

CHAPTER 1

Class, Convention, and Worker Rights

In the summer of 1997, Nguyen Thi Thu Phuong died making Nike sneakers in a factory in Bien Hoa, northeast of Ho Chi Minh City. She was struck in the heart by a piece of shrapnel that flew out of a machine that a co-worker was fixing. She died instantly. Nike's response to this (and other similar incidents) was "We don't make shoes" (Larimer 1998, 30). This was technically correct as Nike's core business strategy involves outsourcing *all* manufacturing to sub-contractors in poor Asian countries.

In November 2001, Rosa Ruiz died when the van she was riding in flipped over on Route 1 in southern Rhode Island. The van was carrying Ruiz and her co-workers from their job at a fish-processing plant back to their homes in the Providence area. Rosa was working at a company called Town Dock but had been hired through a temporary employment agency, Action Manufacturing Employment. The van was owned and operated by the agency. When the surviving workers publicly voiced complaints about conditions at the plant, they were all fired. Town Dock management's response to the incident was "Rosa Ruiz was not working for Town Dock on the day that she passed" (Ziner and Davis 2001).

The business strategy employed by Nike and Town Dock is not unusual. Specifically, each of these businesses has adopted the "sweating system" method of organizing work. In this system, the real employer takes no responsibility for the wages and working conditions of the employees. The sweating system is now being used not only by producers like Nike, who outsource production to low-wage countries but also by companies like Town Dock, operating in the United States.

Against this strategy, a variety of labor and community organizations have asserted "worker rights." Whereas business strategists (largely supported by or-

thodox economics) present their tactics as necessary responses to irresistible “globalization,” labor activists put forward worker rights as an obvious and natural alternative. Rather than a conversation about what appropriate workplace standards might be, we are often left with a battle of competing truisms.

This book examines how worker rights are conceived and how these conceptions affect the activities of international organizations, governments, enterprises, and social movements. Focusing on the social processes by which rights are defined and the networks through which these definitions are distributed, I go beyond the recent controversies over sweatshops and globalization to show how worker rights have been contested from the antislavery movement to the present day. I analyze how class interest and conventional morality interact to define particular rights at particular times.

By defining slavery as *the* evil that must be destroyed, antislavery activists and reformers, many of them rising industrial capitalists and their allies, helped to create a concept of freedom as the right to sell one’s labor time in a “free market.” Responding to the social dislocations of industrialization and the perceived threat posed by the Bolshevik revolution, social democrats articulated a right to collective bargaining that was embodied in the New Deal and the constitution of the International Labor Organization (ILO). During the Cold War, American conservatives such as George Schultz argued for the adoption of ILO conventions to demonstrate the superiority of the American way of life. Bill Clinton sought to boost the presidential chances of Al Gore and contribute to “globalization with a human face” by linking labor standards to trade negotiations, contributing to the collapse of the WTO meetings in Seattle in 1999. The administration of George W. Bush shifted focus away from sweatshops per se to child labor and worker rights in the Middle East. In each case, class interest and moral convention both influenced how worker rights were conceived.

Economic Heterodoxy

I adopt the standpoint of heterodox economics to tell this story. In doing so, I follow Marx to some extent, in highlighting the material conditions that influence the formation of knowledge, but also certain postmodern and Institutional economists who see ideas, and especially moral conventions, as having a life of their own, a relative autonomy from economics. In emphasizing but not essentializing class relations and interests, I try to avoid both the economic determinism of classical Marxism and the hyperindividualism of neoliberalism.

