental *raison d’être* of the economic migrant. However, here there is a double asymmetry, whereby the inequality of risk-burdening is a specific realisation of the basic inequality of the wage bargain under *specially disadvantaged circumstances*. In the case of migrant labour, this double asymmetry or *hyperprecarity* achieves *heightened form in the employment relationship* through the *contingent* nature of that relationship which is typically *definitive*. The migrant stands, more often than not, at the end of a long subcontracting chain in which the burden of risk (as against the “burden” of regulation), is successively *offloaded* from employer to employee. Thereby, the *employment relation becomes itself a risk-transfer mechanism*. At the same time, this transfer mechanism is *globally amplified*. We see it in the “export of hazard” (most graphically as in the Bhopal catastrophe), and in its simultaneous geographically reverse re-importation in humanly-embodied migrant

labour. Moreover, the very act of migration itself often imposes enormous physical and financial risks on migrants and their families, especially for those who are “undocumented”. The freedom of capital to move across borders is not matched by similar freedoms for labour.

This notion of *hyperprecarity* is somewhat akin to what Balibar previously has termed “the tendency towards super exploitation” (177). Access for many migrants to stable regulated and long-term employment, supported by social welfare guarantees in the form of insurance against sickness or accident is generally absent. So also is the opportunity to enter the formal as against more informal job markets, and therefore to acquire the right to unemployment benefits, training opportunities, social services, affordable housing etc, or in other words, to experience the benefits of “decent work” and the basic elements of inclusive citizenship in society. These considerations apply with particular force to so-called “irregular” or “undocumented” migrants, who are particularly exposed to abuse by employers. Such abuses include, in their more extreme manifestation, subjection to physical and psychological coercion, withholding of passports or ID documents, isolation in dormitory work camps often at the worksite and various forms of bonded labour (debt bondage). Malpractices can infect every interstice of the employment relationship. They can include contractual abuses such as the deduction of finder’s fees, failure to pay the minimum wage, late or non-wages payment, excessive charges for food and accommodation (often substandard, unhygienic and overcrowded), absence of holiday pay or sick pay, penalties for leaving employment, unauthorized salary deductions, failure to provide clear written contracts in appropriate languages, deliberate “under-documentation” of employees to induce further contractual dependency, excessively long working hours,

and, typically, exposure to hazardous working environments with unsafe working practices. In the vacuum of regulatory compulsion, the inventiveness of employers in creating new and ever more “toxic” forms of labour degradation is simply awesome.

Most migrants cannot speak up for or demand their rights, since they have few if any counter-balancing representational resources at their disposal. Access to “voice” in the workplace typically powerfully constrained – voiceless “exit” from country of origin, being matched by voiceless “entry” in country of destination. The precariousness of their status is such that such migrants will often be complicit in reducing their own social visibility in order to avoid attracting the attention of the authorities. Their “voicelessness” is all the more profound and they remain more deeply submerged within the sedimentary layers of the informal economy. The “classical” channel of voice for the organisationally powerless, “whistleblowing” is unavailable, often simply because migrants lack the necessary language skills or cultural orientation, but more compellingly, because of their inherently insecure and *temporary* status. As such, many migrants are open to the most arbitrary forms of harassment, cheating, and exploitation and yet remain quiescent or intimidated. Their labour is profoundly constrained by the *absence of boundaries* on employer demands and co-relatively, there are few if any limits upon the excessive and coercively-induced “toxic” risk exposures to which they are subjected.

Within this nexus of disabling employment relations, the multiple forms of contingent employment, their ethnic, gendered and sectoral distribution, the shifting interconnected relations between the formal and informal economies and the patterned recruitment of their labour forces, allow us to examine concretely where the *leading-*

*edges of hyperprecarity* are located. They also allow us to evaluate the contextual limits of self-regulation, their institutional configurations and the assumptions under which they operate, as well as the supporting architecture of judicial and non-judicial compliance-incentives. As we suggest below, in the context of *imposed hyperprecarity*, self-regulation or absence of regulation, leads to potentially disastrous outcomes.

