1. Introduction

The concept of sustainable development has mostly been applied to the application and enforcement of environmental standards upon a state or region undergoing extensive economic development. In its most basic sense, sustainable development measures the benefits of resource extraction and industrial development, against its cost (and again, this has traditionally meant its environmental cost). In such a cost benefit analysis, economic development must proceed in an equilibrium, so that it will not ultimately cause more harm than good on society, and it may continue for a long term.

Labor standards and employment rights also comprise an essential component of sustainable development. Due to global demand for non-renewable energy resources and low cost labor, certain regions around the globe have experienced (and will continue to experience) unparalleled economic development connected with the extraction of such resources and offshoring of production and services from high-wage economies. Unfortunately, it is not always the case that local and indigenous people benefit as much as they should as a result of this development. In the worse cases, their present means of economic subsistence are permanently disrupted, and they do not receive long term, beneficial employment from the corporations extracting the given resource, producing a product or providing a service. When the source of energy is finally exhausted, or production is relocated to an even lower cost country or region, the native and local peoples are left with little.

Truly sustainable development would also provide such local populations with a means to benefit from the economic development around them in a lasting way. This study will argue that raising labor standards, through the application of international labor law, would provide such a benefit while at the same time provide a more level playing field for international investment. Just as various free trade treaties provide protection to investors from various countries, international labor law standards would provide similar protections of fair treatment to employees.
2. Labor standards as a component of sustainable development

The term "development" itself has traditionally been associated with increased Gross Domestic Product (GDP), trade and economic growth in general. Thus, free trade has been unceasingly promoted over the past decades as a means of increasing global economic development, as it has been tied to increased GDP growth rates. In recent years, some checks on such unrestricted economic development have been proposed, where the environmental destruction caused by this development has threatened to ultimately cause more economic harm than good. Thus, sustainable development will still increase GDP, but will do so causing a minimum of environmental harm.

The concept of labor standards as a part of sustainable development also has an economic component. To the extent workers receive high wages, do not suffer discrimination, enjoy benefits including generous pensions and vacations, and are otherwise treated fairly, this increases economic development. Put another way, the share of the economic pie is increased. Well-satisfied employees will be more productive and, what is more, will have more disposable income to spend. This is exemplified by the example of American auto producer Henry Ford, who famously – and to the collective gasp of his fellow industrialists – dramatically increased the wage of his workers in the early 20th century. One important result of this initiative (among others) was the ability of his workforce to purchase his mass-produced automobiles. The Ford company, its employees, and the American economy all benefited. Labor standards should be viewed as a necessary predicate to further economic development, as much as the education of children and students. 2

Still, the labor standards component of sustainable development has a dual nature, and is not limited to a strict economic cost-benefit analysis. 3 The other pillar of labor standards is a focus on the individual, and utilizes a different meaning of the term "development." Development is more than an increase in GDP. Rather, it is measured by the expansion of civic society and human freedoms and capacity. Thus, even if employees receive relatively low wages, there still may be positive (and thus sustainable) development to the extent their own freedoms and capacities increase.

There are a number of different theories that measure development on the level of how it effects human labor. Amartya Sen focuses on the freedom of human capacity to work: development only occurs to the extent it a) reduces labor bondage, b) facilitates human productivity, c) raises productivity, and d) raises the quality of life. 4

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1 See Kevin Koblen, A Development Approach to Trade and Labor Regimes, 45 Wake Forest L. Rev. 355 (Summer, 2010).
2 See Brian Langille, Imagining Post 'Geneva Consensus' Labor Law for Post 'Washington Consensus' Development, 31 Comp. Lab. L. and Pol'y J. 523 (Spring, 2010).
b) increases the freedom to seek employment, c) reduces child labor, and d) increases the freedom of women to work outside the family.

Professor Nussbaum expands these categories, arguing that sustainable development must guarantee a worker's a) life (i.e., workplace safety must be such to ensure that a worker has a reasonable opportunity to live to normal retirement age); b) bodily health (to be free from workplace injuries and diseases); c) bodily integrity (freedom from workplace violence, sexual assaults and harassment); d) play (freedom to take vacations, breaks, and otherwise have time off from work); e) affiliation (freedom from discrimination on the basis of race, religion, membership in trade unions); and f) control over his/her environment (freedom to seek employment, change jobs, join a trade union).

