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# Women workers and labour standards: the problem of ‘human rights’

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**Abstract.** The International Labour Organisation’s Declaration of Fundamental Principles and Rights at Work of 1998 formalised an approach to global labour issues known as the Core Labour Standards (CLS). The CLS have privileged a specific set of labour standards as possessing the kinds of universalistic qualities associated with ideas of ‘human rights’; the abolition of forced and child labour, equality of opportunity, and trade union rights. But what does this ‘human rights’ approach mean from the point of view of those women workers who dominate employment in some of the most globalised, and insecure, industries in the world? In this article, I make the case for critical feminist engagement with the gender-blind, and neoliberal-compatible, approach to economic rights as set out in the CLS. Not least, this article raises wider concerns about the insufficiency of approaches to economic rights that are designed to work within the (gendered) structures of a neoliberal economic development paradigm. It is suggested that the CLS have endorsed a voluntarist approach to labour standards that views the promotion and regulation of human rights by global corporations as unproblematic. The article challenges this perspective, drawing upon the work of number of feminist scholars working in the area of women’s employment and corporate codes of conduct. These feminist writings have specifically avoided the language of human rights; thus questions need to be asked concerning the possibilities and the limitations that the CLS opens up for women’s human rights activism.

## Introduction

Feminist scholars have long raised issue with the way in which conceptions of human rights reflect a pervasive male bias and have sought to bring the concerns of women onto the international human rights agenda.<sup>1</sup> Women’s human rights campaigners have experienced some success in reorienting this human rights agenda to include issues such as violence against women (VAW) that challenge the male-biased ontology of human rights by locating violations within a private/domestic realm previously ignored in human rights discourse. Both drawing on and reflecting upon these feminist debates, this article examines the way in which international labour standards have increasingly drawn upon universalist discourses of human rights and highlights the need for critical feminist engagement with this issue. The specific focus

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<sup>1</sup> Julie Peters and Andrea Wolper (eds.), *Women’s Rights, Human Rights: International Feminist Perspectives* (London: Routledge, 1995); Marjorie Agosin (ed.), *Women, Gender and Human Rights: A Global Perspective* (Pittsataway, NJ: Rutgers University Press, 2001).

of this article is on the launching of the International Labour Organisation (ILO)'s Core Labour Standards (CLS) in 1998 which privileged a specific set of labour standards – indicating that these standards possess the qualities of the universal moral standards associated with the idea of ‘human rights’. The CLS include freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced and compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation.<sup>2</sup> And yet, despite this commitment to non-discrimination within the CLS, the standards have emerged without significant recognition of the problems faced by women workers both inside and outside multinational systems of production.

In this article two main lines of argument are brought together. The first concerns the need to challenge the gendered assumptions and power relations that are implicit within contemporary discussions of labour standards, highlighting the problems that concepts of economic rights as human rights (such as labour rights) raise for feminist research and activism. The second asks to what extent can the new ‘human rights’ perspective on labour standards deal with the issues faced by women workers in the global economy? These issues include the pervasive low pay and poor working conditions found in the most feminised sectors of the global economy. Thus one specific concern of the article is to ask – can the CLS, a set of largely voluntarist, neoliberal-compatible,<sup>3</sup> labour standards be viewed as irreconcilable with the protection of women workers in the global economy?

At the core of this article is the theoretical assumption that gender inequality is an integral feature of the market economy – thus challenging the assumption in liberal economic discourse that markets are a gender-neutral space. The argument is put forward that any understanding of women’s economic ‘rights’ is not something that can be adequately realised within the current unequal structures of global gender relations. In developing these arguments, I draw upon those gendered approaches to political economy that challenge us to situate gender at the centre of our analysis of how the global economy functions.<sup>4</sup> A gendered political economy perspective is then, in essence, a critical perspective – exposing the gendered power relations and assumptions that underpin ostensibly ‘gender-neutral’ ways of conceptualising the

<sup>2</sup> The ILO first began to talk of ‘core labour standards’ at the 1995 World Summit for Social Development, and in 1998 the ILO Declaration of Fundamental Principles and Rights at Work was adopted at the International Labour Conference. The core labour standards relate to the following ILO conventions: Convention 87, freedom of association and protection of the right to organise, 1948; Convention 98, the right to organise and collective bargaining, 1949; Convention 29, forced labour, 1930, relating to the suppression of forced labour; Convention 105, the abolition of forced labour, 1957; Convention 100, equal remuneration, 1951 (equal remuneration for men and women for work of equal value); Convention 111, discrimination (employment and occupation), 1958 (to promote equality of opportunity and treatment in respect of employment and occupation); Convention 138, minimum age, 1973 (the abolition of child labour. The minimum age for admission to employment or work shall be not less than the age of completion of compulsory schooling (normally not less than 15 years)); Convention 182, worst forms of child labour convention, 1999.

<sup>3</sup> In this article I use the term neoliberalism to describe an economic doctrine that rests upon the central tenets of classical liberal political economy but is also a policy approach promoting market-led growth, deregulation and the privatisation of state-owned enterprises.