### **Regulatory failures and responses**

Catastrophic failures of regulatory oversight are actually more common than perhaps is commonly understood. In fact, they are only the most visible tip of the iceberg of the ongoing routine erosion of regulatory oversight and the failure to control and manage risk appropriately. In 2004 an instance of catastrophic regulatory failure, the multiple fatalities that occurred in which 23 migrant Chinese workers collecting sea-shore molluscs were drowned in Morecombe Bay in the west of England, as the tide swept in and cut them off from the shore. In any disaster of this magnitude, there are always unexpected and heart-rending details that make such an incident into a human tragedy almost impossible to comprehend. One of the workers used his mobile phone to call his wife in China in order to say goodbye as the waters engulfed the group. The response of the British state was to pass Gangmasters (Licensing) Act 2004 to protect such vulnerable migrant workers from exploitation by “labour providers” within the food sector, a measure that evoked widespread support from within the industry’s largest employers and supermarkets concerned with their corporate reputation. Here the plight of a previously “hidden” group of the migrant workforce was suddenly “discovered”, and the abuses that led to their deaths called for appropriate and rapid regulatory response.

For pro-regulatory forces within society, in particular, trade unions, this Act was an advance that requires to be extended to other sections of the vulnerable workforce who suffer exploitation resulting from their hyperprecarious status. In the words of Bob Blackman, National secretary for construction of the UK trade union, *Unite*:

With an estimated 75% of labour providers (or gangmasters) now operating in sectors other than food, the case for that law to be extended to protect workers displaced into other sectors, in particular to major employers such as construction, is self-evident (Blackman 15).

Blackman goes on to document some of the abuses that occur in the construction sector affecting migrant workers. These include construction workers being re-designated as “security” staff so that they can sleep on site at night, and injured security workers denied medical treatment because their employers are evading the authorities. Construction workers brought in from the EU new member states are directed onto building sites without the language skills to understand health and safety warnings. Blackman suggests “both the Government and the HSE (the Health and Safety Executive, the responsible UK regulatory authority) are in denial with regard to migrant workers being injured on sites” (Blackman 15). Other documented abuses include workers forced to pay commission to their gangmaster: £400 (approx 500 Euros) to be found employment, plus additional payments of £60 (77 Euros) a week to ensure continued employment. Deductions are also made for “administration, travel, accommodation and expenses” amounting to half of weekly pay. Bogus self-employment is endemic in the industry and Blackman estimates 8 out of 10 workers in construction in London, and more than half of all workers across the industry as a whole are bogusly self-employed.

What the growing body of qualitative evidence and informant testimony suggests is the following: that catastrophic regulatory failures provoke regulatory renewal on the part of the state authorities, and, if necessary, the criminalisation of regulatory infraction. However, the embedded nature of employment malpractices to which migrants are exposed was revealed in a *voluntary* audit of the impact of the new regulations on labour providers, two years after the inception of the legislation. This found a staggering 60% of labour providers, two-thirds of whom had recruited their labour force from new EU member states, to be in “major non-compliance”. Of the regulatory violations, 45% of the total number of non-compliances raised concerned health and safety issues (Temporary Working Labour Group 25).

For the Better Regulation Commission, however, the Gangmasters (Licensing) Act, provided a useful “case study”. In their report referred to previously, the Morecombe Bay tragedy merits a special insert box with the following commentary under the header “Questions this raises”:

There would appear to be no doubt that a hard core of exploitative gangmasters operating illegally exists in the UK and that state action to curb their activities is warranted. However, could gangmaster activity have been effectively regulated by strengthening existing regimes (such as health and safety and employment agencies protections)? What has been the impact of the additional costs of licensing on the regulated industries? The farming industry claims the Act has unintended consequences. If so, how could these have been avoided? How do the costs and benefits stack up? (12).

## **Regulatory renewal and the “decent work” agenda**

Once circumstantial or contingent features are ruled out as the primary explanatory variables, the question is always one of whether it was the *absence* of regulation (the hazard was not perceived or understood as such), and/or the “*inadequate*” nature of risk management which was in place (the hazard was perceived, but the assessment of risk required for its management was faulty) which caused system failure?

Depending on the answer to these not necessarily mutually exclusive questions, the process of re-regulation can begin.

However, overcoming a crisis of regulatory legitimacy presents a fundamental challenge to the social inventiveness of actors at state and civil society levels which regulation by itself cannot solve. This is because the very assumptions of regulatory governance need to be stated explicitly in ways that are not always congenial to the various parties. For capital, this means that the *forms of regulation* are crucial determinants in the *recapitulation of the authority of the market*. For workers, *regulation per se* is often seen as a valuable power resource to counterbalance the excesses of capital.

