

DID YOUR JEANS ENSLAVE CHILDREN? CHILD LABOUR IN INTERNATIONAL TRADE

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International trade is having a dynamic effect on our economy. No longer are markets determined by geographical or political boundaries. Today, goods are produced and traded throughout the world under international trade laws which are accepted and which are enforced.

Lacking in these international trade agreements, however, are accepted labour and human rights standards that are inextricably linked to the production of goods. The absence of such agreements has led to great disparities in how goods are produced in different countries. For while it is widely accepted in North America that children under the age of 10 should not be employed in full time hard labour jobs, countries in the world's southern hemisphere do not always hold the same standards. For many of the poorer countries of the world, child labour is an accepted reality that too often involves unfair and unhealthy labour conditions, and sometimes even involves slavery.

This paper looks at some of the issues involved in child labour in international trade. It discusses the nature of child labour in international law and how international labour law is applied in international trade agreements. It also discusses what attempts are being made to offer realistic solutions to the reality of child labour, and notes how North American consumers can help determine whether their goods were made using child labour or whether their production addressed world poverty issues.

Very few of us only wear clothes that were made in North America. As you read this article you are probably wearing a piece of clothing that was made in a developing country. Wouldn't you like to know if that piece of clothing was made by a child who was enslaved...

I. INTRODUCTION

STORIES OF CHILDREN BEING SOLD INTO SLAVERY, forced into the sex trade, or chained to looms have led to what has now been termed the "child labour movement." This movement seeks the eradication of the worst forms of child labour that are currently occurring in the world's developing nations, specifically:

* L.L.B. (University of Manitoba) 2001.

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, and forced and compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography, or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.¹

Given that current estimates show there to be anywhere from 250 to 500 million children involved in prohibited labour today, child labour advocates are being forced to search for creative ways to curb child labour and the impoverishment it breeds.²

II. WHAT IS CHILD LABOUR?

THE INTERNATIONAL LABOR ORGANIZATION (ILO), one of the leading proponents for the abolition of child labour, has defined child labour to include any form of labour that:

- places too heavy a burden on a child;
- endangers his or her safety, health, or welfare;
- takes advantage of a defenceless child;
- exploits a child as a cheap substitute for adult labour;
- uses a child's efforts but does nothing for his or her development, or
- impedes a child's education, training, and future.³

¹ *Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, 17 June 1999, at Article 3, online: International Labor Organization <<http://ilolex.ilo.ch:1567/scripts/convde.pl?query=C182 &query0=C182 &submit=Display>>.

² D. L. Parker, "The Impact of Economic Exploitation on the Health and Welfare of Children" (1999) 21 Whittier L. Rev. 177 at 181.

³ "Report of the Director General, Child Labor" (1983) 69 Int'l Labor Conf. at 3, 37 as quoted in: A. Giampetro-Meyer, S. J. Brown, & N. Kubasek, "The Exploitation of Child Labor: An Intractable International Problem?" (1994) 16 Loyola of Los Angeles Int'l Comp. L. J. 657 at 659. For the elimination of the worst forms of child labour see *supra* note 1.

The child labour movement seeks the general reduction of these forms of child labour, and the total elimination of the worst forms of child labour listed above.

III. WHY DOES CHILD LABOUR EXIST?

WHILE CHILD LABOUR EXISTS FOR SEVERAL REASONS, poverty is considered to be the overriding factor. In impoverished societies most workers are paid wages that fall below the poverty line, thereby leaving families very poor. This causes parents to depend upon their children for contribution to the family income, forcing many children to work because they have no alternative.⁴

Poverty, however, is not the only reason for the existence of child labour. Cultural norms are also a contributing factor. Some children choose to work because work is valued in their societies as a natural part of maturation and education. Others are forced into labour because of the traditions and inequalities found in their society.