<sup>4</sup> See for example, Georgina Waylen, ‘Gender Feminism and Political Economy’, *New Political Economy*, 2 (1997), pp. 205–20; Shirin Rai, *Gender and the Political Economy of Development: From Nationalism to Globalization* (Cambridge: Polity 2002); V. Spike Peterson, *A Critical Rewriting of Global Political Economy: Integrating Reproductive, Productive, and Virtual Economies* (London: Routledge 2003).

economy. By failing to consider the way in which gender-inequality is a fundamental feature of global systems of production and employment, approaches to labour standards, such as the CLS, that simply contain commitments to non-discrimination and 'equality of opportunity' are partial and inadequate in their capacity to address the needs of many groups of women workers.

In the initial section of this article, I focus on the work of feminist human rights scholars exploring how feminists have engaged with notions of economic rights alongside other areas of feminist human rights activism. One of the key problems highlighted is that whilst there has been some feminist activism around the idea of economic rights,<sup>5</sup> this has not sought to critique how international organisations such as the ILO (as well as the World Bank) have themselves employed concepts of economic rights. The focus of the article then moves to look more specifically at the CLS; how they have been constructed in a way that draws upon discourses of human rights, and how this 'human rights' approach might be critiqued from a feminist perspective. One problem with the CLS in particular is that they encourage a basically voluntarist approach to labour regulation, severing ILO conventions from their principle mechanism of implementation (ratification into domestic law), and endorsing business 'self-regulation' through things like voluntary codes of conduct. I suggest, in the final section of the article, that these 'soft law' approaches to regulation are a key area in which feminist voices have raised criticisms of the CLS. However, what we find is that rather than endorsing the emerging human rights approach to labour standards there has been a tendency to reject the usefulness of a 'human rights' perspective arguing instead for activists and workers to engage in pragmatic responses to the problems faced by women workers.

### **Human rights, economic rights and feminist critique(s)**

My intention here is to situate the issue of women workers and labour standards within the context of wider feminist debates concerning gender and human rights, focusing on the problem that economic rights as a category poses for understandings of women's human rights. The rise of women's human rights activism has been well documented and is covered in greater depth in the article by Jill Steans in this Forum. It is interesting to note that the focus of the small women's human rights movement that emerged in the postwar era was firmly centred on economic rights<sup>6</sup> – albeit a rather narrow focus on the content of treaties that dealt with 'women's issues' such as the United Nations Convention on the Elimination of All forms of Discrimination Against Women (CEDAW).<sup>7</sup> However, by the time of the 1995 Beijing Conference, the attention had shifted. The concern of much international feminist human rights activism was to make the issue of VAW central.<sup>8</sup> The VAW agenda was an important one given that it supplanted the concern with 'equality of opportunity' as embodied

<sup>5</sup> Diane Elson and Jasmine Gideon, 'Organising for Women's Economic and Social Rights: How Useful is the Covenant on Economic, Social and Cultural Rights?', *Journal of Interdisciplinary Gender Studies*, 8 (2004).

<sup>6</sup> Elson and Gideon, 'Organising for Women's Economic and Social Rights', p. 135.

<sup>7</sup> Hilary Charlesworth, 'The Human Rights of Women', *International Feminist Journal of Politics*, 4 (2002), p. 432.

<sup>8</sup> Diane Elson and Jasmine Gideon, 'Organising for Women's Economic and Social Rights', p. 135.

in CEDAW with a more critical human rights feminism. This approach was rooted in a critique of the absence of women's rights within mainstream understandings of human rights that located 'rights' within the public realm of work and civil/political life.<sup>9</sup>

Although many feminist authors have argued for the 'indivisibility' of all human rights (in particular the indivisibility of economic and social and civil and political rights),<sup>10</sup> the concern with VAW may lead to the impression that women's human rights activism has moved away from a concern with economic rights. Grewal certainly takes this view suggesting that a relatively easy consensus around VAW emerged at Beijing whilst issues such as sexual and reproductive rights and economic rights remained highly contentious.<sup>11</sup>

The issue of economic rights is addressed by some feminist authors. What all of these writings point to are the range of constraints that make engagement with economic rights both practically and ideologically problematic for feminists. For Seif, the lack of feminist engagement with economic rights reflects the practical limitations of a human rights approach to the complex nature of socioeconomic inequality; 'International legislation on women's rights is incapable of accounting for and responding to the deeply entrenched particularities of a given culture, its class demarcations, and its interwoven socioeconomic complexities of inequality and prejudices'.<sup>12</sup> Peterson and Parisi suggest that the limitations of economic rights have less to do with these practical constraints; more important is the way in which human rights discourse is both reflective of, and constitutive of, gender inequality. Thus the limitations of economic rights are found in the pervasive 'heterosexism' that underpins dominant understandings of rights. Human rights are viewed as resting upon a public/private distinction that reflects the privileging of the traditional, Western, heterosexual family unit within dominant understandings of human rights in a way that denies many women access to rights.<sup>13</sup> For example, the gendered division of labour within the home and the consequent devaluation of feminine work fosters perceptions of women's 'secondary' status within the market economy. Thus, when women enter formal employment, they do so on unequal terms to men. Economic rights, therefore, 'not only fail to challenge, but too often exacerbate the structural subordination and the denial of women's rights'.<sup>14</sup>

Diane Elson approaches the structural limitations on feminist engagements with ideas of economic rights in a quite different manner. Rather than viewing the heterosexism of rights discourse as the major constraint on articulations of women's

<sup>9</sup> Donna Sullivan, 'The Public/Private Distinction in International Human Rights Law', in Julie Peters and Andrea Wolper (eds.), *Women's Rights Human Rights: International Feminist Perspectives* (London: Routledge, 1995), pp. 126-34; V. Spike Peterson and Laura Parisi, 'Are Women Human? It's Not an Academic Question', in T. Evans (ed.), *Human Rights Fifty Years On* (Manchester: Manchester University Press, 1998), pp. 132-60.