In the aftermath of regulatory breakdown and the subsequent public policy intervention of regulatory renewal, there is a period of intense manoeuvring regarding the new forms and types of regulation to be put in place in order to restore system legitimacy. For capital, it is essential to *maximize the zone of regulatory discretion* in any new system of regulation, in order to prevent the imposition of expensive compliance requirements and “overzealous” regulatory oversight. In general, the shape and character of compliance with new regulation is negotiated with the

regulators to lead them, so far as possible, onto the terrain of discretionary enforcement. This is primarily to enable the target industry to interpret as much of the new regulatory requirements as it can, in a manner that implies the least financial commitment necessary.

Regardless of the outcomes of this initial process of negotiation, in the course of re-establishing a regulatory regime, over time, capital will seek to (re-)capture the regulator or the regulatory process and/or alter the rules of the regulatory game in its own favour. At first, there will be effective compliance as the target seeks to reassure the regulator of good faith and commitment to the renewal process, much in the manner of “we have sinned, oh lord, but now we repent”. Eventually, however, a process of natural regime decay sets in, as first flush enthusiasm is replaced by more short-term expediency and the costs of compliance are seen to be “too high”. It is at this point that the goals of the target industry and the regulatory regime increasingly diverge, an outcome that is described in the literature of regulation, as the “*gradual erosion scenario*” (Wildavsky).

For workers, regulation provides the structures of protective governance that counter-balances potential harms created by market forces. Classically, it was labour inspectors, in their various guises, who were seen by employees as an important first line of defence against the exposures to unnecessary risks created by rapacious employers of the nineteenth century. Global capital, today, is no less rapacious than its predecessors, and certainly, much more adept in distorting the *regulatory contest* between labour and capital in its own favour by altering the “rules of the regulatory

game” wherever possible, but preferably, by *authoring* the very structure of these rules themselves.

The dynamic of global governance regimes order” according to the needs of capital. has so far been informed by the neoliberal vision, thus navigating the process of globalisation towards a creation of a liberal trade regime, embodied in the establishment of the World Trade Organization (WTO in 1994. Related financial and monetary systems supporting free capital flows were also set in place. These have facilitated the establishment of global production systems and the creation of a global labour market through new forms of global “commodification” of labour, its semi-proletarianisation and the consequential global patterning of labour migration (Overbeek).

In this process, global governance itself has been rearranged, reflecting the normative asymmetries informed by neo-liberal paradigms of regulation and de-regulation. Stephen Gill (1974-1976) qualifies this “new constitutionalism” as a “disciplinary neo-liberalism”, which shapes “a political economy and social order” according to the needs of capital. In this, it is “attenuating and co-opting democratic forces in order to *prevent* a second Polanyan ‘double movement’ that might lead towards authoritative re-regulation” (Gill 1982). Throughout 1990s, the World Bank has consistently endorsed so-called “Washington consensus”, including social policy reforms (in a uniformly downwards direction) and “flexible” labour laws, regardless of rising discontent with its lack of social and democratic accountability, and its failure to deliver sustainable economic development and employment.

However, social and political challenges to this liberal global order, especially related to commodification, inequality and security (Doyle), have increasingly questioned the

current paradigm of international monetary management under the tutelage of the IMF, the World Bank and the WTO (Thérien 219). An alternative “UN-paradigm” (Thérien 219) informs a different understanding of the nexus between global liberalisation and poverty, inequality, deterioration of social conditions, human and labour rights. This has attempted to elaborate a comprehensive theoretical and policy framework for the promotion of a “social dimension” to globalisation.

Central here has been the International Labour Organization which has reaffirmed its mandate to promote social justice through forging “decent work agenda”. This was formulated by its Director-General, Juan Samovia in 1999, in the *Decent Work* report (ILO). The ILO’s primary goal was ‘to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity’ (ILO 9). The decent work agenda corroborated the basic principle of the ILO Constitution, which postulates the “de-commodification” of labour and reaffirmed the 1998 Declaration on Fundamental Principles and Rights at Work, while also appealing to a bundle of previously declared international human, social, economic and cultural rights.<sup>1</sup> Moreover, the ILO’s revitalized engagement in the promotion of labour standards is also connected to other more ambitious goals, such as promotion of employment, social protection, security and social dialogue, including strategies to achieve these goals and addressing all workers, even unregulated, self-employed and homeworkers.