Children who work in bonded labour provide such an example. Bonded labour (or "bondage") commonly arises in impoverished societies where children have been forced to work in order to pay off the debts of their parents.⁵ Bondage is particularly debilitating in places where "inter-generational bondage" is practiced and the burden of child labour is handed down from generation to generation. This often arises when desperate parents take on a debt with high rates of interest that cannot be paid off within a parent's lifetime, leaving the debt and the bondage to pass down to the next generation.⁶

Although not all child labour is forced and abusive, many experts believe that all child labour perpetuates poverty since it robs children of their chance at receiving an education. These concerns have led to arguments that child labour be made "illegal" and that laws regulating child labour standards be enforced through practical enforcement regimes.

IV. IS CHILD LABOUR ILLEGAL IN INTERNATIONAL LAW?

MOST NATIONS HAVE LAWS AGAINST CERTAIN FORMS OF CHILD LABOUR, and have also undertaken international commitments to prevent certain practices of child labour from occurring within their own borders. But because of the inadequacy of developing countries' judicial

⁴ N. J. Krug, "Exploiting Child Labour: Corporate Responsibility and the Role of Corporate Codes of Conduct" (1998) 14 N. Y. L. School J. H. R. 651 at 653.

⁵ *Ibid.* at 654.

⁶ *Ibid.* at 655.

systems, and the proliferation of international trade and the inextricable link between labour and the production of goods, many advocates in the child labour movement are also seeking to make child labour illegal in the international realm. While some international "laws" against child labour do exist, most of these "laws" are not enforceable in the same way that domestic laws are enforceable. It is, therefore, difficult to state that child labour is internationally "illegal."

In international human rights law, child labour is not permissible. Due to the nature of international human rights laws and the lack of a judicial regime of enforcement, however, international human rights law has not been capable of preventing child labour from occurring. International human rights laws are formed by countries making international agreements or covenants with one another. In these agreements countries assert that certain agreed upon norms will be respected. In this sense, international human rights law is more contractual than legislative.

There currently exist many international agreements between countries that enunciate the rights that should be afforded to all people, including all children. Child labour rights are a part of those agreements that deal with international children's rights, international human rights, and international labour rights. Most prevalent among these is the United Nations Convention on the Rights of the Child (CRC).

The CRC is one of the most widely ratified human rights agreements throughout the world, having been adopted by all but two of the world's countries.⁷ Countries that have adopted the CRC have asserted to:

respect and ensure the rights ... to each child in their jurisdiction [and ensure that in] all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.⁸

Specifically with regard to child labour the CRC states, in Article 32(1), that children have a right to be protected from economic exploitation:

⁷ A. Blackett, "Wither Social Clause? Human Rights, Trade Theory and Treaty Interpretation" (1999) 31 Colum. H. R. L. Rev. 1 at 19.

⁸ *Convention on the Rights of the Child*, 20 November 1990, at Articles 2(1) & 3(1), online: Office of the High Commissioner for Human Rights <<http://www.unhchr.ch/html/menu3/b/k2crc.htm>>. The United States has signed but not ratified the Convention; Somalia has neither signed nor ratified the Convention.

State Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.⁹

Article 32(2) explicitly states:

State Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) provide for a minimum age or minimum ages for admission to employment;
- (b) provide for appropriate regulation of the hours and conditions of employment;
- (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.¹⁰

International human rights agreements such as the CRC can, therefore, clearly be seen to provide international laws on child labour. In addition, there exist several international human rights committees that try to enforce these agreements. However, because these documents have been enacted and signed through the international political system (i.e. the United Nations), and since that system has not yet found an effective way to enforce international political undertakings, little is actually done to enforce these agreements.¹¹

Most of the enforcement of international human rights standards has been limited to the monitoring, reporting, and publicizing of human rights standards in an attempt to persuade countries to abide by their international agreements. But since governments generally only infringe on their own citizens' rights, nations usually have little incentive to confront other nations on their human rights standards and human rights violations, and since hardly any country is free from human rights abuses, interna-

⁹ *Ibid.* at Article 32(1).

¹⁰ *Ibid.* at Article 32(2).