<sup>10</sup> Susana T. Fried, *The Indivisibility of Women's Human Rights: A Continuing Dialogue* (New Jersey: Centre for Women's Global Leadership, Rutgers University, 1994).

<sup>11</sup> Inderpal Grewal, 'On the New Global Feminism and the Family of Nations: Dilemmas of Transnational Feminist Practice', in Ella Shohat (ed.), *Talking Visions: Multicultural Feminism in a Transnational Age* (New York: MIT Press, 1998), p. 519.

<sup>12</sup> Huda A. Seif, 'Contextualising Gender and Labour: Class, Ethnicity and Global Politics in the Yemini Socio-Economy', in Julie Peters and Andrea Wolper (eds.), *Women's Rights, Human Rights: International Feminist Perspectives* (London: Routledge, 1995), p. 229.

<sup>13</sup> Peterson and Parisi, 'Are Women Human?'

<sup>14</sup> *Ibid.*, p. 150.

economic rights, she poses the hypothesis that notions of women's economic rights may well be incompatible within a neoliberal development paradigm.<sup>15</sup> For example, the central importance of the right to hold property within the neoliberal model is likely to be at odds with those economic rights that contain a redistributive dimension. It is important to note, however, that within the (neoliberal) development mainstream human rights have been portrayed as complementing the operation of markets. For example, Tsikata has highlighted the use of gendered human rights discourse within the 'development industry'<sup>16</sup> – in particular within the World Bank's 'Rights Based Approach' (RBA) to development.<sup>17</sup> These RBAs have placed considerable emphasis on the promotion of gender equality on the basis of women's position as citizens with rights. This is a policy shift that has been broadly welcomed by many women's human rights activists – a reflection of how much human rights feminist activism is dominated by a perspective that is not especially concerned about the neoliberal development paradigm and its impact on women.<sup>18</sup>

However, in a recent article, Elson and Gideon have suggested that there has been a recent feminist re-engagement with economic rights, with activists using the language of human rights in a strategic manner in order to 'challenge the operation of contemporary capitalism'.<sup>19</sup> This strategic usage of economic rights is a potentially fruitful one because it has the potential to force a re-evaluation of the link between economic liberalism and economic rights. For Elson, the work of Martha Nussbaum provides a useful way into developing a reconceptualisation of economic rights that is more human-centred and gender-sensitive. Nussbaum has adopted the Capabilities Approach put forward by Amartya Sen that focuses more on how people are enabled to live.<sup>20</sup> Thus for Elson, talk of women's 'entitlements' and 'empowerment' has the potential to challenge the capturing of the human rights agenda by a neoliberal development paradigm.<sup>21</sup> Critics have questioned, however, the extent to which Nussbaum's work really challenges the public/private divisions that underpin mainstream human rights discourse. Vivienne Jabri, for example, views Nussbaum as representing a liberal feminism that has joined the 'totality' – a hegemonic neoliberal gender order that continues to privilege the public over the private.<sup>22</sup> Jabri raises an

<sup>15</sup> Diane Elson, 'Gender Justice, Human Rights and Neo-liberal Economic Policies', in Maxine Molenyeux and Shara Razavi (eds.), *Gender Justice, Development and Rights* (Oxford: Oxford University Press, 2002), pp. 78–114.

<sup>16</sup> I am using the term 'development industry' in relation to what Caroline Thomas refers to as the 'reformist' approach to economic development within the international financial institutions, whereby the orthodox ideas of the 'Washington Consensus' have been reformed in a way that does not significantly upset the pursuit of an essentially neoliberal development paradigm. Central to this process has been the adoption of Rights-Based Approaches (RBAs). Caroline Thomas, *Global Governance, Development and Human Security: The Challenge of Poverty and Inequality* (London: Pluto, 2000), pp. 93–103.

<sup>17</sup> Dzodzi Tsikata, 'The Rights-Based Approach to Development: Potential for Change or More of the Same?', *IDS Bulletin*, 35 (2004), pp. 130–3. See also World Bank, *Engendering Development: Through Gender Equity in Rights, Resources and Voice* (Oxford: Oxford University Press for the World Bank, 2001).

<sup>18</sup> Tsikata, 'The Rights-Based Approach to Development', p. 131.

<sup>19</sup> Elson and Gideon, 'Organising for Women's Economic and Social Rights', p. 134.

<sup>20</sup> Martha Nussbaum, 'Women and Equality: The Capabilities Approach', *International Labour Review*, 138 (1999), pp. 227–45. Martha Nussbaum, 'Women's Capabilities and Social Justice', in Maxine Molenyeux and Shara Razavi (eds.), *Gender Justice, Development and Rights* (Oxford: Oxford University Press, 2002), pp. 45–77.