Finally, and in a sense more succinctly, Professor Stiglitz categorizes development as a transformation to democracy, both at the macro and micro levels. At the micro level, for Professor Stiglitz this means the increased involvement of workers in corporations. This is primarily achieved though employee ownership of enterprises, or through an increased voice in the workplace by virtue of membership in labor unions.

Under any of these theories of labor standards and development, increasing worker freedoms - as defined above- is an essential component of development. Indeed, the workplace becomes a cauldron of development, as what occurs at the workplace is reflective of what occurs in society as whole. The workplace is at once the center of human capabilities, where most people spend most of their time, and is reflective of societal inequalities. If development and freedom are achieved here, they will be achieved in society as well. Exactly how these freedoms are to be guaranteed is a matter of some debate. Essentially the continuum runs from a hard law (universal norms, strictly regulated and enforced, preferably by a central authority) to a soft law standard (flexible, local standards, with voluntarily enforcement mechanisms).

Examples of a soft law approach include non-state or private labor regulation. This is seen in codes of conduct utilized by multinational corporations, ensuring that local suppliers will comply with minimum labor standards. In other cases non-government organizations (NGOs) and quasi-public entities (perhaps affiliated with the International Labor Organization (ILO)) will monitor suppliers themselves and issue evaluations as to whether or not international labor standards are being satisfied. Suppliers with poor records will presumably be less likely to continue.

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4 See Koblet, supra.
5 Id.
6 Id.
7 Id.
8 See Koblen, supra; Langille, supra.
a relationship with a multinational corporation, and thus will be pressured into making labor reforms.\(^9\)

A hard law approach would essentially give the ILO more enforcement powers to penalize states that do not meet the requisite labor standards, and would otherwise centralize local enforcement to a national body. It could also take the form of enforceable labor-side agreements to free trade treaties.\(^10\)

Criticisms of these two approaches contend, on one hand, that soft law is too weak, and too voluntary, to give workers the protections they need in a reasonable period of time, and on the other hand point out that many states do not have the will or infrastructure to enforce any labor standards that may be promulgated under a hard law approach.\(^11\) Both criticisms are accurate, which has led to the advocacy of a hybrid approach. Under this view, national regulation would be combined with the use of unions and NGOs as proxies to ensure that labor standards are being met.\(^12\) However, there would not be one, universal approach as to what labor standards must be implemented; strong deference would be given to local conditions and preferences. Particularly, there should be a shift from a universal approach to a local one; top down to bottom up; immediate to gradual reforms; and from wide-ranging solutions to removing specific obstacles.\(^13\)

There is an element to the theory of sustainable development that it is most applicable to developing states, which possess lower or non-existent labor standards, as compared with developed states. Nevertheless, due to geography and history, in many cases even states with higher levels of economic development have regional disparities in labor standards, making the theory even more widely applicable.

3. Conclusion

There is a gap between international protection of free trade for business and international protection of minimal labor standards for employees. Like the case for increased international environmental standards, increased international labor law standards are not a part of a zero-sum game. If managed properly, it could be a classic win-win situation for both business and labor. Workplace democracy leads to a greater number of benefits internally, and purchasing power may emerge.

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\(^9\) See Koblen, supra; Langille, supra.

\(^10\) See David A. Gantz, Labor Rights and Environmental Protection under NAFTA and other U.S. Free Trade Agreements, 42 University of Miami Inter-American Law Review 297 (Winter 2011).


\(^12\) See Koblen, supra.

\(^13\) See Langille, supra.
to a greater national respect for political democracy and the rule of law, which benefits international investors. Better working conditions and eventually higher wages may create greater consumer demand (through increased awareness and purchasing power) for the productions of multinational corporations. At the same time, the basic conditions of millions of employees at work – a place where people spend a significant portion of their lives – would be improved.

Of course, how these standards should be applied and enforced is a challenging question. As noted herein, a hybrid approach, combining elements of soft law and hard law, would likely be the most realistic approach. The hope would be that out of this approach, a genuine, enforceable international labor law would ultimately emerge.
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Przygotowywana publikacja zawiera materiały, z których większość stanowi rozwinięcie rozważań ze spotkania naukowego „Transgraniczność stosunku pracy”. Prace obejmują omówienie przypadków, w których praca wykonywana jest za granicą, pracownik jest delegowany za granicą, dotyczy stosunków pracy z zakresu pracy w transporcie. Oprócz kwestii kolizyjnych opra- cowania dotyczą kwestii upadłości pracodawcy, zabezpieczenia społecznego czy też ochrony pracownika.

dr hab. Jacek Widło, prof. KUL
(fragment recenzji)