Contemporary heterodox economics draws on elements from the Keyne-

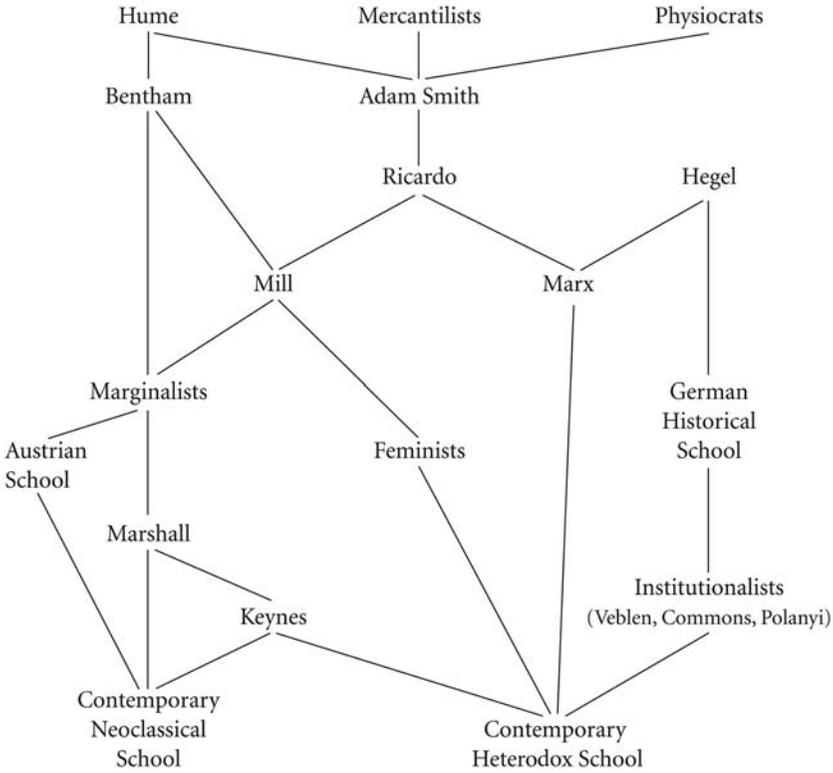


Fig. 1. Political economy: a simplified family tree

sian, Feminist, Marxian, and Institutional traditions (see fig. 1). In Marx and in some of his followers we find the most fully developed analysis of class relations and class interest and their influence on knowledge. The American Institutional school has been especially concerned with the roles of convention, custom, and tradition on how economic arrangements are evaluated.¹

Human beings live in communities. These communities (states, towns, families, workplaces) create larger structures of meaning and understanding, and it is in terms of such structures that individuals understand the world and their place in it. Particular forms of class interest and desire limit both the behavioral choices and meanings available. Class and community create the context within which laws and social practices develop, and law and social practice affect the structuring power of class and community.

Conventional neoclassical economics enters this discussion with little to offer. It essentializes human preferences and technology as the uncaused causes of economic change, and it deploys a highly abstract notion of the market as its primary trope. It continues to spotlight relations between rational, autonomous individuals, “Robinson Crusoes on islands,” and is concerned mainly with the conditions under which these interactions might produce a stable social order.

This neoclassical vision no longer fully defines orthodox economics because over the last generation vigorous research programs in institutional and behavioral economics have developed. Even at the level of the introductory textbook, economics as it is now conventionally taught often includes attention to various complexities such as information and transaction costs, as well as a more serious consideration of the psychological motivation of economic agents. This shift over the last several decades has been useful in making economists more sophisticated about human behavior and able to enter into exciting conversations across the social sciences.

But in public policy discussions a rather crude version of market economics still prevails, and all that noneconomists often know is the neoclassical version of orthodoxy. The study of worker rights is by necessity interdisciplinary, including law, moral philosophy, history, and sociology, as well as economics, and here the revival of Institutional thought is particularly helpful as Institutional economists have always ranged across these fields. However, I argue in the next chapter that the new Institutional and behavioral research programs are likely to help us understand the formation of worker rights only to the extent that class relations, class interest, and the social formation of knowledge are seriously thought about. We will find far more resources for considering these issues in heterodox than in orthodox economics.

If my theoretical approach lies at the intersection of Institutional thought and the Marxian critique of political economy, my political concerns flow from the array of social dislocations that have struck the industrialized world over the last generation, first as “deindustrialization” and more recently as “globalization.”