<sup>21</sup> Diane Elson, 'Gender Justice, Human Rights and Neo-liberal Economic Policies'.

<sup>22</sup> Vivienne Jabri, 'Feminist Ethics and Hegemonic Global Politics', *Alternatives*, 29 (2004), pp. 265–84.

important issue because her critique of Nussbaum raises wider concerns for feminist activism – that when feminist engage with mainstream ethical and human rights agendas, they run the risk of replicating dominant (masculinist) power relations within their work through a hegemonic politics of co-option. This is an issue that I return to in the conclusion to this article.

Moving away from the concern with the co-option of feminist thought and activism, another key issue relating to feminist activism around economic rights concerns the issue raised in the article by Moya Lloyd in this Journal: the limitations for activism around women's rights given the unequal access to resources across women's human rights activism (caused by the structural inequalities that are an integral feature of the global economy). For example, Tsikata has pointed to the dominance of a Western liberal feminist perspective on economic rights that simplistically equates women's employment in the formal sector with empowerment.<sup>23</sup> The dominance of this perspective may well have the effect of limiting the impact of the contestation over the meaning of economic rights by feminist activists noted in Elson and Gideon's work. As will be discussed in the proceeding sections of this article, many feminists have sought to avoid couching their discussions of labour standards in terms of the language of 'human rights'. Perhaps one major reason for this is the way in which human rights discourse has been so effectively captured by the development mainstream in ways that curtail the possibilities for feminist human rights activism.

### **(Women's) human rights and the Core Labour Standards**

In their work on women workers and labour standards, Shaw and Hale note the shift towards what can be understood as a 'human rights perspective' on labour standards – which is viewed as stemming from the emergence of the CLS.<sup>24</sup> I will briefly overview the origins of the CLS before turning to develop the gendered critique of them. In 1997, one ILO official wrote in the ILO's in-house journal *International Labour Review* that the core ILO standards 'have a human rights dimension as well as constituting fundamental framework conditions for the exercise of labour rights'.<sup>25</sup> Nicolas Valticos (a former judge in the European Court of Human Rights and the former assistant Director General of the ILO) also saw the new CLS approach as reflecting notions of universal human rights suggesting that '[i]t would not be misplaced to term the Declaration historic, adding as it does a new dimension to the existing instruments for giving effect to the core ILO standards in all spheres relating directly to human rights'.<sup>26</sup> It has long been recognised that the ILO plays a role in the promotion of internationally agreed human rights standards – in particular in the area of economic rights as laid out in the UN's

<sup>23</sup> Tsikata, 'The Rights-based Approach to Development', p. 131.

<sup>24</sup> Linda Shaw and Angela Hale, 'The Emperor's New Clothes: What Codes Mean for Workers in the Garment Industry', in R. Jenkins et al. (eds.), *Corporate Responsibility and Labour Rights: Codes of Conduct in the Global Economy* (London: Earthscan, 2002), pp. 101–12.

<sup>25</sup> Eddy Lee, 'Globalisation and Labour Standards: A Review of the Issues', *International Labour Review*, 136 (1997), p. 176.

<sup>26</sup> Nicolas Valticos, 'International Labour Standards and Human Rights: Approaching the Year 2000', *International Labour Review*, 137 (1998), p. 136.

International Covenant on Economic, Social and Cultural Rights (ICESCR). However, Valticos and others viewed the CLS as reflecting international norms that have something of a special moral status as ‘fundamental’ human values.<sup>27</sup> This, then, is an overtly universalist position relating to human rights.<sup>28</sup> It is also a fundamentally misguided understanding of the CLS. As Alton has argued, the CLS do not represent universal human standards:

[the] bottom line is . . . that the choice of standards to be included in the CLS was not based upon the consistent application of any coherent compelling economic, philosophical or legal criteria, but rather reflects a pragmatic political selection of what would be acceptable at the time to the United States.<sup>29</sup>

The CLS emerged out of a period of crisis within the ILO following the end of the Cold War and the failure of calls for a ‘social clause’ within the trade dispute mechanism of the WTO. Alston notes the declining US commitment towards the ILO, suggesting that the US was keen to establish a labour standards regime that moved away from a ratification model.<sup>30</sup> Traditionally the ILO has operated on the principle that states which have signed up to its various conventions would then ratify them into domestic law. The US’s poor record on ratification left it exposed to criticism. Talk of the CLS in terms of ‘human rights’ in this sense, represents more of an attempt by the ILO (and indeed the US administration) to recapture the ‘moral high ground’ on labour standards following the collapse of the labour standards debate at the WTO.

### *Core labour standards through feminist lenses*

Feminist authors have suggested that the promotion of the CLS advances a view of worker rights as human rights which often leave the specific problems and concerns of women workers on the sidelines of the labour standards debate. For example, it has been argued that the emerging human rights approach may not benefit women workers all that much, since issues such as low wages and workplace harassment are not generally considered to be ‘human rights’ issues.<sup>31</sup>

However, we can take the critique of CLS further, suggesting that these standards are basically supportive of an unequal gender order. The CLS approach is one that is designed to work within (and even to the benefit of) a neoliberal development paradigm. Commitments to non-discrimination render the private sphere of women’s reproductive, domestic and homework invisible. Given that women workers dominate the lowest paying sectors and industries, one notable absence from the CLS is

<sup>27</sup> Arne Vandaele, cited in Philip Alston ‘“Core Labour Standards” and the transformation of the international labour rights regime’, *European Journal of International Law*, 15 (2004), p. 485.