¹¹ Some human rights commentators argue that the only international human rights standards that are enforced by the international community are those broken when war crimes and crimes against humanity are committed. D. P. Forsythe, *The Internationalization of Human Rights* (Lexington, Massachusetts: Lexington Books, 1991) at 9.

tional political action by states is usually avoided.¹²

So while within international human rights law most child labour is considered to be "illegal," there is as of yet no effective method through which to prevent such "illegalities." This has resulted in child labour being allowed to continue. Considering the inextricable correlation between labour, production, and trade, child labour activists now argue that child labour should also be illegal in international trade law and not just in international human rights law. However, as discussed below, this argument has yet to be adopted by the international community.

V. INTERNATIONAL TRADE

THE CURRENT SYSTEM OF INTERNATIONAL TRADE is a different international regime than the international political and human rights systems that attempt to enforce international human rights laws. This is because of the fact that nations are materially interdependent upon one another and thus have strong incentives to force compliance with internationally accepted trade agreements. This is evidenced in states' scrupulous inspection of other parties' trade practices in order to ensure international equality and fairness (a phenomenon that does not occur with international human rights agreements), and has led to the formation of an effective dispute resolution system – the General Agreement on Trade and Tariffs (GATT) /World Trade Organization (WTO) system.

The WTO was derived out of GATT in 1995, and the GATT/WTO system has become the principal international organization that deals with international trade. Members of the GATT/WTO system are obliged to negotiate reductions in tariffs, to refrain from discriminatory treatment, and to generally comply with other international trade laws. The GATT/WTO system has also established an effective dispute resolution process for dealing with international trade disputes, and has been relatively successful at resolving trade disputes and enforcing international trade agreements.¹³

According to the dispute settlement system within the WTO, trade disputes are first discussed by the disputing parties. If complaints cannot be settled between the parties themselves, complaints may go before a panel of adjudication. This panel examines facts involved in a dispute and then makes a decision as to the outcome. After the panel has made a decision, parties may appeal to an appellate body of the WTO. Once an appeal has

¹² D. S. Ehrenberg, "The Labour Link: Applying the International Trading System to Enforce Violations of Forced and Child Labour" (1995) 20 Yale J. of Int'l L. 361 at 364.

¹³ *Ibid.* at 391, 395.

been dealt with and a final decision has been made, parties to a dispute are expected to comply with recommendations or rulings given by the panel. If an offending party refuses to comply and no other agreement between the disputing parties can be reached, a grievor can request authorization from the WTO to suspend concessions or obligations owed to the offending country under relevant trade agreements.¹⁴

This process has allowed international trade laws to be enforced in a way that international human rights laws are not. Child labour, however, is not explicitly dealt with in the GATT or other general international trade agreements. Because of the effectiveness of the GATT/WTO system at resolving disputes and enforcing international law, coupled with the fact that labour is inextricably linked to the production of goods in trade, child labour activists have begun to look to the GATT/WTO system as a way in which children's labour rights could be made enforceable. They have proposed this through a "linkage" of the GATT/WTO system and the International Labor Organization (ILO).

A. The International Labor Organization

The International Labor Organization (ILO) has traditionally been the principal international body for setting international standards and monitoring child labour. The ILO predates the United Nations by a quarter of a century, and it first addressed child labour in 1919 when it made 14 the universal age at which children could legally work.¹⁵ Since then, the ILO has created a set of international labour standards that are recognized and supported by many of the world's countries. Moreover, its tripartite process of including workers' organizations, employers' organizations, and governments in all of its functions has allowed the ILO to be a unique alternative to the political difficulties found in the United Nations and other international political organizations.¹⁶

The ILO has sought the eradication of child labour for some time, and since the 1990s has moved the child labour campaign to the centre of its mission. It has also been successful in combating child labour in many countries, and is now seen as the world expert on child labour. Because of the ILO's expertise on international labour standards, and the WTO's expertise on international trade disputes, child labour activists have argued that the ILO should be linked with the GATT/WTO system.¹⁷

¹⁴ *Ibid.* at 398.

¹⁵ Parker, *supra* note 2 at 180.