Since the 1970s there has been a massive extension of the market both geographically and into new areas of social life. More and more things take the form of commodities, and more and more people have become wage laborers. How has this affected dominant moral convention? How have these changes in moral convention been influenced by class interest?

How, given our answers to these questions, should we interpret the rela-

tionship between globalization and the reinvigoration of international justice movements? Is the latter simply called forth by the former, as its dialectical opposite, or can (and should) this relationship be understood in a more complex way? How do conventional definitions of rights and class interest combine to overdetermine the agendas that these movements pursue? Does the antisweatshop movement, for instance, rooted as it is in a moral and often religious critique, allow itself to be used by “enlightened” capitalists to shift attention from the existence of exploitation in general to specific forms of exploitation that contemporary cultural conventions define as particularly egregious, such as forced labor and child labor?² Alternatively, can this movement create a desire for certain kinds of rights that does not exist now? Can it contribute to organizing and giving voice to subaltern groups?

Back to Work

In choosing class and convention as analytical entry points I want to be clear about what in Marx and what in Institutional thought I really want to use. The genius of classical Marxism was to produce in thought the class that would resolve the contradictions of capitalism. But the two-class model of the *Communist Manifesto* and the determinism of the famous preface to the *Contribution to the Critique of Political Economy* are now almost embarrassing in their optimism and scientism, however successful they once were polemically. On the other hand Marxist theory has long since left behind the base-superstructure model, and there is now a rich and extensive body of work that develops Marx’s concept of class as exploitation without making class the determinant of everything else in society.³

As long as the drives to minimize labor costs and to privately appropriate public resources are promoted as normal and socially efficient there will probably always be some kind of Marxism that is denaturalizing and critiquing those drives and their effects. I assume with Marx that exploitation in production is linked to a host of social problems, without assuming that those links are simple or obvious. In addressing the role of social convention in combating exploitation I am drawn to those parts of the Marxian and Institutional traditions that find a relatively autonomous role for ideology in social life.

In the United States the Institutional tradition has left a bigger footprint on social theory and politics than has Marxism.⁴ Although Thorstein Veblen is now more commonly read in sociology and cultural studies than in economics, there is a healthy industry in recycling his contrasts between the world of

money making and the world of making goods, if not very often with his satirical wit. There has recently been a resurgence of interest in Karl Polanyi's work, particularly his analysis of the ways in which society protects itself from the outward thrust of the market, and the social turbulence that this double movement engenders.

Among the major Institutional theorists in the United States it was John R. Commons and his followers who had the biggest impact on labor relations and law. Paralleling Fabian socialism in England and the reformist wing of German social democracy, Commons argued that unionization and regulation could incorporate the working class within capitalism while tempering some of the social instability inherent in the capitalist process. And it was Commons's students (and his students' students) who prevailed in labor law and policy in the United States from the 1930s to the 1970s. In a sense, for Commons-brand institutionalism, the labor movement and the New Deal *were* the revolution that Marxists sought through other means.

This brand of policy and thought is now almost as dead as deterministic Marxism. Yet Commons's ideas are also regularly recycled in the New Institutional economics and in vague desires, usually at the end of books or conference addresses, for "some kind of global New Deal." I develop Commons's ideas directly and put them into conversation not with the neoclassical theory of the firm, as in so-called new Institutionalism, but with the Marx who recognized that the institutions, norms, and traditions of each country must be taken into consideration when analyzing the possibility of eliminating exploitation.⁵

Institutions and Class

How do economic rights emerge and evolve? I argue that the emergence and definition of worker rights are best understood as the interactive result of convention and class.

Why *worker rights*?⁶ Because they are increasingly important—and understudied. The globalization of the late twentieth and early twenty-first centuries, that is, the extension of market relations to new parts of the globe and the deepening hold of markets and market-worshipping ideologies within the already (mostly) capitalist countries, was accompanied by an unexpected resurgence of the "labor problem." Antisweatshop activists and living wage campaigns put the problem of the labor market and the employment relationship squarely at the center of the public policy agenda at a time when many apostles of the "new economy" had assumed that these were solved problems of the industrial age (French 2002).