<sup>28</sup> As an international lawyer, Alston argues that the CLS approach is less of a human rights-centred approach because the standards are divorced from the whole set of ILO conventions that are recognised in international law – in this sense they undermine the status of other ILO conventions that have long been recognised as human rights. However, the approach taken in this article is to focus on the employment of the discourse of human rights in relation to labour standards (rather than claims on their legal status as human rights claims). See Philip Alston ‘Core Labour Standards’.

<sup>29</sup> Alston, ‘Core Labour Standards’, p. 485.

<sup>30</sup> *Ibid.*

<sup>31</sup> Shaw and Hale, ‘The Emperor’s New Clothes’, p. 109.



the issue of the right to earn a living wage – something that was included in Article 23 of the Universal Declaration of Human Rights.<sup>32</sup> The disappearance of the issue of fair wages is hardly surprising given the emphasis on a model of economic development based upon the attraction of FDI (on the basis of labour costs) that has come to dominate mainstream development thinking.<sup>33</sup> The relegation of this ‘right’ as somehow peripheral to the universal human rights agenda, lends credibility to the argument that the kinds of rights that will bring about meaningful change for the world’s poorest are somehow incompatible with an economic development model characterised by the increased vulnerability of employment as labour markets are further deregulated and ‘flexibilised’.

Ultimately the CLS fall foul of what Kaufman and Lindquist have labelled ‘gender-neutral treaty language’.<sup>34</sup> There is no recognition of the specific problems that women workers face and many CLS may have the effect of benefiting male workers more. The CLS have been interpreted as standards that are most applicable to (predominantly male) workers in formal employment – thus feminised employment in the informal, domestic and home-work sector is overlooked. The emphasis on trade union rights not only reiterates the privileging of formal forms of employment,<sup>35</sup> but also fails to recognise the way in which trade unions themselves often reflect a pervasive male bias in terms of both rates of unionisation and the upholding of gender discriminatory employment structures within the workplace.<sup>36</sup> Of course, feminist authors such as Whitworth and Prügl have pointed to the gendered assumptions pertaining to the essentially ‘domestic’ and/or ‘secondary’ role of women as feature of almost all ILO activities.<sup>37</sup> However, with conventions such as the home work convention, the ILO has moved to re-evaluate its emphasis on formal sector work. It is in this sense that the establishment of the CLS approach is a particularly significant reaffirmation of the secondary status of women workers in the global economy. As Turner argues, the CLS were designed with a focus on male workers in permanent employment, a reflection in part of the way in which the

<sup>32</sup> Elissa Alben, ‘GATT and the Fair Wage: An Historical Perspective on the Labour-Trade Link’, *Columbia Law Review*, 101 (2001), pp. 1410–47; Adelle Blackett, ‘Whither Social Clauses? Human Rights, Trade Theory and Treaty Interpretation’, *Columbia Human Rights Law Review*, 31 (1999), pp. 1–80.

<sup>33</sup> Ha-Joon Chang, ‘Globalization, Transnational Corporations and Economic Development: Can the Developing Countries Pursue Strategic Industrial Policy in a Globalizing World?’, in D. Baker, G. Epstein and R. Pollin (eds.), *Globalization and Progressive Economic Policy* (Cambridge: Cambridge University Press 1998), pp. 97–114.

<sup>34</sup> Natalie Hevener Kaufman and Stefanie A. Lindquist, ‘Critiquing Gender-Neutral Treaty Language: the Convention on the Elimination of All Forms of Discrimination Against Women’, in Julie Peters and Andrea Wolper (eds.), *Women’s Rights, Human Rights: International Feminist Perspectives* (New York: Routledge, 1995), pp. 121–2.

<sup>35</sup> Bipasha Baruah, ‘Earning their Keep and Keeping what they Earn: A Critique of Organizing Strategies for South Asian Women in the Informal Sector’, *Gender, Work and Organization*, 11 (2004), pp. 605–27.

<sup>36</sup> The classic study of male dominance in trade unions is Cynthia Cockburn, *Brothers: Male Dominance and Technological Change* (London: Pluto, 1983). For more contemporary/international perspectives, see Fiona Colgan and Sue Ledwith (eds.), *Gender, Diversity and Trade Unions: International Perspectives* (London: Routledge, 2002).