¹⁶ Ehrenberg, *supra* note 12 at 382.

¹⁷ D. M. Smolin, "Conflict Ideology in the International Campaign Against Child Labour" (1999) 16 Hofstra Labor & Employment L. J. 383 at 391.

B. Linkage

Daniel S. Ehrenberg of Yale Law School has suggested a detailed mechanism through which labour standards and the international trade system could be linked. Ehrenberg argues that in adopting the CRC and other international conventions that disallow many aspects of exploitative child labour, most nations have undertaken an international legal duty to ensure the eradication of child labour within their own borders. Violations of these and other internationally accepted labour standards due to a state's failure to adequately police violations and enforce laws could therefore be construed to constitute illegal state subsidies. According to the system of international trade, illegal subsidies constitute an unfair comparative advantage and are actionable under the GATT/WTO enforcement regime.¹⁸

By linking the ILO and the WTO systems, expert analysis on whether labour standards have been infringed and how those infringements affect international trade could allow labour standards and trade to be joined. In such an amalgamated system, both the ILO and the WTO could have distinctive but complementary roles.¹⁹ The ILO could use its 70 years of experience in analyzing international labour standards to report, supervise, and determine countries' compliance with basic child labour rules. The WTO could use its expertise on the determination and elimination of unfair trading practices through the use of economic penalties to prevent labour standard infringements. In this way, the compilation of the ILO and the WTO would allow for an efficient and fair approach to enforcing child labour rights.²⁰

It has also been proposed that linkage of labour standards with the GATT could be done through the imposition of a social clause in the GATT. Adelle Blackett, in her paper, "Wither Social Clause? Human Rights, Trade Theory and Treaty Interpretation," notes that proposals to link labour standards to the WTO have focused on the trade of goods under GATT.²¹ A social clause, however, would be a different way of introducing a general exception within the GATT, in the realm of Article XX. Article XX of GATT states:

Subject to the requirement that such measures are not applied in a manner which would constitute a means of

¹⁸ Ehrenberg, *supra* note 12 at 364, 379.

¹⁹ *Ibid.* at 404.

²⁰ *Ibid.* at 405.

²¹ Blackett, *supra* note 7 at 35.

arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

(a) necessary to protect public morals;

(b) necessary to protect human, animal, or plant life or health;²²

The purpose behind importing a social clause within Article XX of GATT would be to allow for a social component within the WTO dispute resolution mechanisms. As such, Article XX could be amended to include a list of core international labour conventions that entail fundamental human rights standards, so that each member state could decide to take action against another member-state if it felt that the other state did not comply with international labour standards.²³

Although child labour advocates champion this as a formidable way to incorporate human rights within the system of international trade, nations of the developing world do not favour linkage. As such, the idea of linkage may be unrealistic. For example, at the Marrakesh Declaration of 1994, trade ministers refused to set up a permanent committee within the WTO to study linkage. Then in Singapore in 1996, the possibility of importing a social clause into GATT was rejected when the director general of the WTO issued a statement that trade sanctions should not be used to deal with disputes over labour standards.²⁴ This statement appeared to have been made with a wide basis of support, leaving the conclusion that the linkage of international labour standards with the GATT may not be a foreseeable development within the near future.

But while an all encompassing linkage of labour standards and human rights within international trade law may not be a likely possibility in the near future, some hope regarding the imposition of human rights within international trade agreements was gained with the democracy clause agreed upon by world leaders at the Free Trade Area of the Americas

²² *General Agreement on Tariffs and Trade*, 30 October 1947, 55. U.N.T.S. 187 at Article XX(a)-(b).

²³ Blackett, *supra* note 7 at 36.

²⁴ *Ibid.* at 43.

(FTAA) summit held in Quebec in the spring of 2001.²⁵ The fact that northern and southern countries were able to agree on linking a most fundamental human right – democracy – within international trade generates some hope that the north-south split on linkage might be narrowing.