Economists have studied property rights at length, often believing that securing such rights is the critical condition necessary for a market-coordinated economy to work. Various kinds of property rights have figured prominently in global trade negotiations. While worker rights have snuck onto that agenda from time to time, they have hardly received anywhere near the analytical attention that property rights have.

Even many heterodox—radical, feminist, institutional, Marxian, Austrian, post-Keynesian, ecological, and so on—economists do not take worker rights seriously, seeing such rights as fine (and perhaps even supportable) as a political slogan but not worth serious academic consideration. I show here that clear understanding of the emergence and evolution of worker rights can make a strong contribution to the ongoing project of building a viable alternative to neoclassical theory and neoliberal policies.

Any approach to the labor market that takes institutional and sociological factors seriously must acknowledge that how hiring and production take place, how wages and unemployment are determined, and how income is distributed are all affected by what kinds of rights can be asserted and defended. It is hard to see how heterodox (or orthodox for that matter) students of labor and employment relations can make any headway without clear and sophisticated concepts of the formation and evolution of worker rights.

Most activists and human rights scholars pay little attention to economics, or indeed to the status of their own claims to workers having “rights.” One of the purposes of this book is to demonstrate that a viable economics exists that can lend support to some human rights claims, while also critically engaging such claims. An encounter between worker rights activism, human rights theory, and economic heterodoxy can lead to the effective critique and strengthening of each.

Class and Conventional Knowledge

Rights emerge and evolve in the context of class processes, class interest, and conventional knowledge. Both *class* and *convention* have multiple meanings in general, and I will use both words to signify several things.

Its *class* approach to understanding social change is arguably the greatest contribution of Marxian theory to the social sciences. Marx posited that all but the most primitive societies are divided by class in that some people receive the surplus labor of others. This surplus is the labor over and above what is necessary for the replacement of the means of production and reproduction of the direct producers at a given standard of living. The appropriators of the sur-

plus—slaveholders, feudal lords, capitalists, chiefs, in various types of societies—have a privileged position as the first receivers of the surplus, but they in turn must distribute at least part of the surplus to various individuals providing conditions of their continued existence as surplus appropriators—overseers, feudal retainers, merchants, bankers, churches, the state, etc. Tensions and contradictions both between the producers and appropriators of surplus and between the appropriators and the various groups that make claims on the surplus are understood to be the main forces driving social change. Examining those forces and the various possible alliances between people differently positioned with respect to the performance, appropriation, and distribution of surplus is the main object of Marxian scholarly and political work.

This is a different notion of class than is used in academic sociology, cultural studies, or the popular media. It is a thin definition in that it focuses on only a few processes, which it calls *class processes*, and does not presume a one-to-one correspondence between these class processes and the sociological or cultural meanings of *class*.

There is another, thicker meaning of *class* that I also deploy in this book: class interest. Those who are performers of surplus labor may have a class interest in ending that performance and appropriating the surplus for themselves. Those who are surplus appropriators may have a class interest in just the opposite outcome. Those who receive surplus from the appropriators may themselves come to perceive class interest either in their own groups or through some kind of alliance with surplus performers or appropriators.

It would be foolish to reduce people's behavior to their class positioning. Consideration of class interest is important though in understanding the formation and evolution of rights concepts. Rights cannot be understood as emerging from nowhere; they are always and everywhere affected by the class relations within which they circulate. Particular rights concepts will be more or less consistent with existing patterns of surplus production, appropriation, and distribution. I argue in chapter 4, for instance, that the critique of slavery was informed and limited by capitalists' desire to contrast slavery with an ideology of free labor. In other words, the (sometimes intended and sometimes unintended) effect of the attack on the slave class process was to create ideological conditions of existence for capitalist exploitation.