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<sup>1</sup> The Declaration affirmed eight core conventions that ensure: freedom of association, recognition of collective bargaining, elimination of forced labour, prohibition of child labour, elimination of discrimination in employment and occupation and right to income. These rights are also linked to the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Economic, Social and Cultural Rights and the 1995 World Social Summit Declaration and Commitments.

In pursuing these strategic goals, and the overall organisational objective to reinvent itself as a main forum for the social policy dialogue, the ILO launched several other global initiatives. They have come to structure a coherent discourse of global justice, solidarity and fair globalisation that has found ready response in the new social movements of anti-globalisation campaigners. One key initiative concerns migration as a global phenomenon and the building of the Global Migration Group, together with the International Organization for Migration and several other UN agencies. The UN Secretary General also launched a Global Commission on International Migration that presented its report in 2005 (*Migration in an interconnected world*). The report probed into the problems of global migration, especially the estimate of rising undocumented migration and reaffirmed the legal mechanisms that should frame migration policies. Indeed, a plethora of international rules, norms and regional instruments already exist that comprise a human rights-based approach to migration in general, and labour and irregular migration in particular. If implemented, these instruments would protect migrants from worst kind of exploitation and human trafficking (see ILO Conventions 97 and 143). For example, respect for migrants' rights is mandated by the 1990 UN *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. However, it took twelve years for the Convention to be adopted and more than a decade for it to be ratified by necessary number of countries in order to "come into force". Even so, such universal declarations, conventions and recommendations have proved toothless while devoid of effective sanctions.

However, of greater moment is that fact that the most important actors, the large transnational corporations, national states and the regional actors have been less than

enthusiastic in promoting the decent work agenda. The inclusion of the agenda into the European Union's discourses of "good governance" (as we have suggested for mainly instrumental reasons), and some shifts in the discourse of "corporate social responsibility" have been seen by some as representing progress, yet very little has been achieved in concrete terms (Likic-Brboric). In the meantime, we have seen further polarisation, informalisation of the economy and increasing irregular migration as an articulation of a global "political economy of inequality" (Ackerman). This poses the question of who then might become the key actors in initiating change on a scale that would protect the least protected of workers, vulnerable migrants, within a new global governance regime in these, the least and yet potentially, the most propitious of times.

### **The transnational trade union response to precariousness**

*Contra* the fatalistic pessimism of "risk society" theorists who have argued the *impossibility* of regulation in the new modernity, the form and content of regulation remains central to working-class demands for social justice and equity in class society. It is why the capacities and *empowerment* of workers in this contest are necessary resources in a global struggle, manifest first at the level of the individual workplace, but also increasingly, at national and transnational levels as the preceding discussion has suggested. The challenge is to mobilise the trans-national strategy and the organisational capacity of trade unions, of non-state multilateral actors and international NGOs, of academic communities and civil society at large to make a significant difference. Hitherto, two avenues of action have been pursued: one towards empowerment of the so-called "precariat", and another focussing on the governance of the production chain, where the role of the multilateral agencies,

transnational corporations and the state is underlined. Concerning the former, there has previously been a divide between trade unions and NGOs. The trade unions have been rightly criticised for their bureaucratic style, nationalism and “exclusion of the excluded”, while praised for organisational capacity and internal democracy (See Silverman). However, the mobilisation of illegal immigrants against their criminalisation in rallies across the USA points to a change in trade union practices and attitudes.

The international trade union movement has not emerged ‘fully formed’ to borrow a phrase, to confront global capital. Realisation of new front lines in the unfolding contest over globalisation and its consequences has come slowly, historically speaking, and in a complex articulation which required the systemic collapse of the putatively “alternative” model of actually existing socialist society. Yet in the two decades that have followed the demise of communism, the international working class movement has painfully built a semblance of unity out of previous ideological fracture, and may even be poised on the threshold of a new combativeness.