VI. THE LINKAGE SPLIT

THE DEVELOPED COUNTRIES OF THE NORTH GENERALLY FAVOUR LINKAGE, whereas the developing countries of the south do not. This split on linkage rests on the very theory of free trade. The theory of free trade asserts that if all countries eliminate tariffs and subsidies, all countries will be able to produce goods at efficient rates and sell those goods for lower costs, thereby leading to greater overall wealth. Free trade, therefore, encourages each country to concentrate on the production of those goods in which it has a “comparative advantage” over other countries.²⁶

A comparative advantage exists when a country can produce a good or service at a lower relative cost than other countries can. If a country has a comparative advantage in an industry, it should promote that industry in international trade, thereby improving its economy by increasing its exports. While the international trading system does generally promote free trade and the eradication of tariffs and subsidies, the system also allows for some tariffs and subsidies to be imposed in the form of “protectionism.” Protectionism may be permitted for several reasons, and results in a country being given the legal right to impair another country’s comparative advantage by imposing tariffs or taxes on the other country’s relatively cheap exports. “Illegitimate protectionism,” however, is not acceptable in international trade. Illegitimate protectionism occurs if a country illegally uses tariffs, taxes, or subsidies to create an “unfair advantage.”²⁷

A problem with the current system of international trade is that many of the factors that affect the cost of production are not clearly defined as either legitimate comparative advantages or illegitimate unfair advantages. This is shown in the case of child labour. Labour activists and workers’ organizations in the developed northern countries argue that the use of child labour by developing nations in the south is an illegitimate, unfair advantage. They state that the lower cost of labour in the develop-

²⁵ See “Trade Negotiations and Agreements: FTAA,” online: Department of Foreign Affairs and International Trade <<http://www.dfait-maeci.gc.ca/trade/menu-e.asp>>.

²⁶ Smolin, *supra* note 17 at 387.

²⁷ *Ibid.* at 388.

ing world is really due to developed countries' failure to honour fundamental international labour and human rights standards, and that this failure is akin to an unfair state subsidy.²⁸

Governments of the developing world have responded to this charge in several ways. They note that they do not presently have the resources required to stop child labour, and argue that it is unrealistic for the north to expect the south to be at the level of advancement that the north enjoys, given their relative poverty. Further, developing countries do not agree on the standards espoused by the north, and do not agree that these standards are "international." Rather, southern countries argue that their different labour market gives them a legitimate, comparative advantage in labour industries.²⁹

These disparities and the proliferation of global markets have meant that workers in developed countries have increasingly had to compete for business with workers of developing countries, leading to arguments that since there is now global competition, there ought also to be global labour standards. Workers' unions of the north advocate that their members should not have to work under abominable conditions in order to stay competitive with the south, and so unions in the north are also demanding linkage and universal compliance with international labour standards.³⁰ In this way, enforcing a minimum set of labour standards has become a value promoted by both workers' unions and human rights activists.³¹

However, because linkage requires mass international consensus, the linkage of international trade and labour standards does not currently exist. This has meant that, because the ILO has no jurisdiction in international trade, countries can ignore internationally accepted labour standards and receive no retribution within the WTO. Moreover, states' unilateral efforts to set up trade sanctions in order to enforce international labour standards have been viewed as illegitimately protectionist and impermissible under the GATT.³²

The north-south divide on linkage sheds light on part of the difficulty with international human rights in today's world. Asserting that child labour is a denial of a human right encompasses the presumption that all people accept the abolition of child labour as just and necessary. The question as to whether any universal human right actually exists is a

²⁸ *Ibid.* at 389.

²⁹ *Ibid.* at 389.

³⁰ *Ibid.* at 387.

³¹ *Ibid.* at 389.