A more recent example is the emergence of rights-based governance of the employment relationship in the United States over the last twenty-five years. Developing out of the civil rights and feminist movements, employers are now legally constrained in their dealings with a whole array of people based on their

gender, age, racial, and physical characteristics. But at the same time, capitalists were successful in channeling the complaints about work relations in the ways that were easiest for them to handle, that is, by granting *individual* rights rather than collective rights such as freedom of association and the right to bargain collectively. In chapter 7 I investigate how the definition of worker rights in the current moment of globalization is influenced by both convention and class, in that some corporations do in fact respond to consumer and investor complaints about sweatshops, but in ways that support individual rather than collective rights.

Class interest has its effects mostly indirectly through the formation of conventional knowledge. Here the Institutional economics tradition and the tendency in Western Marxism associated especially with the Italian theorist and labor leader Antonio Gramsci are not so far apart. Gramsci developed a subtle and acute analysis of how capitalists maintain their position not just through violence and economic coercion but also through various institutions—schools, churches, media, and so forth—in which the values of the capitalist class in general are promoted as the common sense of society. This creation of a hegemonic culture, Gramsci thought, was critical to capitalists' ability to get workers to consent to (and sometimes even to celebrate) their own exploitation, without resorting to direct or violent repression. In the case of Italy Gramsci thought the Catholic Church played an especially important role as a universal institution promoting a perceived unity of interests among those occupying different class positions. The precise workings of cultural hegemony differ from one society to another, but the key point is that a dominant capitalist economic class position is reproduced partly by creating conventional knowledge in which bourgeois values emerge as natural and normal (Gramsci 1971).

Not only did Gramsci raise the importance of cultural processes for socialists, but he pointed to the fact that the formation of a "historical bloc" capable of reproducing the hegemony of the dominant class required compromise and alliance with a variety of different groups. In the analysis of worker rights then, recognizing class interest points us toward the limits that the conventional wisdom will place on the formation of rights concepts as well as the real advances that might be made because of capitalists' desire and need to maintain hegemony in the cultural sphere.

Convention is at least as variously defined as *class*, and I will use the term in several senses. The notion that economic behavior is the complex product of the cultural and political setting in which it occurs is familiar in the older insti-

tutional economics of Thorstein Veblen, John R. Commons, Karl Polanyi, and John Kenneth Galbraith. Galbraith's notion of the "conventional wisdom"—widely and rarely questioned beliefs that ground behavior—is particularly well known, and given the emphasis Galbraith placed on advertising, his version of the consensus construction of reality is perhaps not so far from Gramsci's as it might first appear.

Various strands within Institutional thought are useful for offsetting a tendency to functionalism and structuralism within Marxism. There are, of course, Marxists who reject functionalist and structural explanations but oftentimes what Marxists and critical theorists seem especially good at is explaining how capitalist structures of power and exploitation are reproduced because that is somehow what capitalism requires. Institutional thought allows us to more easily incorporate conventional thinking, which is (of course) influenced by but not reducible to class interest.

The concept of convention is prominent in the new Institutional economics. Conventions, such as driving on one side of the road or another, allow people to coordinate their behavior without communicating with one another, drawing on ideas they share based on common experience. Conventions become widespread when the small numbers of people who deviate from them do less well than those who follow them. Conventions then are self-perpetuating patterns of behavior.

Class, Convention, and Worker Rights

How are worker rights established? Here is where Institutionalists might learn something from Marxism. In the next chapter I argue that it is necessary to bring Marx's ideas fully into the discussion of worker rights, rather than treating Marx—and the idea of class as exploitation—as a ghostly absence, which is currently the case for both orthodox and many heterodox economists.

In chapter 3 I use class and convention to argue that recent changes in the contemporary world economy have created something quite similar to sweatshop conditions on a global basis through an increase in social distance. By this I mean a situation in which the employer takes no moral responsibility for the condition of his employee. This is most obviously true in situations of lengthened commodity chains, such as Nike and other shoe and apparel manufacturers, in which the ultimate employer has never been to the country in which the ultimate producer is working. But it is also true in cases where employer and employee share the same physical space but are grouped into separate legal en-

tities, as in the cases of outsourcing, subcontracting, and the use of temporary workers in the United States. In the concluding chapter I speculate that this imminent tendency has spread to define workplace morality even in traditional factory enterprises.