<sup>37</sup> Sandra Whitworth, *Feminism and International Relations* (Basingstoke: Macmillan, 1994), pp. 119–52; Elizabeth Prügl, *The Global Construction of Gender: Home-Based Work in the Political Economy of the 20th Century* (New York: Columbia University Press, 1999).

main constituencies of the ILO (states, unions and employers) are themselves male dominated.<sup>38</sup>

It could be argued that women workers have potentially most to gain from improvements in labour standards. Mechanisms for protecting labour standards are often targeted at protecting the rights of workers in low waged industries with poor working conditions, the kinds of jobs found in low value-added industries at the bottom end of global supply chains located in the developing world. For the past four decades, feminist researchers have drawn attention to the gendered nature of global production.<sup>39</sup> Yet the development of the labour standards debate has not adequately addressed the concerns raised in this literature. Many of the problems that women face in the workforce are a result of the way in which women tend to be regarded as a key source of low-waged employment in many of the most globalised (and most low-wage dependent) industries.<sup>40</sup> Women are often viewed as a passive, flexible workforce that 'will accept low wages without demanding labour and human rights'.<sup>41</sup> Thus they tend to be recruited into the lowest paying jobs within industries, and tend to be over-represented in part-time, temporary and informal sector employment.<sup>42</sup> The prevalence of female employment is noted in highly labour intensive industries such as garment production, electronics and horticulture. The feminisation of these sectors has been directly related to a process of degradation of the jobs that women move into. Women's work is not only characterised by low wages, but poor working conditions, insecure employment contracts and few opportunities for career advancement. This is a situation that has been described as the feminisation of flexible employment.<sup>43</sup> The globalisation of production is not only characterised by the growth in low wage, feminised, factory employment; we also need to recognise the importance of women's employment as homeworkers, domestic workers and in other forms of informal sector employment (which includes workers employed in formal workplace settings who are classified as 'self-employed' or 'contract labour') (see for example the studies of the garment industry by Women Working Worldwide that point to the pervasiveness of informal and contract work).<sup>44</sup> Women employed in sectors that fall outside conventional understandings of 'labour force participation' are often the most vulnerable groups of workers in the world.

<sup>38</sup> Jane Turner, 'A Gender Perspective on Core Labour Standards in Global Export Industries and an Analysis of Implementation in ETI Company Supply Chains', in Women Working Worldwide, *Core Labour Standards and the Rights of Women Workers in International Supply Chains: Seminar Report November 2004* (Manchester: Women Working Worldwide, 2004), p. 4.

<sup>39</sup> For early examples of these writings see Diane Elson and Ruth Pearson, 'The Subordination of Women and the Internationalization of Factory Production', in K. Young et al. (eds.), *Of Marriage and the Market* (London: CSE Books, 1981) pp. 18–40; Swasti Mitter, *Common Fate Common Bond: Women in the Global Economy* (London: Pluto Press, 1986).

<sup>40</sup> Elson and Pearson, 'The Subordination of Women'.

<sup>41</sup> Christene Chinkin, 'Human Rights of Women: Global Status and Challenges for 2005 and Beyond' (paper given at the 2005 Catalyst Conference 'Global Perspectives on Successful Implementation of Human Rights of Women', University of Essex, 6 May 2005), ([www.essex.ac.uk/catalyst/Prof.Chinkin.htm](http://www.essex.ac.uk/catalyst/Prof.Chinkin.htm)). Accessed 10 October 2006.

<sup>42</sup> Guy Standing, 'Global Feminization through Flexible Labour: A Theme Revisited', *World Development*, 23 (1999), pp. 583–602.

<sup>43</sup> Standing, 'Global Feminization through Flexible Labour'.

<sup>44</sup> Women Working Worldwide, *Garment Industry Subcontracting and Worker Rights: Report of Women Working Worldwide action research in Asia and Europe 2003* (Manchester: Women Working Worldwide, 2003).

### **Codes of conduct, voluntarist regulation and human rights**

Another concern relating to the gendered consequences of the CLS can be raised when looking at how the CLS approach has legitimated the role of the corporation as the principle regulatory agent in enforcing labour standards throughout their supply chains. Alston raises the point that the CLS approach has acted to undermine some of the solid foundations that the ILO had developed in the enforcement and monitoring of labour standards.<sup>45</sup> Unsurprisingly, given the predominance of a language of human rights in the CLS, we can also point to how corporations have adopted the language of 'human rights' in statements of 'corporate social responsibility' and their corporate codes of conduct. This growing emphasis on voluntarism is reflected in the UN's Global Compact which placed the CLS at the centre of building commitments to labour standards within corporations. Launching the Global Compact in 1999, Kofi Annan argued that the CLS represented part of a system of 'universal values' alongside the United Nations Declaration on Human Rights arguing 'they are values people all over the world will recognise as their own'.<sup>46</sup>

The main mechanism through which this voluntarist approach to labour standards is directed is the corporate code of conduct. Codes typically consist of a statement of minimum labour conditions focusing on issues such as the working environment and health and safety standards, assurances that the firm will comply with local laws and guarantees that the firm will uphold anti-discriminatory employment practices.<sup>47</sup> Unsurprisingly, the codes of conduct approach has been thoroughly criticised. Concerns have been raised about the ethics of allowing firms to become essentially self-regulating on this issue. The suggestion is made that codes come to be regarded as a substitute for binding regulatory responses when they really should be viewed as complementary to them.<sup>48</sup> Thus, attention must be drawn to Uvin's concern that talk of 'rights' grants actors a 'moral purpose' that legitimates their activities.<sup>49</sup>

#### *Gendering codes of conduct: feminist activism and research*

The problems with codes of conduct are deftly exposed in a variety of feminist studies. Here I overview some of these studies in order to demonstrate firstly, how commitments to human rights through corporate codes of conduct fail to confront

<sup>45</sup> Alston, 'Core Labour Standards'.