³² *Ibid.* at 390.

topic in and of itself, as much of the world has yet to come to agreement as to just which rights are universal. Although some human rights conventions have been adopted universally, countries interpret these differently and feel justified, therefore, in their rejection of the criticisms of the United Nations' and ILO's human rights committees.³³ In addition, developing nations fear that a new form of northern colonialism could be implemented with the adoption of international human rights laws. These factors have caused developing nations to resist a WTO system that adopts what they see to be the cultural-moral standards of the north bent on the elimination of poorer countries' advantages.³⁴

VII. THE SHORTFALLS OF LINKAGE

GIVEN THE INABILITY OF THE INTERNATIONAL POLITICAL SYSTEM to enforce children's rights and the inability of the international trade system to place labour standards within international trade, some advocates of the child labour campaign are now turning their attention to private solutions. Many believe that linkage may not be the best way to reduce child labour since linkage would not solve poverty (the root cause of child labour) and might even perpetuate it.³⁵

The problem with linking labour standards with the GATT/WTO trade system lies in the fact that even if enough international support could be garnered for a merger, enforcement of labour standards would ultimately depend upon trade sanctions – as this is how all rules in the GATT/WTO system are enforced. According to the GATT/WTO enforcement system, sanctions may be laid against an offending country if that country infringes a trade agreement. Sanctions, however, reduce a country's ability to trade and thereby reduce its economic opportunities and wealth. Since the real solution to child labour is through economic prosperity and the elimination of poverty, penalizing countries that use child labour would not put an end to child labour but would only further poverty.

It is also argued that sanctions do not stop child labour at all but rather force child labour underground or leave poorer work choices for dependent children. It was reported in Bangladesh, for example, that a temporary success in the elimination of child labour in the garment industry only led to many children having to perform worse forms of labour, such as prostitution, as families have come to rely on their children's incomes for survival.³⁶

³³ *Ibid.* at 400.

³⁴ *Ibid.*

³⁵ Krug, *supra* note 4 at 664.

³⁶ *Ibid.* at 665.

VIII. PRIVATE SOLUTIONS

THAT POVERTY NECESSITATES CHILD LABOUR has led to arguments that the real answer to ending child labour rests in the realization that countries do not trade, corporations do.³⁷ Since large corporations are the real power holders of workers' rights, some child labour activists are now stating that it is up to corporations – not just governments – to adopt and enforce codes of conduct that provide fair wages and fair working conditions for children. In fulfilling these obligations, advocates argue that children forced to work because of poverty will at least be placed in humane and prosperous settings, thereby addressing some of the issues involved in poverty and exploitation.³⁸ This can occur with corporations adopting corporate codes of conduct that recognize and enforce international children's rights and labour standards.

This is what the Levi Strauss Company did. Realizing the importance of labour rights in the production of their products, the Levi Strauss Company appointed a task force to review the United Nations Universal Declaration of Human Rights and other international human rights instruments so as to formulate adequate guidelines for doing business in developing countries. Once these guidelines were presented, Levi Strauss adopted a "terms of engagement" section in its code of conduct that established environmental and human rights standards in the company's employment settings. These terms included aspects of child labour.

But more than simply creating an ethical code of conduct to make the company and its production enterprises meet international child labour standards, Levi Strauss also created an elaborate internal monitoring and enforcement mechanism to ensure that its code was strictly adhered to by all of its subcontractors. Foreign contractors were subjected to internal audits and surprise visits. If violations were found, Levi Strauss terminated contracts or forced reforms in subcontractors' employment practices.³⁹

The company did not stop there. Activists argue that corporations need to do more than simply enact and enforce ethical codes of conduct when dealing with child labour, but also need to impose compulsory education systems that correlate with the minimum age of employment and permit children within the minimum age to work and attend school.⁴⁰ Activists justify this by pointing out that it is corporations that truly control eco-

³⁷ G. P. Zachary, "Multinationals Can Aid Some Foreign Workers," *Wall Street Journal*, (24 April 1995) A1.

³⁸ Krug, *supra* note 4 at 668.

³⁹ *Ibid.* at 670.