The first ever “World Day for Decent Work”, an international trade union initiative to highlight the growing problem of precarious work in the global economy occurred on 7 October 2008. The initiative brought together a number of major global trade union federations, including the International Metalworkers’ Federation (the “other” IMF), the International Federation of Chemical, Energy, Mine and General Workers’ Unions (ICEM), together with the European Trade Union Confederation (ETUC). It was led by the global trade union international, the International Confederation of Trade Unions (ICTU). The ILO demand for “decent work” was placed at the centre of this

campaign, intended to give international trade union momentum to this policy agenda. As the International Metalworkers' Federation put it: "*Precarious work affects us all* is a global union campaign to stop the rise in precarious employment and regain power and justice for working people" (International Metalworkers' Federation). The campaign, complete with web-based timelines of unfolding events in more than 100 countries around the world, was reported through "live feeds" on the internet and postings on *YouTube*. It involved actions, meetings and events in Western and Eastern Europe, South-East Asia including India and Pakistan, Latin America, Australia and the Pacific, South Africa, and even Alaska. The Spanish contribution was particularly creative, comprising job interviews covertly recorded on mobile phones by "applicants" for low paid precarious work in a bar, in a supermarket and in a clothes shop ("Metalworker actions"). In Turkey, the trade union *Birlesik Metal Is*, organized a demonstration in front of the ISUZU vehicle manufacturing plant in the industrial area of Gebze in Istanbul, with around 500 workers participating in the demonstration. Union members carried placards with slogans such as: "No to precarious work!", "Let's organize, to put an end to the precarious work for our collective rights". The action was reported as being intended to show resolution in the fight against precarious work, and also against "flexibility" imposed by the employers' organization, during the collective bargaining process ("Metalworkers speak out"). In Ukraine, a "public hearing" on "Decent work - a base for decent life" was organized by Federation of Trade Unions of Ukraine, and a protest demonstration under the slogan of "No to 'shadow' wages!" was held in Independence Square in the centre of Kiev (World Day for Decent Work). In Vilnius, Lithuania, local trade union youth organizations hired a bus which bedecked with posters and balloons, was toured around the city for three hours, an action reported under the magnificent heading of

“Ambulating Decent Work Campaign in Lithuania” (World Day for Decent Work. Lithuania).

In one respect the sheer scale and diversity of the activity around this global day of action was impressive. Yet, while these initiatives clearly resonated with different sections within each regional and national trade union movement, the very linking of the broad generalist demand for decent work with specific local demands, potentially blunts the sharp edge of the fight against precarious work. It is almost as if the core issue of *precariousness*, in adopting so many forms and guises, is in danger of becoming obscured by its chameleon-like, yet ubiquitous, nature. What is local and what is universal becomes difficult to disentangle and inter-linkages are sometimes unclear. The following text from the homepage of the World Day for Decent Work sums up this unacknowledged dilemma:

You don't necessarily have to invent a new campaign for October 7. Maybe you can highlight some of the work that is already being done in your organization? All countries have issues with decent work — maybe it's more obvious if you are working in a developing country than in an industrialized one. Decent work issues can include migration; discrimination; equality; forced labour; human trafficking; child labour; and other core labour standards such as right to bargain collectively and the freedom to organize; freedom of expression; laws and agreements issues; informal economy; climate issues (green jobs); health and safety; social protection; poverty and food crisis; social dialogue... well the list can be even longer (World Day for Decent Work. About the day).

In a sense, this omnibus nature of the campaign is an illustration of the problem that is inherent in the ILO core agenda of decent work, with its appeal to essentially reformist demands for social justice and “decency” at the workplace.

A more focussed approach is found in the allied campaign against precarious work that the International Federation of Chemical, Energy, Mine and General Workers’ Unions (ICEM) has recently launched around contracting out/outsourcing and temporary agency work. Among the useful practical tools which the federation has provided is *A short guide for negotiators on how to deal with contracting out, outsourcing and/or agency labour*, and the more extensive *ICEM Guide on Contract and Agency Labour*. This strategy presupposes, however, organized workplaces with workplace representatives. What it does not envisage is directly organizing the unorganized, those in the informal and grey or black economies from whom many of the “new” second tier or peripheral labour force are recruited. In that sense, the central thrust of the campaign is defensive in orientation, perhaps legitimately so, aimed at protecting the standards of their existing membership. Nevertheless, the federation identifies migrants, as well as women and young workers, as those most vulnerable and in need of protection from the new forms of contractual abuse whom it describes as “the first victims of precarious employment situations, of extremely low salaries and/or of bad working environments” (*ICEM Guide* 12).