<sup>46</sup> United Nations, Secretary General Proposes Global Compact in Human Rights, Labour and Environment in Address to World Economic Forum in Davos, Press Release SG/SM/6881 (1 February 1999).

<sup>47</sup> OECD (Working Party of the Trade Committee, TD/TC/WP(99)56/FINAL) Codes of conduct: an inventory (Paris: OECD 1999); Michael Urminsky, *Self Regulation in the Workplace: Codes of Conduct, Social Labelling and Socially Responsible Investment*, Management and Corporate Citizenship Working Paper no. 1 (Geneva: ILO 2001).

<sup>48</sup> Rhys Jenkins, Ruth Pearson and Gill Seyfang, 'Introduction', in Rhys Jenkins et al. (eds.), *Corporate Responsibility and Labour Rights: Codes of Conduct in the Global Economy* (London: Earthscan, 2002), p. 1.

<sup>49</sup> Peter Uvin, 'On High Moral Ground: The Incorporation of Human Rights by the Development Enterprise', *PRAXIS: The Fletcher Journal of Development*, xvii (2000), p. 1.

the everyday problems faced by female workers. Secondly, this research raises further questions concerning the viability of the CLS's 'human rights approach' in discussions of women's employment. It is suggested that the kinds of issues endorsed in the CLS and, consequently, also reflected in codes often do little to improve the status of female workers.

Pearson and Seyfang's study of women and codes of conduct found that women face a number of problems that stem from their perceived 'secondary' position within the labour market.<sup>50</sup> These include: low wages and wage inequality, a lack of protection and respect for pregnant workers, inadequate occupational health, safety and social security rights (especially for part-time workers), absence of freedom of association, the right to collective bargaining and human rights, enforced overtime and over-long working days and the intensity of work. Furthermore, they also raise issues relating to women homeworkers and child labour that tend to have a significant impact on women workers. For example, because homeworkers tend to work in conditions that are far worse than those found in factories, the imposition of codes that impose minimum working conditions on workers may have a negative impact on the ability of some of the poorest groups of women in the world to find waged employment.<sup>51</sup> Academics and practitioners working in the area of women and codes of conduct have also pointed to a number of practical problems – most notably, that women are often not aware that the codes even exist. They also point to 'tick-box' approaches to code monitoring and verification, whereby independent monitoring organisations (such as accountancy and consultancy firms) generally fail to talk to the women workers themselves, relying on information provided by company managers to ensure that codes are being enforced. Such a situation is indicative of the top-down nature of the implementation of codes that fail to take into account the reality of women's employment whereby 'there has been no place for women workers or their interests to be represented in the process'.<sup>52</sup> A finding mirrored in the work of Shaw and Hale:

It is our engagement with grassroots women worker organisations especially that has informed our view that one of the key problems with the way in which the ethical trade movement has developed is the top down manner in which codes have been adopted . . . Codes of conduct are typically introduced on behalf of workers without their knowledge or consent. It is simply assumed that workers will see these initiatives as being in their interests.<sup>53</sup>

Despite the fact that a high proportion of codes contain a commitment to anti-discrimination, this does very little to enhance the role and position of women in the workforce. In certain respects this reflects the weak enforcement mechanisms that accompany codes of conduct. Although provisions to ensure discrimination does not take place are written into the codes, this has little impact in reality. But more importantly, it also highlights the way in which global labour markets contain structures of gender inequality and how firms have both perpetuated and drawn upon

<sup>50</sup> R. Pearson and G. Seyfang (2002), 'I'll Tell You What I Want . . .': Women Workers and Codes of Conduct', in Rhys Jenkins et al. (eds.), *Corporate Responsibility and Labour Rights: Codes of Conduct in the Global Economy* (London: Earthscan, 2002), pp. 43–60.

<sup>51</sup> Lucy Brill, 'Can Codes of Conduct Help Home Based Workers?', in Jenkins et al., *Corporate Responsibility*, p. 118.

<sup>52</sup> Pearson and Seyfang, 'I'll Tell You What I Want . . .', p. 51.

<sup>53</sup> Shaw and Hale, 'The Emperor's New Clothes'; Marina Prieto and Jem Bendell, *If you Want to Help then Start Listening to Us! From Factories and Plantations in Central America, Women Speak Out about Corporate Responsibility*, Occasional Paper (Bath: New Academy of Business, 2002).

these gendered inequalities in order to secure a supply of low cost female labour.<sup>54</sup> For example, the exclusion of homeworkers from most codes<sup>55</sup> is indicative of the way in which codes are an inadequate tool for dealing with the embedded gendered forms of inequality that characterise multinational systems of production. In Barrientos, McClenaghan and Orton's work on women's employment in South African horticulture, another problem emerges.<sup>56</sup> They found that codes often failed to cover large groups of women workers. In their study, women workers were generally employed on temporary contracts and therefore not included in the provisions of the code. The point is raised that codes of conduct are designed around norms relating to employment that are biased towards the male experience of full-time, permanent employment. Hence, 'the danger is that the experience of the male permanent worker is taken to be the norm and the more subtle complexities of neo-paternalist relations that affect women's employment are not taken into consideration'.<sup>57</sup> What these studies suggest is that corporate codes of conduct have, like the CLS, adopted a universalist position regarding worker rights that reifies the role and the position of the male worker. These are standards that are clearly attached to the notion of public sphere activities (for instance, formal employment) and fail to address the ways in which women's work may take place within a domestic setting or the domestic burden that even formal-sector employed women are forced to shoulder.