⁴⁰ M. Moran, "Ending Exploitative Child Labor Practices" (1993) 5 Pace Int'l L. Rev. 287 at 308.

conomic power, and so it is corporations that ought to be bound to augment moral objectives within bottom line profits.⁴¹

Again, this is what Levi Strauss did. Upon learning that it had children under the age of 14 working in suppliers' factories in Bangladesh, Levi Strauss made arrangements with local authorities to allow children to return to school while the company continued to pay them an income and covered the cost of their tuition and books. In addition, children were informed that they would be again offered jobs when they turned 14, or alternatively when they chose to finish school.⁴²

The implementation of codes of conduct and the recognition of a duty to community development (as demonstrated by Levi Strauss), are some of the private solutions that children's rights advocates have promoted, as these solutions provide a way for children to deal with the economic reality of their societies while still enjoying just employment conditions. But can corporations really be expected to choose ethical philosophies?

IX. THE FAIR TRADE MOVEMENT

THE ACTIONS BY LEVI STRAUSS COME AMIDST A MOVEMENT OF CONSUMERS and concerned citizens demanding that fair trade be imported into free trade. This "fair trade movement" asserts that free trade does not always bring prosperity to everyone, and sometimes actually further impoverishes the world's poor. Proponents of fair trade challenge the way in which international trade is currently being conducted, and assert that the welfare of the producer should be of primary importance within the international trade system.⁴³

The fair trade movement argues that the typical trade relationship often sees producers and labourers of goods paid as little as possible so that wholesalers and retailers can maximize their profits. If this current system of international trade is allowed to continue, they argue, producers will never be able to rise out of poverty. Fair traders accordingly advocate that producers should be paid the highest possible percentage of final retail, sometimes as high as 40%.⁴⁴

Fair traders' recognition that free trade does not always help the marginalized has led to the creation of several retail and information-based

⁴¹ Krug, *supra* note 4 at 672.

⁴² *Ibid.* at 673.

⁴³ A. M. Groos, "International Trade And Development: Exploring the Impact of Fair Trade Organizations in the Global Economy and the Law" (1999) 34 *Texas Int'l L. J.* 379 at 389.

⁴⁴ *Ibid.* at 386.

organizations that are helping to lobby governments, corporations, and consumers about fair trade issues. Fair trade has become increasingly popular and there now exist hundreds of organizations throughout the world that are actively pressuring governments, corporations, and consumers to promote and adopt fair trade practices.⁴⁵

Ten Thousand Villages, for example, is a development and relief agency run by the Mennonite Central Committee that has constructed a network of over 200 retail stores in the United States and Canada over the last 50 years. These stores are run by salaried employees and volunteers and they sell fair trade products produced by thousands of labourers in 34 different countries. Ten Thousand Villages generates revenues of tens of millions of dollars every year⁴⁶ and stands as a shining example of how goods produced in accordance with international labour standards can be profitably sold in a global market.

Other fair trade organizations that are more information orientated have also become increasingly politically active. Oxfam International, for example, is a fair trade organization that has become particularly strong in Europe. Oxfam successfully lobbied the British House of Commons and convinced it to use fairly traded tea and coffee in the British Parliament.⁴⁷ Fair trade organizations such as Equal Exchange specifically assert that their products are produced without the use of any child labour.⁴⁸ These groups will often endorse their products through the use of fair trade labels. Most famous of these is the RUGMARK label, used by an organization in India, which guarantees that rugs holding its label have not been made using child labour. There is now also a movement within the fair trade movement to create generic fair trade labels for all goods produced within a particular industry, or across industries, in order that the increasing number of different labels with different meanings can be consolidated.⁴⁹ Other fair trade organizations have set up websites, such as <www.corpwatch.org>, that closely watch and inform consumers of the practices and labour violations committed by large corporations. Fair traders are also advocating that fair trade principles be put into the relevant domestic and international legislation that deals with trade, but have yet to be successful in getting their message properly adopted into international trade agreements.⁵⁰

⁴⁵ *Ibid.* at 391.

⁴⁶ *Ibid.* at 392.

⁴⁷ *Ibid.* at 392, 396.

⁴⁸ *Ibid.* at 396.

⁴⁹ *Ibid.* at 406.

⁵⁰ *Ibid.* at 388, 402.