Can a politics of rights combat this tendency? “Rights talk” makes economists nervous, and there are good reasons for this. While not all discussions of rights are “hot air on stilts,” I show in chapter 4 that the assertion of rights claims as a primary strategy used by those who want to challenge (or defend) the political-economic status quo is more an accident of history than a testament to the strength of rights theory. What is and is not constituted as a right is influenced not just by the desires of social movements and intellectuals but by material interest. I argue that the right to freedom from forced labor, one of the four “core” rights established by the International Labor Organization, fits well with the contemporary human rights regime, whereas the right to freedom of association and collective bargaining does not. And if the latter is the more potent tool in developing a countermovement to corporate globalization, then neglecting the discursive constitution of rights comes at a high price.

In the later chapters I show that a class-conscious deployment of Institutional economics is the most useful way to think about the contemporary international organization of worker rights through case studies of the International Labor Organization, the international labor policy of the U.S. government, and the student antisweatshop movement. If the growth of social distance through lengthening commodity chains explains much about contemporary labor markets, I argue that the creation of a language of international labor rights and an international law of labor standards through an authoritative institution is a pressing priority.

Chapter 5 is concerned with the nascent version of such an institution, the International Labor Organization (ILO). The most completely articulated argument for labor rights is the ILO’s Declaration on Fundamental Principles and Rights at Work. The ILO, both in the programs and policies it promotes, and in its own governance, is very close to that part of the Institutional tradition associated with Commons. For this reason it deploys a way of thinking about rights that is alien to the other multilateral organizations such as the International Monetary Fund (IMF) and the World Bank. The ILO’s discursive construction of rights creates space to address the moral dimensions of the contemporary employment relationship, while creating awkward translation problems within economics.

The United States has not ratified the core ILO conventions on labor rights,

in particular the rights to freedom of association and to bargain collectively. Defenders of the U.S. record argue variously that the U.S. federal system prevents such ratification, that our current system of employment law reflects a fragile balance of interests that should not be disturbed by international considerations, and that in practice U.S. workers have their rights protected more effectively than workers in those countries that have ratified these conventions. I show each of these claims to be specious. The resistance to ratification flows more from class interest than from legal constraint or the virtues of our current arrangements. Perhaps nothing would be more educational on these issues than a Senate debate on ratification of the conventions on freedom of association and collective bargaining, and because of contradictions between U.S. foreign policy and the class desires of U.S. capitalists, such a debate may be possible.

Resistance to dictatorship inside the workplace is as old as or older than capitalism itself, and today a variety of labor-based nongovernmental organizations are engaged in cultivating a desire for class justice at work, by breaking down the mysteries of the commodity and encouraging people to link the commodities they consume to the social relations under which they were produced. Prominent among these in the United States are United Students Against Sweatshops and the Worker Rights Consortium. I argue that while the stated goals of the student antisweatshop movement are modest, its unintended effects may be quite large, especially when judged against the record of earlier worker rights movements.

In the concluding chapter I will draw the various strands of the argument together and consider some effects of the spread of the sweating model and mentality beyond the global factory networks, as well as the resistance to that model and mentality. To reverse the old 1960s slogan, this resistance takes the form of thinking locally while acting globally, of repositioning faceless others as our neighbors, while building global networks of solidarity.

Neither class nor morality is part of the standard conversation in economics today although both once were. Before becoming famous as the author of the *Wealth of Nations*, Adam Smith, professor of moral philosophy at Edinburgh, wrote *The Theory of Moral Sentiments*, a book recently rediscovered by new Institutional economists. Karl Marx was not only the last of the classical political economists; he also developed the most sophisticated approach to class in social theory. The next chapter provides a new economic approach to worker rights that incorporates both morality and class.