One global campaign led by a trade union international that does place migrants’ working conditions at its centre, is that of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF). Under the title of *Workers and Unions on the Move - organising and defending migrant workers in agriculture and allied sectors*, this trade union international has

provided a detailed handbook for union organizers (Boincean). As the introduction notes:

This growth of migrant labour of course is having a huge impact on how trade unions can and should organize. For some unions, organizing migrant workers has become a matter of their very survival. If unions do not recruit, organize, represent and defend migrant workers, their role will become insignificant and some may even disappear altogether. But for all unions in these sectors, organizing migrants has become necessary if we are to halt the “race to the bottom” which is reducing standards for all workers (*Workers and Unions 2*).

While international trade union campaigns are important in setting normative benchmarks in terms of acceptable labour standards, with a few notable exceptions such as that above, (another being the campaign against “flags of convenience” by the International Transport Workers Federation), it is primarily at the national level that effective action by key stakeholders groups such as trade unions is best devised.

National trade union initiatives recently have included unions in both countries of origin and countries of destination, with both becoming alert to issues of migrant workers conditions. In Spain, France, UK, and Ireland, trade unions have recruited organizers from the countries of origin, published leaflets in migrants’ own languages, set up information centres in countries of origin to explain collective rights, and increasingly have directly taken up injustices that migrant workers have experienced. Migrants’ own organizations, social movements against sweated and bonded labour, sympathetic media and human rights organizations, have exposed migrant workers’ conditions, for example Human Rights Watch (*Building Towers*) in United Arab

Emirates. (*Building Towers*). Such forces also have their part to play in sustaining a broader pro-regulatory momentum alongside and in co-operation with organized labour.

However, the key political question remains, and it is a perennial one: how can the demand for rights at work be made both concrete and enforceable, through governance systems that ensure pro-worker regulatory regimes, while at the same time, linking these demands to the forward movement of the broader international working class. In campaigning for regulatory renewal on behalf of workers, the very basis of capitalism's current legitimacy as a system is challenged.

### **Future of regulation and governance in a global era**

The preceding discussion returns us to the impact of global economic decline on *precarity* and *hyperprecarity*, a question perhaps unanswerable at this time, if only because the scale of that decline is still unfolding. Nevertheless, past analyses of the impact of downturns in economic cycles would suggest some possible outcomes. One of these posits a very simple relationship. If the overall intensity of economic life slows, there will be less demand for labour and therefore, a reduced labour force means fewer potential employed individuals who are at risk. Another strand of argument suggests that while the former may be true, in strictly quantitative terms, pressures for output on those who remain in an even more cost-driven environment result in qualitatively intensified exposure to risk of the workforce. Both outcomes may or may not facilitate regulatory renewal and oversight, Pressures to apply "light touch" approaches and to adopt a "business-friendly" attitude in difficult times may provide a more compelling *modus operandi*. It seems intuitively unlikely that there will be political momentum towards more root and branch regulatory renewal during

a period of prolonged global economic recession. Moreover, there is no necessary “spill-over” of regulatory momentum from one sphere of capital’s activities to another. What is required for a new regime of economic and financial accountability may not be seen as necessarily implying a new regime of social accountability for the well-being of the population, in particular, of those sub-populations that lack authoritative “voice” in the political process, labour migrants being the case in point.

In terms of wider regulatory debates, the current conjuncture therefore raises interesting questions. What are the appropriate forms of governance and of regulation that can protect those, the most vulnerable of workers in contemporary globalized capitalist society against the “toxic” ravages of unbridled exploitation in a period of massive economic retrenchment? Can capital contain, de-limit and ultimately quarantine the drive to re-regulate? Yet, if governments can make regulatory intervention in the financial infrastructure of capital, why can they not equally in its social infrastructure? If “regulation” is no longer a dirty word in the lexicon of public policy, if it is the *only* resource that can match and overcome systemic crisis and produce structures of accountability why should its beneficial outcomes be restricted to the interests of capital and not made available to those of labour?

Lastly, to return directly to our theme of *hyperprecarity*, what are the appropriate and accessible forms of new accountability that might enable migrants as the carriers of a double burden of risk exposure to secure their basic rights in the global labour market? In this context, what were previously discounted “rhetorical” agendas, for example, labour standards, positive labour rights, “decent work”, regulatory enforcement, corporate responsibility etc., become potentially live points of

orientation in an unfolding campaign for a new global governance regime, comprising demands with material political momentum and renewed legitimacy.

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