X. WHAT ELSE CAN BE DONE TO CURB POVERTY?

WHILE THE FAIR TRADE MOVEMENT HAS ATTEMPTED TO MAKE PROGRESS and has offered innovative suggestions as to how to address world poverty and child labour, government activists insist that we should not be so quick to let the governments of the developed world off the hook. Governments, they argue, still ultimately hold the reins of power in society, and even though multinational corporations are having an unprecedented impact on individuals' lives, multinationals can still be controlled by government laws and policies.

There are numerous international governmental, non-governmental, and quasi-governmental organizations that the Canadian government supports in its attempt to address world poverty. From the Canadian International Development Agency, to the International Institute for Sustainable Development, to the World Bank and the International Monetary Fund, the Canadian government is involved in a myriad of direct and indirect support schemes that work to reduce world poverty in different ways. But this is not enough. The Canadian government must also ensure that its own domestic laws pertaining to international trade accord with the world's basic human rights standards.

While current international trade agreements may impair the Canadian government's ability to impose import bans on companies that use child labour or support anti-human rights political systems, the Canadian government can ensure that Canadians are informed as to which corporations do or do not comply with international human rights standards. The Canadian government could promote those corporations that do partake in fair trade practices, and in so doing could attempt to address world poverty within a market driven context. For this to occur and be effective, however, a drastic change in the government's involvement in private industry would be required.

For example, there are some Canadian domestic laws that relate to international trade and commerce which clearly negate human rights awareness. One such example is found in s. 137(5)(b) of the Canada Business Corporations Act (CBCA). Section 137(5)(b) of the CBCA asserts that a corporation is not required to circulate a shareholder proposal if such a proposal has clearly been submitted by a shareholder "primarily for the purpose of promoting general economic, political, racial, religious, social, or similar cause". The effect of this law is to negate shareholder awareness of a company's human rights sympathies.

This was shown in *Re Varsity Corp and the Jesuit Fathers of Upper Canada et al.*⁵¹ In that case, the Ontario High Court of Justice heard an

⁵¹ (1987), 59 O.R. (2d) 459; affirmed (1987), 60 O.R. (2d) 640.

application by the Varsity Corporation for an order permitting the company to exclude a proposal that the company end its investments in South Africa. The proposal had been submitted by two of the company's shareholders who were asking the corporation's board of directors to end the company's investment in South Africa as long as the South African government continued its policy of apartheid. Although the actual motive of these two shareholders may have been to end the company's involvement in South Africa and its promotion of a government that totally disregarded human rights values, the case involved the circulation of their shareholder proposal and would only have guaranteed awareness of the human rights issues among shareholders. Because of s. 131(5)(b) of the CBCA (now s. 137 (5)(b)), however, the Court held that the proposal did not even have to be circulated and that the board of directors could not be compelled to distribute a proposal which had a political cause as its primary purpose.

This law not only allows Canadian companies to support governments which violate international human rights standards, it also impairs the possibility for shareholders to become informed and to discuss human rights and fair trade issues at shareholder meetings. It is clearly contrary to the Canadian government's duty to enforce and promote human rights protection throughout the world to allow consumers and shareholders to be denied their right to be informed as to how their companies are behaving. Rather, the Canadian government needs to become active in contributing to the dissemination of this information.

XI. CONCLUSION

CHILD LABOUR IS COMPLEX, and its eradication may not be possible as long as there is poverty. Attempts at linking the system of international trade with children's and labour rights standards have so far been rejected by many of the countries that have child labour problems. It would, therefore, appear that child labour will continue, as the international trading system is not about to adopt human rights norms as part of its mandate. Movements like the adoption of corporate codes of conduct and fair trade do, however, give some hope that ethical conduct and general prosperity can be achieved in an increasingly competitive global economy.

The late US President John F. Kennedy asserted that an economic system can only be as good as its treatment of its poorest citizens. Hopefully the international trading system will be capable of addressing the concerns of the world's poor, and enable the privileges that industrial society has created to be enjoyed by all the youth of the world. For if there is to be any hope for tomorrow's future, it will have to begin with today's children.