### **Conclusion: Beyond 'human rights'?**

Exposing the problems in both the CLS and corporate codes of conduct has meant that many scholars have come to view the human rights approach as failing to take into account the day to day experiences of large groups of female workers. Fears have also been raised that the human rights approach might have the effect of making it more difficult for women to find employment. Women in Pearson and Seyfang's study were keen to ensure that they would be able to continue to work in export-sector factories – albeit in an improved situation.<sup>58</sup> Similarly, Brill found that the existence of codes of conduct can seriously disadvantage homeworkers (who tend to be mainly women) and calls for approaches to labour regulation that enable workers to continue to earn a living.<sup>59</sup> In a recent article, Naila Kabeer is especially critical of the labour standards debate (in particular the idea of a social clause).<sup>60</sup> Drawing upon her research amongst Bangladeshi women workers, she suggests that the focus of activist campaigns on sectors such as garment production has neglected

<sup>54</sup> Juanita Elias, 'Stitching-up the Labour Market: Recruitment, Gender and Ethnicity in the Multinational Firm', *International Feminist Journal of Politics*, 7 (2005), pp. 90–111.

<sup>55</sup> Brill, 'Can Codes of Conduct Help Home Based Workers?'

<sup>56</sup> Stephanie Barrientos, Sharon McClenaghan and Liz Orton, *Gender and Codes of Conduct: A Case Study from Horticulture in South Africa* (London: Christian Aid, 1999).

<sup>57</sup> Barrientos et al., *Gender and Codes of Conduct*, p. 28.

<sup>58</sup> Pearson and Seyfang, 'I'll Tell You What I Want ...'

<sup>59</sup> Brill, 'Can Codes of Conduct Help Home Based Workers?'

<sup>60</sup> Naila Kabeer, 'Globalization, Labour Standards and Women's Rights: Dilemmas of Collective (in) action in an interdependent world', *Feminist Economics*, 10 (2004), pp. 3–35.

to consider the many advantages that employment in export sector production grants women compared to informal sector employment.

And yet, codes of conduct are often presented as offering an opportunity for women's activism – a space that allows women to push for positive change on a practical level. There is a general acceptance in the literature that codes may eventually come to play an important role in the setting of labour standards that will benefit women workers. These writings call for codes to be developed in cooperation with women workers themselves.<sup>61</sup> But whilst there is a general acceptance of the potential role for codes of conduct in generating labour standards that reflect the specific needs of workers, there is less evidence of critical feminist engagement with the language of 'human rights' within the labour standards debate. In moving beyond the critique of the CLS presented in this article, questions need to be raised concerning the possibilities and the limitations that the CLS agenda opens up for women's human rights activism. Importantly, is the 'pragmatic' engagement with labour standards and codes of conduct endorsed by feminist academics and practitioners sufficient in bringing the concerns of women workers into debates concerning economic rights? For Kabeer, one solution to this dilemma is to pose the idea of a 'universal social floor' (a guaranteed minimum income). Thus:

the struggle for labour standards needs to be broadened and made more inclusive by transforming itself into a struggle for a universal 'social floor', so that all workers, men as well as women, urban as well as rural, formal as well as informal, in work and without it, are able to organise for their rights without fear of jeopardising their means of survival.<sup>62</sup>

This, then, returns us to a point made earlier in the article concerning the ability of (poor) women to access rights, let alone to challenge and renegotiate their rights. The CLS with their privileging of a small sub-set of rights that are compatible with neoliberal values is highly problematic. Without doubt, the use of a human rights discourse in areas such as the CLS has lent legitimacy to a neoliberal development paradigm.<sup>63</sup> Indeed, the main argument presented in this article has been that the CLS fails to meaningfully confront the needs of women workers because it has been formulated in a way that is broadly compatible with neoliberalism. The CLS represent an approach to economic rights that has downgraded or ignored issues that might interfere with the workings of global capital. Placing the multinational firm as a central agent in the promotion of labour standards (via codes of conduct), is highly problematic, because it represents a failure to acknowledge how firms themselves play an active role in the construction of global systems of gender inequality. With these points in mind, therefore, I would suggest that there is some real value in the development of alternative feminist understandings of economic rights – particularly those that might reject the association of rights with public sphere activity. Just as feminist human rights activists sought to challenge the public/private dichotomies that failed to protect women from violence, there is also a need for feminist challenges to be made towards the public/private dichotomies that underpin the exploitation of female labour.

<sup>61</sup> Prieto and Bendell, *If you Want to Help*.

<sup>62</sup> Naila Kabeer, 'Globalization, Labour Standards and Women's Rights', p. 28.

<sup>63</sup> Uvin, 'On High Moral Ground'.